

**Enrolled**  
**House Bill 2457**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Land Conservation and Development)

CHAPTER .....

AN ACT

Relating to units of land crossed by an urban growth boundary; creating new provisions; amending ORS 197.065, 215.263, 215.265, 215.780 and 215.783; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283

(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.

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

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

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

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

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

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

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

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

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

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

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

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than [*at least*] 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 con-

sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

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

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

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

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

(D) The parcels for the nonfarm dwellings are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 2. Section 3 of this 2015 Act is added to and made a part of ORS chapter 215.**

**SECTION 3. (1) As used in this section, notwithstanding ORS 215.010, "parcel" has the meaning given that term in ORS 92.010.**

**(2) Notwithstanding the minimum lot or parcel size established under ORS 215.780 (1), when a portion of a lawfully established unit of land has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan and the portion of the lawfully established unit of land that remains outside the urban growth boundary and zoned for forest uses or mixed farm and forest uses is smaller than the minimum size established under ORS 215.780 (1), the governing body of a county, or its designee, may approve a proposed division by partition of the land, including the land that remains in a forest zone or a mixed farm and forest zone.**

**(3) The parcel created in the forest zone or mixed farm and forest zone must be partitioned 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:**

**(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; and**

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

**(4) In approving a land division under this section, the governing body of the county or its designee shall require as a condition of approval that the owner of a parcel not containing a dwelling sign and record in the deed records for the county in which the parcel is located**

**an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

**SECTION 4.** ORS 197.065 is amended to read:

197.065. (1) Prior to each odd-numbered year regular legislative session, the Land Conservation and Development Commission shall submit to the appropriate legislative committee a written report analyzing applications approved and denied for:

(a) New and replacement dwellings [*under*]:

(A) **Under** ORS 215.213 (1)(d) and (f), (2)(a) and (b), (3) and (4), 215.283 (1)(d) and (e), 215.284 and 215.705; and

(B) [*Any*] **On** land zoned for forest use under any statewide planning goal that relates to forestland;

(b) Divisions of land [*under*]:

(A) **Under** ORS 215.263 (2), (4) and (5); and

(B) [*Any*] **On** land zoned for forest use under any statewide planning goal that relates to forestland, **including a division under section 3 of this 2015 Act**;

(c) Dwellings and land divisions approved for marginal lands [*under*]:

(A) **Under** ORS 215.317 or 215.327; and

(B) **On** any land zoned for forest use under any statewide planning goal that relates to forestland; and

(d) Such other matters pertaining to protection of agricultural or forest land as the commission deems appropriate.

(2) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the appropriate legislative committee under subsection (1) of this section. The department shall establish, after consultation with county governing bodies, an annual reporting period and may establish a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

(a) Dwellings authorized by ORS 215.213 (1)(d) or 215.283 (1)(d); or

(b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum size established by the commission under ORS 215.780.

(3) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsection (1) of this section.

**SECTION 5.** ORS 215.265 is amended to read:

215.265. In approving a land division under ORS 215.263 **(2)(a)(C) or (10)**, the governing body of a county or its designee shall require as a condition of approval that the owner of any parcel not containing a dwelling sign and record in the deed records for the county where the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

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

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

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

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

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

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

(a) When the county can demonstrate to the Land Conservation and Development Commission that the county can adopt a lower minimum lot or parcel size while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

(b) To divide **by partition** an area of land zoned for forest use to *[establish]* **create** a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

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

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum *[land division standards]* **lot or parcel size** of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum *[land division standards]* **lot or parcel size** of the zone.

(c) To divide **by partition** an area of land zoned for mixed farm and forest use to *[establish]* **create** a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

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

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum *[land division standards]* **lot or parcel size** of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum *[land division standards]* **lot or parcel size** of the zone;

(C) The minimum tract eligible under this paragraph is 40 acres;

(D) The tract *[shall]* **must** be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(E) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

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

(A) Are not eligible for siting of a new dwelling;

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

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

(D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:

(i) Facilitate an exchange of lands involving a governmental agency; or

(ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.

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

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

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

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

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

(E) The landowner of a *[lot or]* parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further divid-

ing the [lot or] parcel has been recorded with the county clerk of the county in which the [lot or] parcel is located. A restriction imposed under this paragraph [shall be] **is** irrevocable unless a statement of release is signed by the county planning director of the county in which the [lot or] parcel is located indicating that the comprehensive plan or land use regulations applicable to the [lot or] parcel have been changed so that the [lot or] parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

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

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

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

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

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

(5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.651 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

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

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

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

(7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that [shall] **must** be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

**SECTION 7.** ORS 215.783 is amended to read:

215.783. (1) The governing body of a county or its designee may approve a proposed division **by partition** of land in a forest zone or a mixed farm and forest zone to create [two parcels] **one new parcel** if the proposed division of land is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels as provided in this section.

(2) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

(a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or

(b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under ORS 215.705 to 215.750, based on the size and configuration of the parcel.

(3) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

(a) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and

(b) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

(4) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the county may approve the division.

**SECTION 8. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

**Passed by House March 10, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 7, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State