

House Bill 2315

Sponsored by Representative BONHAM (at the request of The Nature Conservancy) (Pre-session 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**.

Modifies provisions regarding division of land by eliminating purchase requirement when land is acquired by provider of public parks or open space, or by not-for-profit land conservation organization.

A BILL FOR AN ACT

1
2 Relating to the division of land for noncommercial open space purposes; amending ORS 215.263 and
3 215.783.

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

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

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

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

13 (A) The proposed division of land is appropriate for the continuation of the existing commercial
14 agricultural enterprise within the area;

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

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

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

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

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

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

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

30 (iii) May not be considered in approving a redesignation or rezoning of forestlands under the
31 acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (i) Not capable of producing more than 50 cubic feet per acre per year of wood fiber; and

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

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

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

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

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

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

45 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully

1 created prior to July 1, 2001;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (12) Notwithstanding the minimum lot or parcel size described in ORS 215.780 (1) or (2), the
 33 governing body of a county or its designee may approve a proposed division of land in an exclusive
 34 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
 35 parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing
 36 body may establish other criteria as it considers necessary.

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

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

43 **SECTION 2.** ORS 215.783 is amended to read:

44 215.783. (1) The governing body of a county or its designee may approve a proposed division by
 45 partition of land in a forest zone or a mixed farm and forest zone to create one new parcel if the

1 proposed division of land is for the purpose of allowing a provider of public parks or open space,
2 or a not-for-profit land conservation organization, to [*purchase*] **acquire** one of the resulting parcels
3 as provided in this section.

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

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

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

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

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

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

21 (4) If a proposed division of land under this section results in the disqualification of a parcel for
22 a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as
23 riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS
24 308A.371 or 308A.700 to 308A.733 before the county may approve the division.
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