

House Bill 3368

Sponsored by Representative SMITH DB

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**.

Authorizes counties to allow contiguous clustered nonresource dwellings on clustered development tract in lieu of approval of individual nonresource dwellings on exclusive farm use or forest lands. Allows bonus dwellings when dwellings are sited on low value soil or with shared water or sewage systems. Establishes requirements for siting and approving dwellings and subdividing or partitioning clustered development tracts.

A BILL FOR AN ACT

1
2 Relating to clustered resource dwellings; creating new provisions; and amending ORS 215.236,
3 215.262 and 215.700.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 215.700 to**
6 **215.780.**

7 **SECTION 2. (1) As used in this section:**

8 (a) **"Base developable dwellings" means the maximum total number of new nonresource**
9 **dwellings that could be allowable on a clustered development tract if the tract had a common**
10 **owner.**

11 (b) **"Clustered development tract" means one or more contiguous lots or parcels that are**
12 **zoned for exclusive farm use or forest use and are:**

13 (A) **Under the same ownership; or**

14 (B) **Under different ownership, but the owners have entered into a written agreement to**
15 **apply to develop two or more clustered nonresource dwellings on the owners' combined lots**
16 **or parcels.**

17 (c) **"Clustered nonresource dwellings" means two or more new nonresource dwellings**
18 **sited on a clustered development tract.**

19 (d)(A) **"New nonresource dwelling" includes dwellings that could be authorized on a tract**
20 **under ORS 215.213 (3) or (4), 215.284, 215.317, 215.327 or 215.700 to 215.780 or are otherwise**
21 **allowed on lands zoned for exclusive farm use or forest use.**

22 (B) **"New nonresource dwellings" does not include replacement dwellings or dwellings**
23 **that are authorized in conjunction with a farm or forest use.**

24 (e) **"Remaining resource lands" means lots or parcels included within a clustered devel-**
25 **opment tract upon which no clustered nonresource dwelling is sited and which will remain**
26 **zoned for exclusive farm use, forest use or mixed farm and forest use.**

27 (2) **In lieu of, and not in addition to, individually authorizing new nonresource dwellings,**
28 **a county may authorize, on a clustered development tract dwelling, the subdivision or par-**
29 **tion of the tract and the siting of clustered nonresource dwellings as provided by this sec-**
30 **tion.**

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 **(3) In the clustered development tract, a county may allow the siting of residential**
2 **dwellings in addition to the base developable dwellings in an amount that is no greater than**
3 **the lesser of:**

4 **(a) The total base developable dwellings minus one; or**

5 **(b) Rounded down to the nearest whole number, the sum of:**

6 **(A) One-quarter dwelling for each clustered nonresource dwelling sited on a lot or parcel**
7 **where a deed restriction requires that the dwelling share a well or water source with one**
8 **or more clustered nonresource dwellings;**

9 **(B) One-quarter dwelling for each clustered nonresource dwelling sited on a lot or parcel**
10 **where a deed restriction requires that the dwelling share a septic system or drainfield or**
11 **sewage system with one or more clustered nonresource dwellings; and**

12 **(C) One-quarter dwelling for each clustered nonresource dwelling that is sited on soil**
13 **that is predominately composed of Class VI through Class VIII soils.**

14 **(4) A county may authorize only clustered nonresource dwellings that:**

15 **(a) Are separated by not more than 300 feet, measured between the nearest points of the**
16 **respective dwellings' footprints; and**

17 **(b) Either front on a public road or share, with all other clustered nonresource dwellings**
18 **that do not front on a public road, a private road with a single common access point to a**
19 **public road via an easement.**

20 **(5) A county may authorize a clustered development tract unless the overall plan for the**
21 **tract and the clustered nonresource dwellings:**

22 **(a) Will force a significant change in or significantly increase the cost of accepted farm-**
23 **ing or forest practices on the remaining resource lands or nearby lands devoted to farm or**
24 **forest use; or**

25 **(b) Will materially alter the stability of the overall land use pattern of the area.**

26 **(6) A county shall allow a clustered development tract to be subdivided or partitioned to**
27 **allow each clustered nonresource dwelling to be sited on a lot or parcel that:**

28 **(a) Is not smaller than one acre in size;**

29 **(b) Is not larger than five acres in size; and**

30 **(c) Forms a single contiguous tract of parcels or lots with all other clustered**
31 **nonresource dwellings.**

32 **(7) To the extent practicable, the single contiguous tract described in subsection (6)(c)**
33 **of this subsection:**

34 **(a) Must be contiguous to:**

35 **(A) Any of the following that border the clustered development tract:**

36 **(i) An urban growth boundary;**

37 **(ii) Any area zoned for rural residential use, as defined in ORS 215.501; and**

38 **(iii) Other clustered nonresource dwellings; and**

39 **(B) Any road that borders or crosses the clustered development tract; and**

40 **(b) May not divide the remaining resource lands into more than one tract.**

41 **(8) To the extent practicable, the county shall ensure each clustered nonresource dwell-**
42 **ing or lot or parcel authorized under this section:**

43 **(a) Prevents negative impacts to groundwater and impacts due to runoff;**

44 **(b) Minimizes disturbance to wetlands, grasslands, mature trees, habitat lands and open**
45 **lands; and**

1 (c) Protects or incorporates any existing historic buildings or residential dwellings.

2 (9) Remaining resource lands:

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

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

6 (c) May not be considered in approving a redesignation or rezoning of forestlands or lands
7 zoned for exclusive farm use under the acknowledged comprehensive plan and land use reg-
8 ulations, except for a redesignation or rezoning to allow a public park, open space or other
9 natural resource use; and

10 (d) Must be subject to a deed restriction recorded in the county records that precludes
11 all future rights of the owner or future owners of the tract consistent with the requirements
12 of paragraphs (a) to (c) of this subsection.

13 (10) If any portion of a clustered development tract is within an acknowledged urban
14 growth boundary, the portion of the tract within the urban growth boundary may not be used
15 to calculate the base developable dwellings under this section. Notwithstanding ORS 215.263
16 (2)(b)(B) and 215.785 (3)(b)(B), a parcel created under ORS 215.263 (2)(a)(C) or 215.785 (2) after
17 the effective date of this 2019 Act that remains in the exclusive farm use, forest use or mixed
18 farm and forest use zone may be considered in determining the base developable dwellings
19 for a clustered development tract under this section.

20 **SECTION 3.** ORS 215.262 is amended to read:

21 215.262. [(1)] The Legislative Assembly declares that the creation of small parcels for nonfarm
22 dwellings in exclusive farm use zones introduces potential conflicts into commercial agricultural
23 areas and allows a limited number of nonfarm dwellings in exclusive farm use zones. To protect the
24 state’s land base for commercial agriculture from being divided into multiple parcels for nonfarm
25 dwellings while continuing to allow a limited number of nonfarm dwellings on less productive agri-
26 cultural land not suitable for farm use, it is necessary to:

27 [(a)] (1) Limit the incremental division of lots or parcels larger than the minimum size estab-
28 lished under ORS 215.780 into smaller lots or parcels for the purpose of creating new nonfarm
29 dwellings; [and]

30 [(b)] (2) Allow a limited number of lots or parcels equal to or less than the minimum size es-
31 tablished under ORS 215.780 to be partitioned into not more than two parcels unsuitable for farm
32 use and eligible for siting nonfarm dwellings under ORS 215.284[.]; **and**

33 [(2) *The amendments to ORS 215.263 by section 3, chapter 704, Oregon Laws 2001, address the*
34 *partition of land within an exclusive farm use zone to create parcels smaller than the minimum size*
35 *established under ORS 215.780 for the purpose of siting dwellings not provided in conjunction with*
36 *farm use in eastern Oregon, as defined in ORS 321.805, and in western Oregon, as defined in ORS*
37 *321.257.*]

38 (3) **For nonfarm dwellings that are allowed, encourage the clustering of dwellings to**
39 **maintain uninterrupted tracts of usable resource lands and to minimize conflict between**
40 **resource lands and residential uses.**

41 **SECTION 4.** ORS 215.700 is amended to read:

42 215.700. The Legislative Assembly declares that land use regulations limit residential develop-
43 ment on some less productive resource land acquired before the owners could reasonably be ex-
44 pected to know of the regulations. In order to assist these owners while protecting the state’s more
45 productive resource land from the detrimental effects of uses not related to agriculture and forestry,

1 it is necessary to:

2 (1) Provide certain owners of less productive land an opportunity to build a dwelling on their
3 land; *[and]*

4 (2) Limit the future division of and the siting of dwellings upon the state's more productive re-
5 source land[.]; **and**

6 **(3) For dwellings that are allowed, encourage the clustering of dwellings to maintain un-**
7 **interrupted tracts of usable resource lands and to minimize conflict between resource lands**
8 **and residential uses.**

9 **SECTION 5.** ORS 215.236 is amended to read:

10 215.236. (1) As used in this section, "dwelling" means a single-family residential dwelling not
11 provided in conjunction with farm use.

12 (2) The governing body or its designee may not grant final approval of an application made un-
13 der ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) **or section 2 of this 2019 Act** for the estab-
14 lishment of a dwelling on a lot or parcel in an exclusive farm use zone that is, or has been, receiving
15 special assessment without evidence that the lot or parcel upon which the dwelling is proposed has
16 been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 or
17 other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to
18 321.855 and any additional tax imposed as the result of disqualification has been paid.

19 (3) The governing body or its designee may grant tentative approval of an application made
20 under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) **or section 2 of this 2019 Act** for the estab-
21 lishment of a dwelling on a lot or parcel in an exclusive farm use zone that is specially assessed
22 at value for farm use under ORS 308A.050 to 308A.128 upon making the findings required by ORS
23 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) **or section 2 of this 2019 Act**. An application for the
24 establishment of a dwelling that has been tentatively approved shall be given final approval by the
25 governing body or its designee upon receipt of evidence that the lot or parcel upon which estab-
26 lishment of the dwelling is proposed has been disqualified for special assessment at value for farm
27 use under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to
28 321.390, 321.700 to 321.754 or 321.805 to 321.855 and any additional tax imposed as the result of
29 disqualification has been paid.

30 (4) The owner of a lot or parcel upon which the establishment of a dwelling has been tentatively
31 approved as provided by subsection (3) of this section shall, before final approval, simultaneously:

32 (a) Notify the county assessor that the lot or parcel is no longer being used as farmland or for
33 other specially assessed uses described in subsection (2) or (3) of this section;

34 (b) Request that the county assessor disqualify the lot or parcel from special assessment under
35 ORS 308A.050 to 308A.128, 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855; and

36 (c) Pay any additional tax imposed upon disqualification from special assessment.

37 (5) Except as provided in subsection (6) of this section, a lot or parcel that has been disqualified
38 pursuant to subsection (4) of this section may not requalify for special assessment unless, when
39 combined with another contiguous lot or parcel, it constitutes a qualifying parcel.

40 (6)(a) A lot or parcel that has been disqualified pursuant to subsection (4) of this section may
41 requalify for wildlife habitat special assessment under ORS 308A.403 to 308A.430 or conservation
42 easement special assessment under ORS 308A.450 to 308A.465 without satisfying the requirements
43 of subsection (5) of this section.

44 (b) Upon disqualification from wildlife habitat special assessment under ORS 308A.430 or dis-
45 qualification from conservation easement special assessment under ORS 308A.465, the lot or parcel

1 shall be subject to the requirements of subsection (5) of this section.

2 (7) When the owner of a lot or parcel upon which the establishment of a dwelling has been
3 tentatively approved notifies the county assessor that the lot or parcel is no longer being used as
4 farmland and requests disqualification of the lot or parcel for special assessment at value for farm
5 use, the county assessor shall:

6 (a) Disqualify the lot or parcel for special assessment at value for farm use under ORS 308A.050
7 to 308A.128 or other special assessment by removing the special assessment;

8 (b) Provide the owner of the lot or parcel with written notice of the disqualification; and

9 (c) Impose the additional tax, if any, provided by statute upon disqualification.

10 (8) The Department of Consumer and Business Services, a building official, as defined in ORS
11 455.715 (1), or any other agency or official responsible for the administration and enforcement of the
12 state building code, as defined in ORS 455.010, may not issue a building permit for the construction
13 of a dwelling on a lot or parcel in an exclusive farm use zone without evidence that the owner of
14 the lot or parcel upon which the dwelling is proposed to be constructed has paid the additional tax,
15 if any, imposed by the county assessor under subsection (7)(c) of this section.

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