

House Bill 3246

Sponsored by Representative NOBLE

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**.

Allows partition of land zoned for exclusive farm use that contains dwelling. Specifies conditions on partition.

A BILL FOR AN ACT

1
2 Relating to partition of land zoned for exclusive farm use that contains a dwelling; amending ORS
3 197.665, 215.263, 215.265 and 329A.440.

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 igned 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 **(c) A parcel used or to be used for training or stabling facilities may not be considered**
 3 **appropriate to maintain the existing commercial agricultural enterprise in an area where**
 4 **other types of agriculture occur.**

5 (3) The governing body of a county or its designee may approve a proposed division of land in
 6 an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (1)(c) or (2)
 7 or 215.283 (1)(c) or (2) if it finds that the parcel for the nonfarm use is not larger than the minimum
 8 size necessary for the use. The governing body may establish other criteria as it considers neces-
 9 sary. Land that is divided under this subsection pursuant to ORS 215.213 (1)(c) or 215.283 (1)(c) may
 10 not later be rezoned by the county for retail, commercial, industrial or other nonresource use, ex-
 11 cept as provided under the statewide land use planning goals or under ORS 197.732.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:
- 2 (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels
- 3 smaller than the minimum size established under ORS 215.780, each to contain a dwelling not pro-
- 4 vided in conjunction with farm use if:
- 5 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
- 6 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully
- 7 created prior to July 1, 2001;
- 8 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with
- 9 the minimum size established under ORS 215.780;
- 10 (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings
- 11 complies with the minimum size established under ORS 215.780; and
- 12 (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm
- 13 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-
- 14 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-
- 15 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or
- 16 forest use in conjunction with other land.
- 17 (b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into
- 18 two parcels, each to contain one dwelling not provided in conjunction with farm use if:
- 19 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
- 20 (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully
- 21 created prior to July 1, 2001;
- 22 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or
- 23 smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
- 24 (D) The parcels for the nonfarm dwellings are:
- 25 (i) Not capable of producing at least 20 cubic feet per acre per year of wood fiber; and
- 26 (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90
- 27 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage
- 28 for grazing livestock. The Land Conservation and Development Commission, in cooperation with the
- 29 State Department of Agriculture and other interested persons, may establish by rule objective cri-
- 30 teria for identifying units of land that are not capable of producing adequate herbaceous forage for
- 31 grazing livestock. In developing the criteria, the commission shall use the latest information from
- 32 the United States Natural Resources Conservation Service and consider costs required to utilize
- 33 grazing lands that differ in acreage and productivity level;
- 34 (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation;
- 35 and
- 36 (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm
- 37 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-
- 38 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-
- 39 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or
- 40 forest use in conjunction with other land.
- 41 (6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within
- 42 the boundaries designated for a farm use zone at the time the zone is established.
- 43 (7) This section does not apply to divisions of land resulting from lien foreclosures or divisions
- 44 of land resulting from foreclosure of recorded contracts for the sale of real property.
- 45 (8) The governing body of a county may not approve any proposed division of a lot or parcel

1 described in ORS 215.213 (1)(d) or (i), 215.283 (1)(d) or (2)(L) or 215.284 (1), or a proposed division
 2 that separates a facility for the processing of farm products, as defined in ORS 215.255, from the
 3 farm operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (12) Notwithstanding the minimum lot or parcel size described in ORS 215.780 (1) or (2), the
 38 governing body of a county or its designee may approve a proposed division of land in an exclusive
 39 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
 40 parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing
 41 body may establish other criteria as it considers necessary.

42 **(13) Notwithstanding ORS 215.780, the county may approve a proposed division of land**
 43 **zoned for exclusive farm use that contains an existing dwelling, if:**

44 **(a) The resulting parcel that contains a dwelling:**

45 **(A) Is large enough to support continued residential use of the parcel but not larger than**

1 **five acres; and**

2 **(B) May not be expanded in size by a property line adjustment under ORS 92.192; and**

3 **(b) The resulting parcel that does not contain a dwelling:**

4 **(A) Is used for a farm use both before and after the partition; and**

5 **(B) Is subject to a restrictive covenant executed by the landowner and recorded in the**
6 **deed records of the county that is irrevocable, unless the parcel is later included within an**
7 **urban growth boundary or authorized by a change in law as indicated by a release executed**
8 **by the county planning director and recorded in the deed records of the county, and that**
9 **prohibits the use of the property:**

10 **(i) For siting a dwelling; or**

11 **(ii) In consideration of an application on lands zoned for exclusive farm use for the siting**
12 **of a dwelling or the redesignation or rezoning of the lands except to allow a public park, open**
13 **space or other natural resource use.**

14 **(14) The county planning director shall maintain a record, including a copy of the filed**
15 **deed restrictions, of the parcels that pursuant to subsection (13)(b) of this section do not**
16 **qualify for the siting of a new dwelling.**

17 [(13)] **(15)** The governing body of a county may not approve a division of land for nonfarm use
18 under subsection (3), (4), (5), (9), (10), (11), **(12) or (13)** [or (12)] of this section unless any additional
19 tax imposed for the change in use has been paid.

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

23 **SECTION 2.** ORS 197.665 is amended to read:

24 197.665. (1) Residential homes shall be a permitted use in:

25 (a) Any residential zone, including a residential zone which allows a single-family dwelling; and

26 (b) Any commercial zone which allows a single-family dwelling.

27 (2) A city or county may not impose any zoning requirement on the establishment and mainte-
28 nance of a residential home in a zone described in subsection (1) of this section that is more re-
29 strictive than a zoning requirement imposed on a single-family dwelling in the same zone.

30 (3) A city or county may:

31 (a) Allow a residential home in an existing dwelling in any area zoned for farm use, including
32 an exclusive farm use zone established under ORS 215.203;

33 (b) Impose zoning requirements on the establishment of a residential home in areas described in
34 paragraph (a) of this subsection, provided that these requirements are no more restrictive than those
35 imposed on other nonfarm single-family dwellings in the same zone; and

36 (c) Allow a division of land for a residential home in an exclusive farm use zone only as de-
37 scribed in ORS 215.263 (9) **or (13)**.

38 **SECTION 3.** ORS 215.265 is amended to read:

39 215.265. In approving a land division under ORS 215.263 (2)(a)(C), **(10) or (13)** [or (10)], the
40 governing body of a county or its designee shall require as a condition of approval that the owner
41 of any parcel not containing a dwelling sign and record in the deed records for the county where
42 the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's succes-
43 sors in interest from pursuing a cause of action or claim of relief alleging an injury from farming
44 or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

45 **SECTION 4.** ORS 329A.440 is amended to read:

1 329A.440. (1) A registered or certified family child care home shall be considered a residential
2 use of property for zoning purposes. The registered or certified family child care home shall be a
3 permitted use in all areas zoned for residential or commercial purposes, including areas zoned for
4 single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the
5 use of a residential dwelling, located in an area zoned for residential or commercial use, as a reg-
6 istered or certified family child care home.

7 (2) A city or county may impose zoning conditions on the establishment and maintenance of a
8 registered or certified family child care home in an area zoned for residential or commercial use if
9 the conditions are no more restrictive than conditions imposed on other residential dwellings in the
10 same zone.

11 (3) A county may:

12 (a) Allow a registered or certified family child care home in an existing dwelling in any area
13 zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

14 (b) Impose reasonable conditions on the establishment of a registered or certified family child
15 care home in an area zoned for farm use; and

16 (c) Allow a division of land for a registered or certified family child care home in an exclusive
17 farm use zone only as provided in ORS 215.263 (9) **or (13)**.

18 (4) This section applies only to a registered or certified family child care home where child care
19 is offered in the home of the provider to not more than 16 children, including children of the pro-
20 vider, regardless of full-time or part-time status.

21
