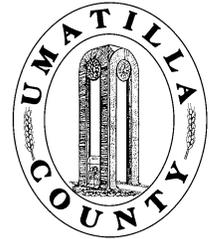


Umatilla County

Department of Land Use Planning



AGENDA

Umatilla County Planning Commission Public Hearing

Thursday, December 17, 2020, 6:30 PM

VIRTUAL MEETING

IF YOU WISH TO PARTICIPATE IN THE HEARING PLEASE SUBMIT COMMENTS BY 4PM, DECEMBER 17TH 2020, TO planning@umatillacounty.net OR CONTACT THE PLANNING DEPARTMENT AT, 541-278-6252.

Planning Commission

Suni Danforth, Chair
Don Wysocki, Vice-Chair
Tammie Williams
Tami Green
Molly Tucker Hasenbank

Hoot Royer
Jon Salter
Lyle Smith

Planning Staff

Bob Waldher, Planning Director
Carol Johnson, Senior Planner
Megan Green, Planner II/ GIS
Gina Miller, Code Enforcement Coordinator
Tierney Cimmiyotti, Administrative Assistant

1. Call to Order

2. New Hearing:

TEXT AMENDMENT #T-20-083, AMENDMENT OF UMATILLA COUNTY DEVELOPMENT CODE, INCORPORATING THE OPPORTUNITY TO CREATE PARCELS TO ACCOMMODATE UTILITY FACILITIES NECESSARY FOR PUBLIC SERVICE. Umatilla Electric Cooperative (UEC) proposes text changes to the Umatilla County Development Code (UCDC) that would incorporate the provisions of Senate Bill 408 (enrolled 2019) to allow the creation of parcels to support utility facilities necessary for public service on land zoned Exclusive Farm Use as defined in Oregon Revised Statute (ORS) 215.213(1)(c) and 215.283(1)(c). The criteria of approval for amendments are found in Umatilla County Development Code 152.750-152.755.

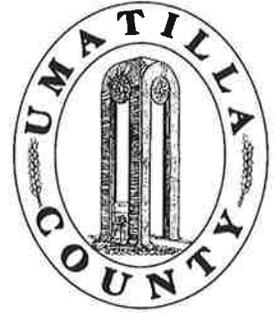
For further information please contact County Planning Director, Robert Waldher at the Umatilla County Planning Department, 216 SE 4th Street, Pendleton, Oregon 97801; telephone 541-278-6251; or email robert.waldher@umatillacounty.net.

3. Minutes from November 19, 2020 Hearing

4. Adjournment

Umatilla County

Department of Land Use Planning



DIRECTOR
ROBERT WALDHER

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

TO: Umatilla County Planning Commissioners

FROM: Bob Waldher, Director

DATE: December 10, 2020

CODE
ENFORCEMENT

**RE: December 17, 2020 Planning Commission Hearing
Text Amendment T-20-083**

SOLID WASTE COMMITTEE

SMOKE
MANAGEMENT

Background Information

Umatilla Electric Cooperative (UEC) proposes text changes to the Umatilla County Development Code (UCDC) that would incorporate the provisions of Senate Bill 408 (enrolled 2019) to allow the creation of parcels to support utility facilities necessary for public service on land zoned Exclusive Farm Use as defined in Oregon Revised Statute (ORS) 215.213(1)(c) and 215.283(1)(c).

GIS AND
MAPPING

RURAL
ADDRESSING

UEC worked through the Oregon Legislature in 2019 accomplishing the passage of Senate Bill 408. The intent of this legislation was to create a pathway for utility providers to achieve ownership of the land associated with their infrastructure without using more EFU land than is necessary, something not previously allowed in ORS 215.263. For UEC, this is related to the siting of substations and related infrastructure, but not linear facilities such as transmission lines, which do not require the creation of new lot. UEC worked with 1000 Friends of Oregon and the Oregon Farm Bureau to develop statutory language that is limited in scope and that prevents any parcel created under the statute from being rezoned later if the utility facility ceases to exist. The legislation is not self-implementing and each county must individually adopt regulations for this purpose. In support of this, the applicant has submitted the required application and supporting documents that provide the proposed text changes within the UCDC that will implement the statute.

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Criteria of Approval

The criteria of approval for amendments are found in Umatilla County Development Code 152.750-152.755.

Conclusion

This matter is a legislative matter because it proposes to amend the text of the UCDC in a manner that will affect county properties located in the Exclusive Farm Use (EFU) zoning within unincorporated Umatilla County. Therefore, the County has the authority to consider and approve the text amendment.

The process of approval by the County involves review by the County Planning

Memo

Planning Commission Public Hearing – December 17, 2020

Text Amendment T-20-083

Commission with a recommendation to the Board of County Commissioners (BCC). The BCC must also hold a public hearing(s) and make a decision whether or not to adopt the proposed change to the Development Code. A public hearing before the BCC is scheduled for January 6, 2021.

Attachments

The following attachments have been included for review by the Planning Commission:

- County Preliminary Findings and Conclusions
- Draft Text Amendment
- Senate Bill 408 (Enrolled) and Testimony in Support

**UMATILLA COUNTY BOARD OF COMMISSIONERS
PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW
TEXT AMENDMENT, #T-20-083**

**AMENDMENT OF UMATILLA COUNTY DEVELOPMENT CODE, INCORPORATING THE
OPPORTUNITY TO CREATE PARCELS TO ACCOMMODATE UTILITY FACILITIES
NECESSARY FOR PUBLIC SERVICE**

1. Request

Umatilla Electric Cooperative (UEC) proposes text changes to the Umatilla County Development Code (UCDC) that would incorporate the provisions of Senate Bill 408 (enrolled 2019) to allow the creation of parcels to support utility facilities necessary for public service on land zoned Exclusive Farm Use as defined in Oregon Revised Statute (ORS) 215.213(1)(c) and 215.283(1)(c).

UEC worked through the Oregon Legislature in 2019 accomplishing the passage of Senate Bill 408. The intent of this legislation was to create a pathway for utility providers to achieve ownership of the land associated with their infrastructure without using more EFU land than is necessary, something not previously allowed in ORS 215.263. For UEC, this is related to the siting of substations and related infrastructure, but not linear facilities such as transmission lines, which do not require the creation of new lot. UEC worked with 1000 Friends of Oregon and the Oregon Farm Bureau to develop statutory language that is limited in scope and that prevents any parcel created under the statute from being rezoned later if the utility facility ceases to exist. The legislation is not self-implementing and each county must individually adopt regulations for this purpose. In support of this, the applicant has submitted the required application and supporting documents that provide the proposed text changes within the UCDC that will implement the statute. Therefore, the County has the authority to consider and approve the text amendment.

2. Procedural Matters

A. Categorization of this Matter

This matter is a legislative matter because it proposes to amend the text of the UCDC in a manner that will affect county properties located in the Exclusive Farm Use (EFU) zoning within unincorporated Umatilla County.

B. Post-Acknowledgment Amendment

This legislative amendment is an amendment to the County's acknowledged 1983 Zoning Ordinance. ORS 197.610(1) and OAR 660-018-0020(1) require that the County provide notice to the Director of the Oregon Department of Land Conservation and Development ("DLCD") at least 35 days prior to the initial evidentiary hearing. The County provided the 35-day notice to DLCD on DLCD's Form 1, November 9, 2020. The County has satisfied ORS 197.610(1) and OAR 660-018-0020(1) by mailing the post-acknowledgment amendment notice so that it arrived at the office of the Director of DLCD at least 35 days prior to the initial evidentiary hearing.

UCDC 152.771(B) requires the County provide a legal notice for the Planning Commission hearing December 17, 2020 and Board of Commissioners hearing January 6, 2021 by publication in a newspaper of general circulation in the County at least ten (10) days prior to the date of the first hearing. The notice was published in the *East Oregonian* newspaper on December 5, 2020.

The County has satisfied the post-acknowledgement amendment notice required by ORS 197.610(1) and OAR Chapter 660-018-0020(1) and the legal notice of hearing publication in UCDC 152.771(B).

C. Procedure

UCDC 152.752 is entitled "Public Hearings on Amendments." This section provides, in relevant part:

"The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures in section 152.771 of this Chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission shall be final unless appealed, except in the case where the amendment is to the text of this Chapter, then the Planning Commission shall forward its recommendation to the Board of Commissioners for final action."

The County will hold two (2) hearings for this legislative amendment, one (1) before the Planning Commission and another before the Board of Commissioners.

Additionally, UCDC 152.771(A)(1) provides that a public hearing is required for legislative amendments. The procedures and requirements for a quasi-judicial hearing are not applicable to this hearing. Therefore, UCDC 152.772, which applies to quasi-judicial hearings, is not applicable to this legislative proceeding.

3. Approval Criteria

UCDC 152.751 requires that an amendment to the text of the UCDC shall comply with provisions of the Umatilla County Comprehensive Plan (the "Plan"), the Oregon Transportation Planning Rule (the "TPR"), OAR Chapter 660, division 12, and the Umatilla County Transportation Plan ("Transportation Plan"). The County also finds that because this text amendment is a post-acknowledgment amendment, ORS 197.175(1) requires that the Plan and Map amendment satisfy applicable Statewide Planning Goals (the "Goals") and other applicable administrative rules. The County finds that the UCDC does not contain substantive standards for an amendment to the UCDC text. The remainder of this section addresses the applicable approval criteria.

This UCDC provision sets forth the approval requirements for amendment to the text of the UCDC. This section requires that an amendment satisfy the Plan and the Oregon Transportation Planning Rule (the "TPR"), OAR 660, Division 12, as well as the Umatilla County Transportation Plan.

The County finds this request is to amend the text of the UCDC, specifically provisions to allow the division of land in the EFU zone for siting of utility facilities. These uses are allowed with standards, not requiring a Conditional Use Permit. The land use decision that would generally accompany or precede the land division application is subject to a variety of requirements within the Development Code found at § 152.059(C) and § 152.617(II)(7). There are standards within the land division provisions that the applicant is not proposing to change that also evaluates access requirements. The applicant would find that this action, creating an opportunity for a land division for a land use that is already allowed, does not further impact transportation and this criterion has been met. The TPR, OAR 660-012-0060 (1)-(3), is not implicated by this text amendment and further analysis of the Oregon Transportation Plan and Umatilla County requirements at 152.019 are not necessary.

Finding: The County finds that UCDC 152.751 is satisfied.

A. Applicable Statewide Planning Goals

Goal 1 Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The Umatilla County Comprehensive Plan and development code outlines the County's citizen involvement program that includes the activities of the Planning Commission and provides for the public hearing process with its required notice provisions. These notice provisions provide for adjoining and affected property owner notice; notice to interested local, state and federal agencies; and allows for public comment to the process.

Goal 2 Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes the underlining process that a county or a city needs to utilize when considering changes to their Comprehensive Plans and development codes. This text amendment is being requested under the Umatilla County Development Code provisions that apply to amendments, meeting the intent of Goal 2.

Goal 3 Agricultural Lands: To preserve and maintain agricultural lands.

The Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with Oregon Revised Statute 215.203 et. seq.

Goal 3 does allow some nonfarm uses on lands zoned for exclusive farm use and it specifically acknowledges statutory non-farm uses like utility facilities necessary for public service. This proposed amendment addresses a need for utility providers to partition land on which utility infrastructure is located or would be located. UEC is particularly interested in substations and related infrastructure, not transmission lines. Those uses are allowed in Oregon Revised Statute at 215.213(1)(c) and 215.283(1)(c). Current agricultural practices in Umatilla County and the lower Umatilla Basin is dependent upon electrical power delivered through local service delivery lines which are supported by local substations. The larger regional power grid is also supported by substations to move power from larger regions and within local areas.

Goal 4 Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Goal 4 addresses the protection of forest lands. This request is not applicable within lands acknowledged for forest use.

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources: To protect natural resources and conserve scenic and historic areas and open spaces.

Goal 5 addresses historical and cultural resources with a focus on protecting sites. The proposed text amendment does not seek approval of a specific development. Any known or found cultural or historic sites would be subject to review and conditioning during the land use approval process for the development of the uses proposed on the land subject to division.

Goal 6 Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 addresses the quality of air, water and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed text amendment does not seek approval of a specific development but seeks to create the opportunity for land divisions in support of the siting of utility facility infrastructure. The UEC has an interest in owning the land associated with built substations and related items, not linear facilities. As part of the land use approval process to authorize the development of substations and related infrastructure there are opportunities to assure compliance with local, state and federal requirements associated with Goal 6. The applicant consistently uses construction techniques that include temporary and permanent Best Management Practices for erosion and sediment control. Spill control and prevention also can achieve compliance with clean water standards. Noise is defined as unwanted sound, which would also be subject to review during the application of the proposed text amendment changes along with the related land use authorizations.

Goal 7 Areas Subject to Natural Hazards and Disasters: To protect people and property from natural hazards.

Goal 7 works to address natural hazards and disasters and through a comprehensive plan amendment process would seek to determine if there are known natural hazards and seek to mitigate any concerns. Natural hazards would be considered as part of the land use processes that would be completed, both the changes to the proposed land partition text as well as the land use approval process for the associated use.

Goal 8 Recreation Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No recreation components are included in this application.

Goal 9 Economy: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 requires local governments to adopt comprehensive plans and policies that contribute to a stable and healthy economy. The applicant serves a critical role in economic development providing power to a substantial area within Umatilla County. Approval of this text amendment provides economic and other advantages to providers of utilities by allowing them to own the land associated with their infrastructure.

Goal 10 Housing: To provide for the housing needs of citizens of the state.

Housing is not considered as part of this application.

Goal 11 Public Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services. The goal provides that urban and rural development be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the area to be served. The applicant, as a provider of electricity, is well versed in timely and orderly delivery. The ability to own the land associated with installed substations and related infrastructure contributes to these principles and supports efficient development and use of rural lands.

Goal 12 Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 requires local governments to provide and encourage a safe, convenient and economic transportation system, implemented through the Transportation Planning Rule. This application evaluates various requirements and has found that the Transportation Planning Rule is met through the already in place evaluation of land divisions and land use authorizations of utility facilities.

Goal 13 Energy: To conserve energy.

Goal 13 directs local jurisdictions to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles. The delivery of electricity to rural farms and homes is a necessary activity. Providing the most efficient farming practices does, in the end, conserve energy.

Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Goal 14 prohibits urban uses on rural lands. This text amendment would create the opportunity to achieve a division of land to allow for the development of needed infrastructure in the Exclusive Farm Use Zone. The intent of the applicant is to achieve ownership of the land where necessary substations and related infrastructure is sited. Farming in much of Umatilla County and particularly in the Lower Umatilla Basin is accomplished with irrigation which requires electricity to move and apply water. The intent under Goal 14 is to ensure the most efficient use of land zoned for farming purposes and to support farming communities.

Finding: Umatilla County has evaluated Statewide Planning Goals 1-16. The other three goals, 17-19, are not applicable to this application request. The County finds the 16 applicable goals are satisfied.

B. Applicable Oregon Administrative Rules

Finding: The County finds that there are no administrative rules implementing Goals applicable to the application.

C. Applicable Plan Policies

The Umatilla County Comprehensive Plan includes the following provisions that are supportive of this application:

- Citizen Involvement Policy 1 states that the County should, “Provide information to the public on planning issues and programs, and encourage continuing citizen input to planning efforts.” UEC, as a member of the community, has submitted this application for the Planning Commission and Board of Commissioners to consider as a mechanism to update the Development Code, keeping it current based on recent changes to Oregon Revised Statutes.
- Agricultural Policy 1 states that the County, “...will protect, with Exclusive Farm Use zoning pursuant to ORS 215, lands meeting the definition of farmland in this plan and designated as Agricultural on the Comprehensive Plan Map.” This application supports this Policy as does the applicant when providing power to regional farm and ranching operations. The advent of circle or pivot irrigations requires the delivery of electricity; local substations facilitate that delivery in an economical manner. Further, the requested change will allow UEC to create smaller parcels for utility use, thereby retaining more EFU land for farm purposes.
- Agricultural Policy 6 requires that, “Non-Farm divisions under 160 acres in the County must meet the applicable policies and appropriate criteria and standards in the Development Code.” The UEC is submitting this application to incorporate the changes outlined in Senate Bill 408 (2019) to allow non-farm divisions for the purpose of supporting utility infrastructure, particularly substations and related facilities (excluding linear facilities).
- Agricultural Policy 8 requires that the County shall, “require appropriate procedures/standards/policies be met in the Comprehensive Plan and Development Ordinance when reviewing non-farm uses for compatibility with agriculture.” This request is to allow for the division of land in support of “utility facilities necessary for public service,” a use already identified within the Development Code with standards for review found at 152.616 Standards For Review of Conditional Uses and Land Use Decisions (CCC) Utility Facility. The requested change would not alter the standard of approval for these utility uses.
- Agricultural Policy 13 encourages the County to, “Recognize that future irrigation water supplies will be primarily surface sources (Columbia River Water).” And to, “Support feasible and storage projects including groundwater recharge.” These types of activities often require some level of electric infrastructure to implement and maintain.
- Agricultural Policy 14 encourages the County to, “Ensure availability of necessary supportive services sites through allowed conditional uses in EFU zones and commercial activities allowed on industrial lands.” These activities in support of the growing of crops and the raising of animals often require infrastructure that includes electricity.
- Public Facilities and Services Finding 6 states that, “Public facilities and services providers must be kept abreast of development in the County so that they may allocate existing resources and plan accordingly for efficient expansion.” The corresponding Policy 6 states that, “The County will seek comments from affected public facilities and services providers for all discretionary land use actions including all types of land divisions, conditional uses, variances, zoning map amendments, and comprehensive plan map amendments.” The Umatilla Electric Cooperative

supports both this Finding and Policy. By allowing this text amendment the applicant will be able to better meet their needs.

- Public Facilities and Services Policy 19 requires, “Where feasible, all utility lines and facilities shall be located on or adjacent to existing public or private rights-of-way so as to avoid dividing existing farm or forest units; and transmission lines should be located within existing corridors as much as possible.” The applicant agrees with this policy and works with Cooperative members when establishing easements for the installation of linear facilities. This text amendment focuses on the installation of substations and similar infrastructure in support of power delivery in the rural areas of Umatilla County served by the Umatilla Electric Cooperative. When determining the locations for substations there is effort to minimize impacts to farming operations, keeping installations in areas of least impact.
- Public Facilities and Services Finding 20 states that, “Needless utility and other service facility damages may be averted through cooperation with Umatilla County Utility Coordinating Council.” Its related Policy 20 encourages the County to, “Consider incorporating their recommendations into the Development Standards.”

Finding: Umatilla County finds that the proposed amendment complies the provisions of the applicable Umatilla County Comprehensive Plan policies. This criterion is satisfied.

5. CONCLUSION

For the reasons contained herein, the County finds the applicable approval criteria for the text amendment have been satisfied and the proposed text amendment to allow the creation of parcels to support utility facilities necessary for public service on land zoned Exclusive Farm Use as defined in Oregon Revised Statute (ORS) 215.213(1)(c) and 215.283(1)(c) can be approved.

DATED this ____ day of _____, 20 ____.

UMATILLA COUNTY BOARD OF COMMISSIONERS

John M. Shafer, *Commissioner*

George L. Murdock, *Commissioner*

Dan Dorran, *Commissioner*

**PART 5, TYPE IV LAND
DIVISION**

Sub-Sections

<u>152.710</u>	<u>Review and approval procedure: Matrix System.</u>
<u>152.711</u>	<u>Tolerances for Acreage Categories Established by Matrix System</u>

**§ 152.710 REVIEW AND APPROVAL
PROCEDURE; MATRIX SYSTEM.**

(A) *Type IV Land Division review and approval matrix system.* Review and approval of a Type IV Land Division shall be divided into four types of reviews. The following table shall be used to identify what type of review is to be used:

Type of Land Use	Parcel Size To Be Created Through a Land Division.		
	Creating a Parcel 160 acres +	Creating a Parcel 80 - 160 acres	Creating a Parcel Less Than 80 acres
Continued resource use in EFU Zone	Review I , and the requirements of the Critical Winter Range (CWR) Overlay if applicable	Review II , and the requirements of the CWR Overlay if applicable	Review II if located within an approved “go-below” area per OAR 660-033-0100
Continued resource use in GF Zone	Review I , and the requirements of the Critical Winter Range (CWR) Overlay if applicable	Does Not Apply	Does Not Apply
Non-resource (EFU or GF Zone) new or existing dwelling	Does Not Apply	Does Not Apply	Review III Level I for parent parcels greater than 160 acres and meets the non-farm dwelling criteria, Review III , Level II for parent parcels 40 to 160 acres and meets the non-farm dwelling criteria
Non-resource (EFU or GF Zone) uses other than dwellings	Conditional use permit required first then Review IV	Conditional use permit required first then Review IV	Conditional use permit <i>or land use decision for a Utility Facility allowed under 152.059(C)</i> required first then Review IV
EFU or GF Zone and UGB Parcels	Does Not Apply	Review V if portion of parcel located within UGB	Review V if portion of parcel located within UGB

NOTE: The addition of the land use decision allowance is based upon Senate Bill 408 and how the UCDC has incorporated the approval for a utility facility.

(B) *Review I.* The following review and approval standards of a Type IV, Review I Land Division application is for the creation of parcels equal to or greater than 160 acres, within a resource zone and/or identified Critical Winter Range with or without a new or existing dwelling:

(1) The survey requirement for a Type IV, Review I, Land Division application will meet the provisions of § [152.644](#). If it is determined that a survey and a partition plat is necessary then the technical standards of submittal of the application shall be the same as that for a Type II Land Division, and are therefore subject to §§ [152.681](#) through [152.683](#), and §§ [152.685](#) and [152.686](#).

(2) If the partition is a requirement of an approved conditional use, land use decision or variance request where notice has already been given to surrounding property owners, the property owner and agency notification does not have to be repeated, as long as the notice for the conditional use or variance request noted the partition proposal and addressed the standards for

partition approval.

(3) *Criteria for approval of a Type IV Review I Land Division application.*

(a) The proposed division complies with the applicable policies in the Comprehensive Plan and this Development Code which include, but are not limited to:

(i) Preserves agricultural lands and agricultural uses as intended in [ORS 215.243](#) and Policy 3 of the agricultural policies for the county; and for those areas designated grazing/forest on the Comprehensive Plan Map meets the criteria above as well as preserves forest lands for forest uses as intended by Policies 1, 2 and 4 in the grazing/ forest policies for the county.

(ii) Meets the minimum for road frontage, yard setbacks, stream setbacks, road and/or easement standards, if a dwelling is proposed.

(iii) Is either for the purpose of farm use as defined by [ORS 215.203\(2\)](#) and set out in § [152.003](#) or forest use as described in Policy 2 of grazing/forest policies for the county.

(iv) All parcels created will be 160 acres or larger or be combined with adjacent lands.

(v) The proposed division is a result of the requirements of an approved conditional use request or variance request.

(b) Findings of compliance with the criteria listed in subdivision (3) (a) of this division shall be determined as complying with [ORS 215.243](#). (Ord. [83-4](#), passed 5-9-83; Ord. [2008-09](#), passed 6-16-08)

(C) *Review II.* The following review and approval standards of a Type IV, Review II Land Division application is for the creation of parcels equal to or greater than 80 acres, within the EFU zone and/or identified Critical Winter Range. Parcels less than 80 acres may be established if located within an approved “go below” area pursuant to [OAR 660-033-0100\(1\)-\(9\)](#).

(1) The survey requirement for a Type IV, Review II, Land Division application will meet the provisions of § [152.644](#). If it is determined that a survey and a partition plat is necessary then the technical standards of submittal of the application shall be the same as that for a Type II Land Division, and are therefore subject to §§ [152.681](#) through [152.683](#), and §§ [152.685](#) and [152.686](#).

(2) The procedure for processing a Type IV, Review II, Land Division application shall follow the standards set forth in § [152.643\(D\)](#) and § [152.645\(B\)](#).

(3) *Criteria for approval of a Type IV, Review II Land Division application* (Note: Approval of a Type IV, Review II Land Division will not qualify new parcels for a farm dwelling; farm dwellings must qualify under Section [152.059\(K\)](#)) :

(a) The partition will preserve and maintain farm use consistent with Oregon Agricultural Land Use Policy found in ORS 215.243.

(b) Is for the purpose of farm use as defined in § 152.003.

(c) Meets the minimum frontage and access requirements.

(d) All parcels created will be 80 to 160 acres, in accordance with ORS 215.780; or, parcels less than 80 acres may be established if located within an approved “go below” area pursuant to OAR 660-033-0100(1)-(9). Parcels created through this process cannot subsequently be decreased below 80 acres or the size specified in the authorized “go below” by a land division or property line adjustment.

(D) *Review III*. The following review and approval of a Type IV, Review III Land Division application may create, upon approval, of up to two new non-farm dwelling parcels that will be smaller than the minimum parcel size for land zoned EFU.

(1) The review and approval of a Type IV, Review III Land Division application is divided into two levels:

(a) The Level I review is administered when the non-farm dwelling parcels are partitioned from a parent lot or parcel that is larger than 160 acres.

(b) The Level II review is administered when non-farm dwelling parcels are partitioned from a parent lot or parcel that is larger than 40 acres but smaller than 160 acres.

(2) The survey requirement for a Type IV, Review III, Land Division application will meet the provisions of § 152.644. If it is determined that a survey and a partition plat is necessary then the technical standards of submittal of the application shall be the same as that for a Type II Land Division, and are therefore subject to §§ 152.681 through 152.683, and §§ 152.685 and 152.686 and the following standards:

(a) Shall obtain necessary approval and/or permits from either the State Highway Department or County Public Works Director for location, design, and improvement standards of access points onto County Roads, (approved) public roads, or state highways.

(b) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type IV, Review III Land Division.

(c) Each parcel under four acres in size, both those partitioned and the remaining piece which are to be for residential purposes, have a site suitability approval from the Department of Environmental Quality. A waiver to this requirement may be granted if the applicant makes a written request to the Planning Director and the Planning Director finds:

(i) The parcel, four acres or under, is to be used for non-residential purposes and the owner's signature to this effect is on the partition form;

(ii) The parcel remaining has an existing dwelling and zoning densities will not permit additional dwellings.

(3) If the partition is processed in combination with a conditional use, land use decision or variance request, where proper notice is given to the surrounding property owners, property owner and agencies, then notification does not have to be repeated, as long the notice for the conditional use, land use decision or variance request contains the partition proposal and addressed the standards for the partition approval.

(4) *Criteria for approval of a Type IV, Review III, Level I Land Division application.*
The review criteria to create up to two new non-farm dwelling parcels from a parent lot or parcel that is larger than 160 acres.

(a) The non-farm dwellings have been approved under §[152.059 \(K\) \(8\)](#):

(b) The parcels for the non-farm dwellings are divided from a parent lot or parcel that was lawfully created prior to July 1, 2001;

(c) The parcels for the non-farm dwellings are divided from a parent lot or parcel that is greater than 160 acres;

(d) The remainder of the parent lot or parcel that does not contain the non-farm dwellings is 160 acres or greater; and

(e) The parcels for the non-farm 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.

(f) The parcels upon which non-farm dwellings are approved shall be disqualified from farm tax deferral program and the tax penalty shall be paid prior to final partition approval

(5) *Criteria for approval of a Type IV, Review III, Level II Land Division application:*
The following criteria apply to a parent lot or parcel that is larger than 40 acres but less than 160 acres in size. The land division is to divide a lot or parcel into two parcels, each to contain a non-farm dwelling. The parent parcel and the new parcel must both qualify as non-farm dwelling parcels.

(a) The non-farm dwellings have been approved under §[152.059 \(K\) \(8\)](#):

(b) The parcels for the non-farm dwellings are divided from a parent lot or parcel that

was lawfully created prior to July 1, 2001;

(c) The parcels for the non-farm dwellings are divided from a parent lot or parcel that is equal to or smaller than 160 acres, and larger than 40 acres;

(d) The remaining acreage of the parent lot or parcel, after the non-farm dwelling parcels are partitioned, is a minimum of at least 40 acres;

(e) The parcels for the non-farm 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 is 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;

(f) The parcels for the non-farm dwellings do not have established water rights for irrigation; and

(g) The parcels for the non-farm 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.

(h) The parcels upon which non-farm dwellings are approved shall be disqualified from farm tax deferral program and the tax penalty shall be paid prior to final partition approval

(E) *Review IV*. The following review and approval standards of a Type IV, Review IV Land Division application are for the creation of parcels to establish non-farm uses on qualified parcels:

(1) The survey requirement for a Type IV, Review IV, Land Division application will meet the provisions of § 152.644. If it is determined that a survey and a partition plat is necessary then the technical standards of submittal of the application shall be the same as that for a Type II Land Division, and are therefore subject to §§ 152.681 through 152.683, and §§ 152.685 and 152.686 and the following standards:

(a) Shall obtain necessary approval and/or permits from either the State Highway Department or County Public Works Director for location, design, and improvement standards of

access points onto County Roads, (approved) public roads, or state highways.

(b) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type IV, Review IV Land Division.

(c) Each parcel under four acres in size, both those partitioned and the remaining piece which are to be for residential purposes, have a site suitability approval from the Department of Environmental Quality. A waiver to this requirement may be granted if the applicant makes a written request to the Planning Director and the Planning Director finds:

(i) The parcel, four acres or under, is to be used for non-residential purposes and the owner's signature to this effect is on the partition form;

(ii) The parcel remaining has an existing dwelling and zoning densities will not permit additional dwellings.

(2) If the partition is a requirement of an approved conditional use, land use decision or variance request where notice has already been given to surrounding property owners, the property owner and agency notification does not have to be repeated, as long the notice for the conditional use or variance request noted the partition proposal and addressed the standards for partition approval.

(3) *Criteria for approval of Type IV, Review IV, Land Division application:*

(a) A proposed division of land may be approved in an exclusive farm use zone for non-farm uses as set out in ~~ORS 215.213(2)~~ or 215.283(1)(c) and (2), except dwellings, if it finds that the parcel for the non-farm use is not larger than the minimum size necessary for the use.

NOTE: The addition of the Oregon Revised Statute (ORS) reference is based upon Senate Bill 408 and how the UCDC references ORS within its text.

(i) Be an adequate size area necessary for the protection of public health;

(ii) Will be the minimum size needed to accommodate the principal use and its accessory uses, structures, and facilities;

(iii) Consider compatibility with adjoining land uses and be a size necessary to mitigate adverse impacts;

(iv) Consider possible effects on the overall land use pattern of the area and immediate vicinity;

(v) Conditional Uses under 215.283(2) ~~will~~Will comply with the development standards in § 152.063, and applicable standards in §§ 152.010 through 152.017, §§ 152.545

through 152.562, and §§ 152.615 and 152.616. Land Use Decisions under 215.283(1)(c) will comply with the development standards in § 152.059(C) and § 152.617(II)(7).

NOTE: This proposed change seeks to maintain the current requirements for Conditional Uses seeking a land partition but incorporating the standards that would be applicable to the utility facility use decision. The Conditional Use criteria cannot, based on *Brentmar v Jackson County*, be applied to the utility facility determination. Only those standards found within ORS can be applied.

(b) The governing body may establish other criteria as it considers necessary.

(F) *Review V*. The following review and approval standards of a Type IV, Review V Land Division application is for the creation of parcels less than 160 acres within the EFU and GF zones, where a portion of a lawfully established parcel has been included within an urban growth boundary. And that portion of the EFU or GF zoned parcel that remains outside of the urban growth boundary is smaller than the minimum parcel size of 160 acres the parcel may be divided as follows:

(1) The survey requirement for a Type IV, Review V, Land Division application will meet the provisions of § 152.644. If it is determined that a survey and a partition plat is necessary then the technical standards of submittal of the application shall be the same as that for a Type II Land Division, and are therefore subject to §§ 152.681 through 152.683, and §§ 152.685 and 152.686.

(2) The procedure for processing a Type IV, Review II, Land Division application shall follow the standards set forth in § 152.643(D) and § 152.645(B).

(3) *Criteria for approval of a Type IV, Review V Land Division application:*

- (a) The partition must occur along the urban growth boundary; and
- (b) If the parcel contains a dwelling, that portion of the parcel with the dwelling must be large enough to support continued residential use.
- (c) If the parcel does not contain a dwelling;
 - (i) The parcel created outside of the urban growth boundary will not be eligible for siting a dwelling, except as may be authorized under ORS 195.120.
 - (ii) The parcel created outside of the urban growth boundary may not be considered in approving or denying an application for the siting of any other dwelling; and
 - (iii) The parcel may not be considered in approving a re-designation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a re-designation or rezoning to allow a public park, open space or other natural resource use.
- (d) The parcels will meet the minimum frontage and access requirements.

(e) Approval of a land division under this section, requires as a condition of approval that the owner of the parcel 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. (Ord. [83-4](#), passed 5-9-83; Ord. [2008-09](#), passed 6-16-08; Ord. [2009-09](#), passed 12-8-09; Ord. [2011-02](#), passed 3-17-11; Ord. [2013-02](#), passed 1-29-13; Ord. [2016-02](#), passed 3-16-16;)

§ 152.711 TOLERANCES FOR ACREAGE CATEGORIES ESTABLISHED BY MATRIX SYSTEM.

(A) Acreages for parcel sizes established for review in the matrix system found in § [152.710 \(A\)](#) of this chapter may deviate below the minimums established for each category listed in the matrix under the following circumstances:

(1) Where it can be shown that a county, public or state road right-of-way has reduced the gross acreage of parcel (i.e. the right-of-way was donated to or condemned by the state or county for road purposes);

(2) Where it can be shown that the government survey for a section of ground is less than the standard 640 acres per section, 160 acres per quarter section, or 40 acres per quarter-quarter section.

(B) In no case shall the deviation below the minimum established by the categories in the matrix exceed 11%.

(Ord. [83-4](#), passed 5-9-83; Ord. [2008-09](#), passed 6-16-08)

Enrolled
Senate Bill 408

Sponsored by Senators HANSELL, MANNING JR, Representative SMITH G (Presession filed.)

CHAPTER

AN ACT

Relating to how a county may approve a proposed division of land zoned for exclusive farm use for siting utilities; amending ORS 215.262 and 215.263.

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

(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 (1)(c) or (2) or 215.283 (1)(c) or (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. **Land that is divided under this subsection pursuant to ORS 215.213 (1)(c) or 215.283 (1)(c) may not later be rezoned by the county for retail, commercial, industrial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.**

(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 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 con-

ditions, 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 (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. ORS 215.262 is amended to read:

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

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

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

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

Passed by Senate March 14, 2019

Repassed by Senate May 29, 2019

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 22, 2019

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State



April 15, 2019

Representative Brian Clem, Chair
House Committee on Agriculture & Land Use
900 Court Street NE
Salem, Oregon 97301

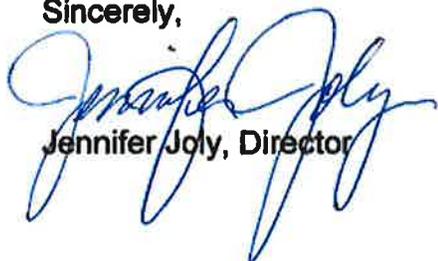
Dear Chair Clem and Members of the House Committee on Agriculture & Land Use:

The Oregon Municipal Electric Utilities Association (OMEU) appreciates the opportunity to submit testimony in support of SB 408A, allowing counties to approve the division of land zoned for exclusive farm use for purposes of siting utility facilities necessary for public service. OMEU is made up of eleven municipally-owned and operated electric utilities.

Under current land use statutes, counties may authorize the creation of smaller parcels through the land division process on exclusive farm use land for specific recreational uses, commercial uses, power generators, transmission lines, museums, resorts, private schools, dog kennels, and even solid waste disposal sites, all of which are conditional uses in the farm zone. Ironically, the current statute does not include utility facilities necessary for public service as an acceptable basis for smaller land divisions, even though counties must allow that use if it meets applicable statutory standards. Thus, while utility facilities can be built under existing law, counties cannot divide the land for these facilities. Accordingly, landowners own the land and the infrastructure is owned by the utilities. This arrangement can lead to long-term leases with landowners, who generally prefer to sell the land necessary for the project to avoid potential liability or inaccurate tax assessments.

OMEU finds that SB 408A provides a better approach to meeting statewide land use planning goals and infrastructure needs. Additionally, an amendment adopted by the Senate Committee on Environment & Natural Resources prevents future action from undermining the intent of this legislation. OMEU urges your support of SB 408A. The legislation presents a narrowly-tailored solution to address a gap in the current law.

Sincerely,



Jennifer Joly, Director

1201 COURT ST. NE, SUITE 102 • SALEM, OREGON 97301 • (971) 600-6976 • E-MAIL: jenniferjoly@omeu.org



House Committee on Agriculture and Land Use
Oregon State Capitol
900 Court St NE
Salem, OR 97301

April 15, 2019

Dear Chair Clem, Vice-Chair McLain and Post, and Members of the Committee:

Umatilla Electric Cooperative (UEC) is a member-owned business that sells energy, invests in and supports other services to improve the quality of life in our communities. UEC serves a large portion of the Columbia Basin and Blue Mountain country of Northeastern Oregon. The cooperative's territory is located west of Boardman in Morrow County and covers much of Umatilla County surrounding the cities of Hermiston and Pendleton and into the Blue Mountains.

UEC urges your support of SB 408A. The bill addresses a gap in the tool box for land use decision makers to subdivide Exclusive Farm Use (EFU) for utility facilities necessary for public service (which by statute, does not include commercial facilities for the purpose of generating electrical power for public use by sale).

The issue came to light when Morrow County was trying to subdivide land into a smaller parcel for an approved substation on EFU property. Turns out there is no statutory or administrative rule authority to divide EFU land into a smaller parcel for utility facilities necessary for public use. As a result, either the landowner had to continue to own the property and lease the land back to the utility, or the utility would need to purchase an adjacent parcel to place the structure. The former is problematic because the landowner retains the liability of owning the dirt under a substation and the latter results in more EFU being taken out of production.

Looking at the current standards under ORS 215.263(3), county planners can create smaller parcels for specific recreational uses, transmission lines, museums, resorts, private schools, and dog kennels, all of which are conditional uses in the farm zone that counties may or may not allow; however, the statute does not allow the division of EFU land for utility facilities necessary for public service as an acceptable basis for smaller land divisions.

SB 408A does NOT give land use planners new authority to approve new conditional uses on EFU. Rather SB 408A only allows decision makers to subdivide EFU into smaller parcels for utility facilities necessary for public service. Moreover, as amended in the Senate, SB 408A ensures that should the infrastructure be removed in the future, that parcels created for a purpose described in ORS 215.215 (1)(c) or 215.283 (1)(c) may not, as a result of the land division, be used to justify redesignation or rezoning of resource lands.

The Dash 2 amendment addresses a concern raised by a legislative counsel clean up in the statute. UEC is neutral to the Dash 2 but assisted in addressing the concern and understand there is no substantive legal impact.

750 W. Elm Street • PO Box 1148 • Hermiston OR 97838

Phone: (541) 567-6414

Fax: (541) 567-8142

Toll Free: 800-452-2273

I appreciate the opportunity to testify today and UEC urges your strong support of SB 408A.

Alec Shebiel
UEC Government Affairs



"The Power of Community"

April 15, 2019

House Committee on Agriculture and Land Use
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

Dear Chair Clem, Vice-Chairs McLain and Post and Members of the Committee:

For the record, I am Ted Case, the Executive Director of the Oregon Rural Electric Cooperative Association (ORECA). ORECA represents 18 electric cooperatives that serve nearly 500,000 Oregonians in some of the most rural and remote parts of the state.

ORECA urges your support of SB 408A. Providing electric service to rural Oregonians is an often arduous task involving a patchwork of laws and regulations. It has been a tough winter for electric utility providers in rural Oregon, and we are often reminded of the difficulty of serving members at the end of the line. This bill addresses a gap in the tool box for land use decision makers to subdivide Exclusive Farm Use (EFU) for utility facilities necessary for public service. This issue came to light when Morrow County was trying to subdivide land into a smaller parcel for an approved substation on EFU property, which caught the attention of representatives of Umatilla Electric Cooperative.

However, we have discovered that the situation is not isolated to northeastern Oregon. Hood River Electric Cooperative, located in Odell, Oregon also strongly believes this proposal could help improve reliability of the electric grid in the Columbia Gorge.

ORECA commends the bipartisan leadership of Senators Hansell and Manning, along with Rep. Greg Smith to help bring together a diverse group of sponsors and stakeholders to advance this important legislation. On behalf of Oregon's 18 electric cooperatives I urge your strong support of SB 408A.

Thank you for the opportunity to offer our testimony on this important issue.

Sincerely,

Ted Case

SB 408-1
(LC 1597)
2/22/19 (RLM/ps)

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
SENATE BILL 408**

1 On page 2 of the printed bill, line 6, after the period insert “Land that
2 is divided under this subsection pursuant to ORS 215.213 (1)(c) or 215.283
3 (1)(c) may not later be rezoned by the county for retail, commercial, indus-
4 trial or other nonresource use, except as provided under the statewide land
5 use planning goals or under ORS 197.732.”.

6

**PLANNING COMMISSION HEARING
NOVEMBER 19, 2020**

DRAFT MINUTES

**LAND DIVISION; TYPE I
SUBDIVISION REQUEST
#S-057-20**

**KMK LAND LLC, APPLICANT
JOY WULFF, OWNER**

DRAFT MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, November 19, 2020, 6:30 PM
Umatilla County Courthouse, 216 SE 4th Street, Pendleton, Oregon

** **

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Molly Tucker Hasenbank, Tammie Williams, Hoot Royer, Tami Green, Jon Salter, Lyle Smith

STAFF: Bob Waldher, Planning Director; Megan Green, Planner/GIS; Tierney Cimmiyotti, Administrative Assistant

** ****

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE

CALL TO ORDER

Chair Danforth called the meeting to order at 6:30 PM and read the Opening Statement.

NEW HEARING

TYPE I LAND DIVISION, SUBDIVISION REQUEST #S-057-20: KMK LAND, LLC, APPLICANT/ JOY WULFF, OWNER. The applicant requests approval to subdivide the property located on Assessor’s Map 4N 28 15, Tax Lot 702. The applicant’s proposed subdivision will create 8 lots of at least 4 acres in size. The Land Use standards applicable to the applicants’ request are found in Umatilla County Development Code 152.665, Type I Land Divisions.

Chair Danforth called for the Staff Report.

STAFF REPORT

Megan Green, Planner/ GIS, stated that the applicant, KMK Land LLC, requests approval of a Subdivision (Type I Land Division) of Tax Lot #702 located on Map 4N 28 15. Approval of the Magnolia Acres Subdivision would result in 8 subdivision lots of at least 4 acres in size. The property is located on the east side of State Highway 207 and south of Gettman Road, south of Hermiston City Limits.

The Standards of Approval are found in the Umatilla County Development Code (UCDC) Section 152.665, Type I Land Divisions. Standards for reviewing a Subdivision generally consist of complying with development code standards, Traffic Impact Analysis standards and subdivision plat requirements.

Ms. Green stated that notice of the applicant’s request and the public hearing was mailed on October 29, 2020 to the owners of properties located within 250 feet of the perimeter of Tax Lot #702. Notice was also published in the *East Oregonian* on November 7, 2020 notifying the

public of the applicants request before the Planning Commission on November 19, 2020. Both the Tentative Subdivision Plan and the draft Covenant, Conditions and Restrictions identify each new subdivision lot as a parcel. Because this proposal is for a subdivision, they shall be identified as lots. Both the applicant and the surveyor are aware of this, and that the final subdivision plan shall identify the newly created lots as such.

Ms. Green stated that the proposed Conditions of Approval address road improvement and access standards, including road naming and an Irrevocable Consent Agreement (ICA), fencing along irrigation canals and the survey and recording requirements with final approval accomplished through the recording of the final subdivision plat. The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex-parte contact or objections to jurisdiction. There were none.

TESTIMONY

Applicant Testimony: Paul Barnett, (in attendance with Kristen Coller and Megan Barnett) KMK Land, LLC, 495 E Main Street, Hermiston, Oregon. Mr. Barnett stated that he is part of a group of three couples in Hermiston that are in the process of purchasing this property from local farmer, Joy Wulff. He stated that they are all excited to get the application processed and to start developing the lots.

Commissioner Wysocki asked if the property is zoned for farm use. Mr. Barnett said no. The zone is RR-4 which is Rural Residential with a 4 acre minimum parcel size. They plan to include a paved road down the middle of the subdivision with utilities running down the road. They will divide the water rights equally between the properties and have plans to install two gravity-fed irrigation systems to serve the lots. Mr. Barnett said they have contractors in line and hope to start as soon as possible.

Commissioner Wysocki asked how domestic water will be supplied to the properties. Mr. Barnett explained that each owner would be required to drill their own well or they could have a shared well system to support up to 3 properties. The septic will also be the buyer's responsibility but it shouldn't be an issue because the lots will be 4 acres in size with plenty of room to accommodate a new septic system.

Commissioner Royer asked if this property is in a critical groundwater area. Mr. Barnett said no. He added that according to the well report there appears to be a significant iron presence at 250-375 ft. However, he added that most wells go deeper and there is a lot of water available in the aquifers below. Senior Planner, Carol Johnson stated that the property is in a critical groundwater area but it does not have any effect on the exempt wells. It does have a lot to do with new water rights but there are no new water rights in terms of groundwater rights as part of

this application. The irrigation water that is used for this property is surface water from Hermiston Irrigation District (HID).

Commissioner Wysocki asked about livestock regulations for the future lots. Mr. Barnett stated that they will follow the County standards with additional restrictions written into the Covenants, Conditions and Restrictions (CCR's).

Commissioner Green asked if the property is being farmed at this time. Mr. Barnett stated that it has been farmed consistently over the last 30-40 years and currently has an alfalfa crop.

Commissioner Williams asked how long the property has been zoned RR-4. Ms. Johnson stated that it has been zoned RR-4 since the early 1980's when the Comprehensive Plan was acknowledged.

Chair Danforth asked for clarification about the access road and utility easement. Mr. Barnett stated that the access road easement is 60 feet wide and the utilities will be run within the proposed easement. They will also pave the road for the benefit of all the new owners.

Chair Danforth asked if the water rights are transferrable. Mr. Barnett stated that the water rights will be transferred to the new lot owners and they will be required to sell part of the water rights that will be covered by the house or other paved surfaces on the lot. They could transfer it out to other people in the district but due to the cost involved, the consensus of the new owners will likely be to retain those rights in order to maintain their pastures.

Commissioner Green asked for clarification about the distribution of water rights. Mr. Barnett said the plan is to install an underground gravity-fed pipeline and each land owner will have the chance to draw from that pipeline through the shared pump system.

Chair Danforth asked about the surrounding properties to the south. Mr. Barnett stated that the property in the southwest corner is owned and operated by Country Animal Hospital and they have a pasture in the rear. The 5 acre property located to the south in the center is used as a riding area with a trailer. Further south a property owner, Mr. McDonough, is trying to split his RR-4 land into 4 acre parcels in order to sell for development. Across the train tracks is RR-4 Zone land that has already been developed with houses.

Public Agencies: Annette Kirkpatrick, District Manager, Hermiston Irrigation District, 366 E Hurlburt Avenue, Hermiston, Oregon. Ms. Kirkpatrick stated that the property has full water rights on it. It is currently covered by 34 acres of water rights and she expects it to maintain at least 32 acres of water rights. She said they have a 6 acre foot duty that they can use and even if they irrigate a minimal 3 acre foot duty they will still be allowing close to 1 million gallons of water per season to percolate through the ground by way of their irrigation practices. She reiterated that the applicant is fully covered by surface water rights on this property.

Ms. Kirkpatrick explained that part of the approval process for HID requires the installation of appropriate fencing (approved by the district) on the edge of the districts right-of-way when property is being divided or built upon. The district is not imposing specific fencing height standards, but it will be each new property owner's responsibility to erect an appropriate fence.

Opponent Testimony: Jeff Newman, 29411 Feedville Road, Hermiston, Oregon. Mr. Newman stated that he owns tax lot #900 located to the southeast of the subject parcel. Mr. Newman asked if the access road will be gravel or paved. Ms. Green stated that Umatilla County only requires that the road be gravel, but the applicant does have plans to pave the access road.

Mr. Newman stated that his property was created when a larger parcel was divided and they only established a 30 foot easement to tax lot #1000 at that time. He said that he has worked numerous hours trying to figure out how to get a legal easement into his property. He asked if the applicant could include an easement that extends all the way through the property as part of this project because he does not have a legal easement from tax lot #1000 into his tax lot.

Chair Danforth asked Mr. Newman if he has reached out the County Planning Department regarding his concerns. Mr. Newman said no, he just received the public notice in the mail and is attending in response to the notice. Chair Danforth asked if Mr. Newman attended the hearing to speak in opposition of the project, or if he is trying to get an easement for his property. Mr. Newman said he is not trying to get himself an easement. He is trying to make sure that if this property gets subdivided again the development will have easements in place. Chair Danforth asked staff for clarification. Mrs. Johnson stated that the division Mr. Newman is referring to took place in the late 1990's and the Transportation System Plan standards that staff works with today were not in place at that time. The decision to approve that land division application predates Mrs. Johnson's time with the department so she did not have additional insight regarding the easement decisions made previously. Mr. Newman stated that he would like the newly created road to go clear through to the railroad easement to the east of the property in order to eliminate any future easement issues for surrounding property owners.

Mr. Newman stated that he believes this property development will create parcels that are subdivided into 4 acre landlocked lots, forcing developers to come all the way from Joseph Avenue to connect with city services. He believes approval of this permit will effectively put a stop to any development to the south of Hermiston because 11th Street, 9th Street, and 1st Street are the only roads that city sewer and water can use to access this property and future properties as they develop. Chair Danforth asked how Mr. Newman accesses his property currently. Mr. Newman stated that he has an easement from the Union Pacific Railroad to cross the tracks along the A Line Canal. Chair Danforth stated that this development will not affect his property or his access easement. Mr. Newman agreed that his property will not be affected by this project. He stated that the railroad is an absentee landowner and he only hears from them when they want to do something to his land. He is frustrated and feels that they do not acknowledge any landowner issues unless it directly affects them.

Commissioner Wysocki asked for clarification about Mr. Newman's comments regarding the extension of city water and sewer services. He stated that he is confused because these newly created lots will all have wells and septic systems. Mr. Newman stated that he is trying to make a point that if this parcel is divided into 4 acre lots, it puts an end to development in this area south of Hermiston all the way to Joseph Avenue. Chair Danforth argued that is not an entirely true statement. She pointed out that people are able to develop to the south, just without city services. This property is outside of the Urban Growth Boundary (UGB) and there are no plans at this time to annex into the city, so the properties will need to be served by wells and septic anyway. Mr. Newman agreed but added that he is trying to think ahead into the future.

Mr. Newman stated that he is concerned about 8 new wells in the area. He knows property owners in the area that have had to deepen their wells to over 300 feet. He is also concerned about the gravity-fed irrigation water. He does not believe a gravity-fed line will work when running the water uphill and believes that each property owner will need a power and water easement. Chair Danforth stated that the applicant included materials which addressed the possibility of a pressurized line if necessary.

Opponent Testimony: Ryan Barnes, 675 W Gettman Road, Hermiston, Oregon. Mr. Barnes was not present, but submitted written testimony via email:

"I am writing you to voice my opposition to the subdivision of tax lot 702 into 8 parcels to be sold off for development. I request at the expense of the proposed owners, a comprehensive study of the effects that this new development of houses will have on the surrounding water table levels.

With lack of adequate replenishment every spring from mountain snow packs the water levels around our area are at a critical level and before a community well or 8 individual wells be dug I would like to know if the water table can support such a high demand of draw that these 8 proposed houses are sure to demand. With an uncertainty of well irrigated lawn sizes and a potential number of pools being built it is critical to understand the impact that this will have before any requests to subdivide are granted. It is extremely expensive to have a well drilled deeper and this is not an expense myself or any other properties in this area would wish to endure in the coming years. Once this comprehensive study on the water levels around the development have been completed I would have no further objection to this development.

If this subdivision is granted, at the land owners expense, I would request that their community well NOT be dug into the same aquifer that my house currently draws off of. If they dig into the same aquifer I would request in writing a promise to pay for any future drilling and well/ pump work that my private well would require over the span of the next 15 years as a result of the water levels dropping. Based on the average consumption of a US family, it is expected that this development will draw upwards of One Million gallons of water per year. Thank you for your time."

Planning Staff noted that concerns regarding the proposed increase in well water usage have been addressed in the Final Finding & Conclusions, page 3, heading 24(a) Domestic Water.

Applicant Rebuttal: Paul Barnett, KMK Land, LLC, 495 E Main Street, Hermiston, Oregon. Mr. Barnett stated that he is following the guidelines for the County's RR-4 Zone and has addressed many of Mr. Newman's concerns in the application materials submitted to the County as part of this process. He believes this is a proper use for this property and it makes sense for him to develop more residences and provide opportunities for local families. He looks forward to moving ahead with this project.

Chair Danforth closed the hearing for deliberation.

DELIBERATION & DECISION

Chair Danforth stated that she can understand Mr. Newman's concern regarding wells. Mrs. Johnson advised that the Commissioners make a Finding regarding the issue of exempt wells not being under the County Planning Department's authority and provide clarification that the Oregon Water Resources Department (OWRD) will oversee and authorize that piece of the project. As a result, the Commissioners declared that Umatilla County Planning Commission finds that exempt wells are not under the County's authority and are managed and under the authority of OWRD.

Chair Danforth pointed out that Precedent Condition #6 the County's Preliminary Findings & Conclusions requires that the applicant erect a 6 foot high chain link fence along the irrigation canal. However, HID will not require the 6 foot fence as part of this request. Therefore, it was decided that Precedent Condition #6 should be changed to reflect that the Umatilla Planning Commission finds that fencing proposed along the Maxwell Irrigation Canal shall be erected by the lot owners in agreement with requirements of the HID and included in the applicant's CCR's. Additionally, it was made clear that Precedent Condition #7 in the County's Preliminary Findings & Conclusions require the applicant to provide verification from Hermiston Irrigation District that irrigation standards have been met. This can be satisfied with a signature on the final subdivision plat.

Ms. Johnson proposed that the Planning Commission consider adding a condition to require the applicant to provide a final copy of the CCR's to the County Planning. The Commissioners requested that staff change Precedent Condition #9 to Subsequent Condition #9, and renumber the rest of the conditions that follow, in sequence (#9 is becomes a new Precedent Condition and the original #9 becomes Subsequent Condition #10, and #10 becomes #11, and #11 becomes #12). The Planning Commission consulted with staff and identified a need for changes to the President Conditions to include the following:

President Condition #6

Erect future fencing along the Maxwell Canal in agreement with HID recommendations and include fencing requirements in the CCR's. Confirmation of the agreement from the district must be provided to the County Planning Department.

President Condition #9

Provide a copy of the Subdivision Covenants, Conditions and Restrictions confirming fencing requirements and fencing type for along Maxwell Canal.

Commissioner Williams made a motion to approve Land Division, Type I, Subdivision request #S-057-20, KMK Land LLC, Applicant, with the revisions to Precedent and Subsequent Conditions outlined above. In addition, Umatilla County Planning Commission finds that exempt wells are not under the County's authority and are managed and under the authority of OWRD. Commissioner Smith seconded the motion. Motion passed with a vote of 8:0.

MINUTES

Chair Danforth called for any corrections or additions to the minutes from the October 22, 2020 meeting. Commissioner Hasenbank moved to approve the minutes as written. Commissioner Green seconded the motion. Motion carried by consensus.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:57 p.m.

Respectfully submitted,

Tierney Cimmiyotti,
Administrative Assistant