

Senate Bill 738

Sponsored by Senator L GEORGE

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**.

Prohibits use of income test to determine whether primary or accessory dwelling customarily provided in conjunction with farm use is outright permitted use in exclusive farm use zone.

A BILL FOR AN ACT

1
2 Relating to exclusive farm use zones; creating new provisions; and amending ORS 215.213 and
3 215.283.

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

5 **SECTION 1.** ORS 215.213 is amended to read:

6 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
7 Edition), the following uses may be established in any area zoned for exclusive farm use:

8 (a) Public or private schools, including all buildings essential to the operation of a school.

9 (b) Churches and cemeteries in conjunction with churches.

10 (c) The propagation or harvesting of a forest product.

11 (d) Utility facilities necessary for public service, including wetland waste treatment systems but
12 not including commercial facilities for the purpose of generating electrical power for public use by
13 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
14 may be established as provided in ORS 215.275.

15 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
16 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
17 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
18 operator does or will require the assistance of the relative in the management of the farm use and
19 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
20 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
21 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
22 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
23 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
24 shall operate as a partition of the homesite to create a new parcel.

25 (f) Nonresidential buildings customarily provided in conjunction with farm use.

26 (g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
27 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-
28 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
29 edged under ORS 197.251. **The determination of whether a primary or accessory dwelling is**
30 **authorized under this paragraph may not be based on the income produced from farm use**
31 **on the lot or parcel upon which the dwelling will be sited.**

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 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
2 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
3 compressors, separators and other customary production equipment for an individual well adjacent
4 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
5 an exception under ORS 197.732 (1)(a) or (b).

6 (i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or
7 construction relating to such operations shall not be a basis for an exception under ORS 197.732
8 (1)(a) or (b).

9 (j) A site for the disposal of solid waste that has been ordered to be established by the Envi-
10 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings
11 necessary for its operation.

12 (k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
13 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
14 hardship suffered by the existing resident or a relative of the resident. Within three months of the
15 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
16 ished or, in the case of an existing building, the building shall be removed, demolished or returned
17 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
18 view of the hardship claimed under this paragraph. A temporary residence approved under this
19 paragraph is not eligible for replacement under paragraph (t) of this subsection.

20 (L) The breeding, kenneling and training of greyhounds for racing in any county with a popu-
21 lation of more than 200,000 in which there is located a greyhound racing track or in a county with
22 a population of more than 200,000 that is contiguous to such a county.

23 (m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

24 (n) Reconstruction or modification of public roads and highways, including the placement of
25 utility facilities overhead and in the subsurface of public roads and highways along the public right
26 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
27 would occur, or no new land parcels result.

28 (o) Temporary public road and highway detours that will be abandoned and restored to original
29 condition or use at such time as no longer needed.

30 (p) Minor betterment of existing public road and highway related facilities, such as maintenance
31 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
32 public-owned property utilized to support the operation and maintenance of public roads and high-
33 ways.

34 (q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has
35 been listed in a county inventory as historic property as defined in ORS 358.480.

36 (r) Creation of, restoration of or enhancement of wetlands.

37 (s) A winery, as described in ORS 215.452.

38 (t) Alteration, restoration or replacement of a lawfully established dwelling that:

39 (A) Has intact exterior walls and roof structure;

40 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to
41 a sanitary waste disposal system;

42 (C) Has interior wiring for interior lights;

43 (D) Has a heating system; and

44 (E) In the case of replacement:

45 (i) Is removed, demolished or converted to an allowable nonresidential use within three months

1 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
2 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
3 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
4 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
5 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
6 deed records for the county where the property is located a deed restriction prohibiting the siting
7 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
8 a statement of release is placed in the deed records for the county. The release shall be signed by
9 the county or its designee and state that the provisions of this paragraph regarding replacement
10 dwellings have changed to allow the siting of another dwelling. The county planning director or the
11 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
12 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
13 and release statements filed under this paragraph; and

14 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-
15 ished within three months after the deferred replacement permit is issued. A deferred replacement
16 permit allows construction of the replacement dwelling at any time. If, however, the established
17 dwelling is not removed or demolished within three months after the deferred replacement permit
18 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
19 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to
20 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
21 or otherwise, except by the applicant to the spouse or a child of the applicant.

22 (u) Farm stands if:

23 (A) The structures are designed and used for the sale of farm crops or livestock grown on the
24 farm operation, or grown on the farm operation and other farm operations in the local agricultural
25 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm
26 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-
27 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;
28 and

29 (B) The farm stand does not include structures designed for occupancy as a residence or for
30 activity other than the sale of farm crops or livestock and does not include structures for banquets,
31 public gatherings or public entertainment.

32 (v) An armed forces reserve center, if the center is within one-half mile of a community college.
33 For purposes of this paragraph, "armed forces reserve center" includes an armory or National
34 Guard support facility.

35 (w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
36 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
37 area or placed on a permanent foundation unless the building or facility preexisted the use approved
38 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
39 the surface preexisted the use approved under this paragraph. As used in this paragraph, "model
40 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
41 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
42 ground.

43 (x) A facility for the processing of farm crops located on a farm operation that provides at least
44 one-quarter of the farm crops processed at the facility. The building established for the processing
45 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for

1 preparation, storage or other farm use or devote more than 10,000 square feet to the processing
2 activities within another building supporting farm uses. A processing facility shall comply with all
3 applicable siting standards but the standards shall not be applied in a manner that prohibits the
4 siting of the processing facility.

5 (y) Fire service facilities providing rural fire protection services.

6 (z) Irrigation canals, delivery lines and those structures and accessory operational facilities as-
7 sociated with a district as defined in ORS 540.505.

8 (aa) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
9 cilities or structures that end at the point where the utility service is received by the customer and
10 that are located on one or more of the following:

11 (A) A public right of way;

12 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
13 jacent property owners has been obtained; or

14 (C) The property to be served by the utility.

15 (bb) Subject to the issuance of a license, permit or other approval by the Department of Envi-
16 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
17 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
18 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
19 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
20 exclusive farm use zone under this chapter.

21 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
22 the following uses may be established in any area zoned for exclusive farm use subject to ORS
23 215.296:

24 (a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest
25 product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm op-
26 eration or woodlot:

27 (A) Consists of 20 or more acres; and

28 (B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in
29 annual gross income from the crops, livestock or forest products to be raised on the farm operation
30 or woodlot.

31 (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest
32 product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than re-
33 quired under paragraph (a) of this subsection, if the lot or parcel:

34 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar
35 years out of the three calendar years before the year in which the application for the dwelling was
36 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000
37 in annual gross farm income; or

38 (B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross an-
39 nual income.

40 (c) Commercial activities that are in conjunction with farm use but not including the processing
41 of farm crops as described in subsection (1)(x) of this section.

42 (d) Operations conducted for:

43 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
44 as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

45 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-

1 sources subject to ORS 215.298;

2 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

3 (D) Processing of other mineral resources and other subsurface resources.

4 (e) Community centers owned by a governmental agency or a nonprofit community organization
5 and operated primarily by and for residents of the local rural community, hunting and fishing pre-
6 serves, public and private parks, playgrounds and campgrounds. Subject to the approval of the
7 county governing body or its designee, a private campground may provide yurts for overnight
8 camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include
9 a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.
10 Upon request of a county governing body, the Land Conservation and Development Commission may
11 provide by rule for an increase in the number of yurts allowed on all or a portion of the
12 campgrounds in a county if the commission determines that the increase will comply with the stan-
13 dards described in ORS 215.296 (1). A public park or campground may be established as provided
14 under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or
15 canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appli-
16 ance.

17 (f) Golf courses.

18 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

19 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
20 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-
21 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
22 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
23 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
24 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
25 granted through waiver action by the Oregon Department of Aviation in specific instances. A
26 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
27 ject to any applicable rules of the Oregon Department of Aviation.

28 (i) A facility for the primary processing of forest products, provided that such facility is found
29 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
30 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
31 renewable. These facilities are intended to be only portable or temporary in nature. The primary
32 processing of a forest product, as used in this section, means the use of a portable chipper or stud
33 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
34 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
35 contiguous land where the primary processing facility is located.

36 (j) A site for the disposal of solid waste approved by the governing body of a city or county or
37 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
38 mental Quality together with equipment, facilities or buildings necessary for its operation.

39 (k) Dog kennels not described in subsection (1)(L) of this section.

40 (L) Residential homes as defined in ORS 197.660, in existing dwellings.

41 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
42 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
43 shall not include any species under quarantine by the State Department of Agriculture or the United
44 States Department of Agriculture. The county shall provide notice of all applications under this
45 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the

1 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
2 tive decision or initial public hearing on the application.

3 (n) Home occupations as provided in ORS 215.448.

4 (o) Transmission towers over 200 feet in height.

5 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way
6 but not resulting in the creation of new land parcels.

7 (q) Reconstruction or modification of public roads and highways involving the removal or dis-
8 placement of buildings but not resulting in the creation of new land parcels.

9 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh
10 stations and rest areas, where additional property or right of way is required but not resulting in
11 the creation of new land parcels.

12 (s) A destination resort that is approved consistent with the requirements of any statewide
13 planning goal relating to the siting of a destination resort.

14 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
15 dences.

16 (u) A living history museum related to resource based activities owned and operated by a gov-
17 ernmental agency or a local historical society, together with limited commercial activities and fa-
18 cilities that are directly related to the use and enjoyment of the museum and located within
19 authentic buildings of the depicted historic period or the museum administration building, if areas
20 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
21 the museum administration buildings and parking lot are located within one quarter mile of the
22 metropolitan urban growth boundary. As used in this paragraph:

23 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
24 culture of some specific historic period using authentic buildings, tools, equipment and people to
25 simulate past activities and events; and

26 (B) "Local historical society" means the local historical society, recognized as such by the
27 county governing body and organized under ORS chapter 65.

28 (v) Operations for the extraction and bottling of water.

29 (w) An aerial fireworks display business that has been in continuous operation at its current
30 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
31 permit to sell or provide fireworks.

32 (x) A landscaping business, as defined in ORS 671.520, or a business providing landscape archi-
33 tecture services, as described in ORS 671.318, if the business is pursued in conjunction with the
34 growing and marketing of nursery stock on the land that constitutes farm use.

35 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
36 a single-family residential dwelling not provided in conjunction with farm use may be established
37 on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by
38 the Agricultural Capability Classification System in use by the United States Department of Agri-
39 culture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval
40 of the governing body or its designee in any area zoned for exclusive farm use upon written findings
41 showing all of the following:

42 (a) The dwelling or activities associated with the dwelling will not force a significant change in
43 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

44 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and
45 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location

1 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size
2 or location if it can reasonably be put to farm use in conjunction with other land.

3 (c) Complies with such other conditions as the governing body or its designee considers neces-
4 sary.

5 (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
6 one single-family dwelling, not provided in conjunction with farm use, may be established in any
7 area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that
8 is not larger than three acres upon written findings showing:

9 (a) The dwelling or activities associated with the dwelling will not force a significant change in
10 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

11 (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a
12 geological hazard area, the dwelling complies with conditions imposed by local ordinances relating
13 specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is
14 applicable; and

15 (c) The dwelling complies with other conditions considered necessary by the governing body or
16 its designee.

17 (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing
18 body shall notify:

19 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-
20 tablished; and

21 (b) Persons who have requested notice of such applications and who have paid a reasonable fee
22 imposed by the county to cover the cost of such notice.

23 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days
24 following the date of postmark of the notice to file a written objection on the grounds only that the
25 dwelling or activities associated with it would force a significant change in or significantly increase
26 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-
27 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-
28 jection is received, the governing body shall set the matter for hearing in the manner prescribed in
29 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required
30 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of
31 this section.

32 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
33 1948, and July 1, 1983. For the purposes of this section:

34 (a) Only one lot or parcel exists if:

35 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-
36 scribed in this section; and

37 (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels
38 or lots and parcels by the same person, spouses or a single partnership or business entity, separately
39 or in tenancy in common.

40 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including
41 but not limited to, lots, parcels or lots and parcels separated only by a public road.

42 (8) A person who sells or otherwise transfers real property in an exclusive farm use zone may
43 retain a life estate in a dwelling on that property and in a tract of land under and around the
44 dwelling.

45 (9) No final approval of a nonfarm use under this section shall be given unless any additional

1 taxes imposed upon the change in use have been paid.

2 (10) Roads, highways and other transportation facilities and improvements not allowed under
 3 subsections (1) and (2) of this section may be established, subject to the approval of the governing
 4 body or its designee, in areas zoned for exclusive farm use subject to:

5 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable
 6 goal with which the facility or improvement does not comply; or

7 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development
 8 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

9 **SECTION 2.** ORS 215.283 is amended to read:

10 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

11 (a) Public or private schools, including all buildings essential to the operation of a school.

12 (b) Churches and cemeteries in conjunction with churches.

13 (c) The propagation or harvesting of a forest product.

14 (d) Utility facilities necessary for public service, including wetland waste treatment systems but
 15 not including commercial facilities for the purpose of generating electrical power for public use by
 16 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
 17 may be established as provided in ORS 215.275.

18 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 19 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 20 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 21 operator does or will require the assistance of the relative in the management of the farm use and
 22 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 23 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
 24 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 25 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
 26 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
 27 shall operate as a partition of the homesite to create a new parcel.

28 (f) Primary or accessory dwellings and other buildings customarily provided in conjunction with
 29 farm use. **The determination of whether a primary or accessory dwelling is authorized under
 30 this paragraph may not be based on the income produced from farm use on the lot or parcel
 31 upon which the dwelling will be sited.**

32 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
 33 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
 34 compressors, separators and other customary production equipment for an individual well adjacent
 35 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 36 an exception under ORS 197.732 (1)(a) or (b).

37 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or
 38 construction relating to such operations shall not be a basis for an exception under ORS 197.732
 39 (1)(a) or (b).

40 (i) A site for the disposal of solid waste that has been ordered to be established by the Envi-
 41 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings
 42 necessary for its operation.

43 (j) The breeding, kenneling and training of greyhounds for racing.

44 (k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

45 (L) Reconstruction or modification of public roads and highways, including the placement of

1 utility facilities overhead and in the subsurface of public roads and highways along the public right
2 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
3 would occur, or no new land parcels result.

4 (m) Temporary public road and highway detours that will be abandoned and restored to original
5 condition or use at such time as no longer needed.

6 (n) Minor betterment of existing public road and highway related facilities such as maintenance
7 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
8 public-owned property utilized to support the operation and maintenance of public roads and high-
9 ways.

10 (o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has
11 been listed in a county inventory as historic property as defined in ORS 358.480.

12 (p) Creation of, restoration of or enhancement of wetlands.

13 (q) A winery, as described in ORS 215.452.

14 (r) Farm stands if:

15 (A) The structures are designed and used for the sale of farm crops or livestock grown on the
16 farm operation, or grown on the farm operation and other farm operations in the local agricultural
17 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm
18 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-
19 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;
20 and

21 (B) The farm stand does not include structures designed for occupancy as a residence or for
22 activity other than the sale of farm crops or livestock and does not include structures for banquets,
23 public gatherings or public entertainment.

24 (s) Alteration, restoration or replacement of a lawfully established dwelling that:

25 (A) Has intact exterior walls and roof structure;

26 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to
27 a sanitary waste disposal system;

28 (C) Has interior wiring for interior lights;

29 (D) Has a heating system; and

30 (E) In the case of replacement:

31 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
32 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
33 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
34 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
35 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
36 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
37 deed records for the county where the property is located a deed restriction prohibiting the siting
38 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
39 a statement of release is placed in the deed records for the county. The release shall be signed by
40 the county or its designee and state that the provisions of this paragraph regarding replacement
41 dwellings have changed to allow the siting of another dwelling. The county planning director or the
42 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
43 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
44 and release statements filed under this paragraph; and

45 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-

1 ished within three months after the deferred replacement permit is issued. A deferred replacement
2 permit allows construction of the replacement dwelling at any time. If, however, the established
3 dwelling is not removed or demolished within three months after the deferred replacement permit
4 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
5 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to
6 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
7 or otherwise, except by the applicant to the spouse or a child of the applicant.

8 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
9 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
10 area or placed on a permanent foundation unless the building or facility preexisted the use approved
11 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
12 the surface preexisted the use approved under this paragraph. As used in this paragraph, "model
13 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
14 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
15 ground.

16 (u) A facility for the processing of farm crops located on a farm operation that provides at least
17 one-quarter of the farm crops processed at the facility. The building established for the processing
18 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for
19 preparation, storage or other farm use or devote more than 10,000 square feet to the processing
20 activities within another building supporting farm uses. A processing facility shall comply with all
21 applicable siting standards but the standards shall not be applied in a manner that prohibits the
22 siting of the processing facility.

23 (v) Fire service facilities providing rural fire protection services.

24 (w) Irrigation canals, delivery lines and those structures and accessory operational facilities
25 associated with a district as defined in ORS 540.505.

26 (x) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
27 cilities or structures that end at the point where the utility service is received by the customer and
28 that are located on one or more of the following:

29 (A) A public right of way;

30 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
31 jacent property owners has been obtained; or

32 (C) The property to be served by the utility.

33 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-
34 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
35 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
36 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
37 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
38 exclusive farm use zone under this chapter.

39 (z) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to
40 provide rural law enforcement services primarily in rural areas, including parole and post-prison
41 supervision, but not including a correctional facility as defined under ORS 162.135.

42 (2) The following nonfarm uses may be established, subject to the approval of the governing body
43 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

44 (a) Commercial activities that are in conjunction with farm use but not including the processing
45 of farm crops as described in subsection (1)(u) of this section.

1 (b) Operations conducted for:

2 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
3 as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

4 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
5 sources subject to ORS 215.298;

6 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

7 (D) Processing of other mineral resources and other subsurface resources.

8 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the
9 approval of the county governing body or its designee, a private campground may provide yurts for
10 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,
11 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent
12 foundation. Upon request of a county governing body, the Land Conservation and Development
13 Commission may provide by rule for an increase in the number of yurts allowed on all or a portion
14 of the campgrounds in a county if the commission determines that the increase will comply with the
15 standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed
16 shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or
17 internal cooking appliance.

18 (d) Parks and playgrounds. A public park may be established consistent with the provisions of
19 ORS 195.120.

20 (e) Community centers owned by a governmental agency or a nonprofit community organization
21 and operated primarily by and for residents of the local rural community. A community center au-
22 thorized under this paragraph may provide services to veterans, including but not limited to emer-
23 gency and transitional shelter, preparation and service of meals, vocational and educational
24 counseling and referral to local, state or federal agencies providing medical, mental health, disability
25 income replacement and substance abuse services, only in a facility that is in existence on January
26 1, 2006. The services may not include direct delivery of medical, mental health, disability income
27 replacement or substance abuse services.

28 (f) Golf courses.

29 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

30 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
31 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-
32 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
33 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
34 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
35 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
36 granted through waiver action by the Oregon Department of Aviation in specific instances. A
37 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
38 ject to any applicable rules of the Oregon Department of Aviation.

39 (i) Home occupations as provided in ORS 215.448.

40 (j) A facility for the primary processing of forest products, provided that such facility is found
41 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
42 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
43 renewable. These facilities are intended to be only portable or temporary in nature. The primary
44 processing of a forest product, as used in this section, means the use of a portable chipper or stud
45 mill or other similar methods of initial treatment of a forest product in order to enable its shipment

1 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
2 contiguous land where the primary processing facility is located.

3 (k) A site for the disposal of solid waste approved by the governing body of a city or county or
4 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
5 mental Quality together with equipment, facilities or buildings necessary for its operation.

6 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
7 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
8 hardship suffered by the existing resident or a relative of the resident. Within three months of the
9 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
10 ished or, in the case of an existing building, the building shall be removed, demolished or returned
11 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
12 view of the hardship claimed under this paragraph. A temporary residence approved under this
13 paragraph is not eligible for replacement under subsection (1)(s) of this section.

14 (m) Transmission towers over 200 feet in height.

15 (n) Dog kennels not described in subsection (1)(j) of this section.

16 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

17 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
18 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
19 shall not include any species under quarantine by the State Department of Agriculture or the United
20 States Department of Agriculture. The county shall provide notice of all applications under this
21 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
22 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
23 tive decision or initial public hearing on the application.

24 (q) Construction of additional passing and travel lanes requiring the acquisition of right of way
25 but not resulting in the creation of new land parcels.

26 (r) Reconstruction or modification of public roads and highways involving the removal or dis-
27 placement of buildings but not resulting in the creation of new land parcels.

28 (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh
29 stations and rest areas, where additional property or right of way is required but not resulting in
30 the creation of new land parcels.

31 (t) A destination resort that is approved consistent with the requirements of any statewide
32 planning goal relating to the siting of a destination resort.

33 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-
34 dences.

35 (v) Operations for the extraction and bottling of water.

36 (w) Expansion of existing county fairgrounds and activities directly relating to county
37 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

38 (x) A living history museum related to resource based activities owned and operated by a gov-
39 ernmental agency or a local historical society, together with limited commercial activities and fa-
40 cilities that are directly related to the use and enjoyment of the museum and located within
41 authentic buildings of the depicted historic period or the museum administration building, if areas
42 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
43 the museum administration buildings and parking lot are located within one quarter mile of an ur-
44 ban growth boundary. As used in this paragraph:

45 (A) "Living history museum" means a facility designed to depict and interpret everyday life and

1 culture of some specific historic period using authentic buildings, tools, equipment and people to
2 simulate past activities and events; and

3 (B) "Local historical society" means the local historical society recognized by the county gov-
4 erning body and organized under ORS chapter 65.

5 (y) An aerial fireworks display business that has been in continuous operation at its current
6 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
7 permit to sell or provide fireworks.

8 (z) A landscaping business, as defined in ORS 671.520, or a business providing landscape archi-
9 tecture services, as described in ORS 671.318, if the business is pursued in conjunction with the
10 growing and marketing of nursery stock on the land that constitutes farm use.

11 (3) Roads, highways and other transportation facilities and improvements not allowed under
12 subsections (1) and (2) of this section may be established, subject to the approval of the governing
13 body or its designee, in areas zoned for exclusive farm use subject to:

14 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable
15 goal with which the facility or improvement does not comply; or

16 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development
17 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

18 **SECTION 3. The amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2007**
19 **Act apply to a primary or accessory dwelling for which a development application is sub-**
20 **mitted on or after the effective date of this 2007 Act.**

21