

House Bill 3129

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies authority to use lands in exclusive farm use zones for sale of wine.

A BILL FOR AN ACT

1
2 Relating to sale of wine on land zoned for exclusive farm use; creating new provisions; and amending
3 ORS 215.213 and 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.

30 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
31 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
32 compressors, separators and other customary production equipment for an individual well adjacent

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

1 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 2 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (C) Has interior wiring for interior lights;

40 (D) Has a heating system; and

41 (E) In the case of replacement:

42 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
 43 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
 44 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
 45 siting standards. However, the standards shall not be applied in a manner that prohibits the siting

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

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

19 *[(u) Farm stands if:]*

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

25 *[(B) The farm stand does not include structures designed for occupancy as a residence or for ac-*
 26 *tivity other than the sale of farm crops or livestock and does not include structures for banquets, public*
 27 *gatherings or public entertainment.]*

28 **(u) A farm stand if the farm stand does not include structures used for occupancy as a**
 29 **residence, for activity other than the sale of farm crops or livestock, for banquets, for public**
 30 **gatherings or for public entertainment and if either:**

31 **(A)(i) The structures are designed and used for the sale of farm crops or livestock, other**
 32 **than wine, grown on the farm operation, or grown on the farm operation and other farm**
 33 **operations in the local agricultural area; and**

34 **(ii) The retail sale of incidental items and fee-based activity to promote the sale of farm**
 35 **crops or livestock sold at the farm stand do not make up more than 25 percent of the total**
 36 **annual sales of the farm stand; or**

37 **(B)(i) The structures are designed and used for the sale of farm crops or livestock, in-**
 38 **cluding wine, grown on the farm operation, or grown on the farm operation and other farm**
 39 **operations in the local agricultural area;**

40 **(ii) The retail sale of incidental items and fee-based activity to promote the sale of farm**
 41 **crops or livestock sold at the farm stand do not make up more than 25 percent of the total**
 42 **annual sales of the farm stand; and**

43 **(iii) The farm stand is on the site of the farm operation containing a vineyard of at least**
 44 **15 acres, is under common ownership with a contiguous farm operation containing a vineyard**
 45 **of at least 15 acres, has a long-term contract for the purchase of all of the grapes from a**

1 **farm operation containing at least 15 acres of vineyards contiguous to the farm stand or**
 2 **obtains grapes from a combination of vineyards described in this sub-subparagraph.**

3 (v) An armed forces reserve center, if the center is within one-half mile of a community college.
 4 For purposes of this paragraph, “armed forces reserve center” includes an armory or National
 5 Guard support facility.

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

14 (x) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
 15 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
 16 processed at the facility. The building established for the processing facility shall not exceed 10,000
 17 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm
 18 use or devote more than 10,000 square feet to the processing activities within another building
 19 supporting farm uses. A processing facility shall comply with all applicable siting standards but the
 20 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

27 (A) A public right of way;

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

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

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

37 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 38 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 39 215.296:

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

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

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

1 or woodlot.

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

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

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

11 (c) Commercial activities that are in conjunction with farm use, including:

12 (A) The processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or sub-
13 section (1)(x) of this section.

14 **(B) A winery other than the wineries permitted by subsection (1)(s) of this section.**

15 **(C) A farm stand other than the farm stands permitted by subsection (1)(u) of this sec-**
16 **tion.**

17 (d) Operations conducted for:

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

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

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

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

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

37 (f) Golf courses.

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

39 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
40 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-
41 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
42 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
43 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
44 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
45 granted through waiver action by the Oregon Department of Aviation in specific instances. A

1 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
2 ject to any applicable rules of the Oregon Department of Aviation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-
 8 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction
 9 with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

19 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and
 20 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location
 21 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size
 22 or location if it can reasonably be put to farm use in conjunction with other land.

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

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

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

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

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

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

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

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

43 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days
 44 following the date of postmark of the notice to file a written objection on the grounds only that the
 45 dwelling or activities associated with it would force a significant change in or significantly increase

1 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-
 2 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-
 3 jection is received, the governing body shall set the matter for hearing in the manner prescribed in
 4 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required
 5 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of
 6 this section.

7 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
 8 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

20 (9) No final approval of a nonfarm use under this section shall be given unless any additional
 21 taxes imposed upon the change in use have been paid.

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

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

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

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

30 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

38 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 39 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 40 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 41 operator does or will require the assistance of the relative in the management of the farm use and
 42 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 43 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
 44 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 45 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-

1 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
2 shall operate as a partition of the homesite to create a new parcel.

3 (f) Primary or accessory dwellings and other buildings customarily provided in conjunction with
4 farm use.

5 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
6 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
7 compressors, separators and other customary production equipment for an individual well adjacent
8 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
9 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

18 (L) Reconstruction or modification of public roads and highways, including the placement of
19 utility facilities overhead and in the subsurface of public roads and highways along the public right
20 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
21 would occur, or no new land parcels result.

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

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

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

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

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

32 *[(r) Farm stands if:]*

33 *[(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm
34 operation, or grown on the farm operation and other farm operations in the local agricultural area,
35 including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or
36 livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity
37 do not make up more than 25 percent of the total annual sales of the farm stand; and]*

38 *[(B) The farm stand does not include structures designed for occupancy as a residence or for ac-
39 tivity other than the sale of farm crops or livestock and does not include structures for banquets, public
40 gatherings or public entertainment.]*

41 **(r) A farm stand if the farm stand does not include structures used for occupancy as a
42 residence, for activity other than the sale of farm crops or livestock, for banquets, for public
43 gatherings or for public entertainment and if either:**

44 **(A)(i) The structures are designed and used for the sale of farm crops or livestock, other
45 than wine, grown on the farm operation, or grown on the farm operation and other farm**

1 **operations in the local agricultural area; and**

2 **(ii) The retail sale of incidental items and fee-based activity to promote the sale of farm**
 3 **crops or livestock sold at the farm stand do not make up more than 25 percent of the total**
 4 **annual sales of the farm stand; or**

5 **(B)(i) The structures are designed and used for the sale of farm crops or livestock, in-**
 6 **cluding wine, grown on the farm operation, or grown on the farm operation and other farm**
 7 **operations in the local agricultural area;**

8 **(ii) The retail sale of incidental items and fee-based activity to promote the sale of farm**
 9 **crops or livestock sold at the farm stand do not make up more than 25 percent of the total**
 10 **annual sales of the farm stand; and**

11 **(iii) The farm stand is on the site of the farm operation containing a vineyard of at least**
 12 **15 acres, is under common ownership with a contiguous farm operation containing a vineyard**
 13 **of at least 15 acres, has a long-term contract for the purchase of all of the grapes from a**
 14 **farm operation containing at least 15 acres of vineyards contiguous to the farm stand or**
 15 **obtains grapes from a combination of vineyards described in this sub-subparagraph.**

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

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

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

20 (C) Has interior wiring for interior lights;

21 (D) Has a heating system; and

22 (E) In the case of replacement:

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

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

45 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as

1 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
 2 area or placed on a permanent foundation unless the building or facility preexisted the use approved
 3 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
 4 the surface preexisted the use approved under this paragraph. As used in this paragraph, “model
 5 aircraft” means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
 6 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
 7 ground.

8 (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
 9 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
 10 processed at the facility. The building established for the processing facility shall not exceed 10,000
 11 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm
 12 use or devote more than 10,000 square feet to the processing activities within another building
 13 supporting farm uses. A processing facility shall comply with all applicable siting standards but the
 14 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

21 (A) A public right of way;

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

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

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

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

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

36 (a) Commercial activities that are in conjunction with farm use, including:

37 (A) The processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or sub-
 38 section (1)(u) of this section.

39 (B) **A winery other than the wineries permitted by subsection (1)(q) of this section.**

40 (C) **A farm stand other than the farm stands permitted by subsection (1)(r) of this sec-**
 41 **tion.**

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

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

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

24 (f) Golf courses.

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

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

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

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

44 (k) A site for the disposal of solid waste approved by the governing body of a city or county or
45 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-

1 mental Quality together with equipment, facilities or buildings necessary for its operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (z) A landscape contracting business, as defined in ORS 671.520, or a business providing land-
5 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction
6 with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

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

14 **SECTION 3. The amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009**
15 **Act apply to activities outright permitted or conditionally allowed in exclusive farm use**
16 **zones on or after the effective date of this 2009 Act.**

17