

House Bill 3221

Sponsored by COMMITTEE ON LAND USE

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 siting requirements for destination resorts on or near agricultural lands.

Provides that destination resort is not residential use of private real property for purpose of claiming compensation for regulations restricting use of property.

A BILL FOR AN ACT

1
2 Relating to destination resorts; creating new provisions; and amending ORS 197.435, 197.455, 215.213
3 and 215.283.

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

5 **SECTION 1.** ORS 197.435 is amended to read:

6 197.435. As used in ORS 197.435 to 197.467:

7 (1) "Developed recreational facilities" means improvements constructed for the purpose of re-
8 creation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas,
9 ski runs and bicycle paths.

10 [(2) "*High value crop area*" means an area in which there is a concentration of commercial farms
11 capable of producing crops or products with a minimum gross value of \$1,000 per acre per year. These
12 crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying,
13 livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural
14 Estimates prepared by the Oregon State University Extension Service. The "*high value crop area*"
15 designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise
16 the requirements of an agricultural land goal or administrative rules interpreting the goal.]

17 (2) "**High-value farmland**" has the meaning given that term in ORS 195.300.

18 (3) "Map of eligible lands" means a map of the county adopted pursuant to ORS 197.455.

19 (4) "Open space" means any land that is retained in a substantially natural condition or is im-
20 proved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle
21 paths or is specifically required to be protected by a conservation easement. Open spaces may in-
22 clude ponds, lands protected as important natural features, lands preserved for farm or forest use
23 and lands used as buffers. Open space does not include residential lots or yards, streets or parking
24 areas.

25 (5) "Overnight lodgings" means:

26 (a) With respect to lands not identified in paragraph (b) of this subsection, permanent, separately
27 rentable accommodations that are not available for residential use, including hotel or motel rooms,
28 cabins and time-share units. Individually owned units may be considered overnight lodgings if they
29 are available for overnight rental use by the general public for at least 45 weeks per calendar year
30 through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufac-
31 tured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings

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 for the purpose of this definition.

2 (b) With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately
3 rentable accommodations that are not available for residential use, including hotel or motel rooms,
4 cabins and time-share units. Individually owned units may be considered overnight lodgings if they
5 are available for overnight rental use by the general public for at least 38 weeks per calendar year
6 through a central reservation system operated by the destination resort or by a real estate property
7 manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings,
8 dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose
9 of this definition.

10 (6) "Self-contained development" means a development for which community sewer and water
11 facilities are provided on-site and are limited to meet the needs of the development or are provided
12 by existing public sewer or water service as long as all costs related to service extension and any
13 capacity increases are borne by the development. A "self-contained development" must have devel-
14 oped recreational facilities provided on-site.

15 (7) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single owner-
16 ship. A tract may include property that is not included in the proposed site for a destination resort
17 if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent
18 of the total tract.

19 (8) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facili-
20 ties that are designed to and provide for the needs of visitors rather than year-round residents.

21 **SECTION 2.** ORS 197.455 is amended to read:

22 197.455. (1) A destination resort must be sited on lands mapped as eligible for destination resort
23 siting by the affected county. The county may not allow destination resorts approved pursuant to
24 ORS 197.435 to 197.467 to be sited in any of the following areas:

25 (a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or
26 more unless residential uses are limited to those necessary for the staff and management of the re-
27 sort.

28 (b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and
29 mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

30 (B) On a site within three miles of [*a high value crop area*] **high-value farmland** unless the
31 resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer
32 to [*a high value crop area*] **high-value farmland** than one-half mile for each 25 units of overnight
33 lodging or fraction thereof.

34 (c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State
35 Forestry Department, which are not subject to an approved goal exception.

36 (d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge
37 National Scenic Act, P.L. 99-663.

38 (e) In an especially sensitive big game habitat area as determined by the State Department of
39 Fish and Wildlife in July 1984 or as designated in an acknowledged comprehensive plan.

40 (2) In carrying out subsection (1) of this section, a county shall adopt, as part of its compre-
41 hensive plan, a map consisting of eligible lands within the county. The map must be based on rea-
42 sonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more
43 frequently than once every 30 months. The county shall develop a process for collecting and pro-
44 cessing concurrently all map amendments made within a 30-month planning period. A map adopted
45 pursuant to this section shall be the sole basis for determining whether tracts of land are eligible

1 for destination resort siting pursuant to ORS 197.435 to 197.467.

2 **SECTION 3. A destination resort approved pursuant to ORS 197.435 to 197.467 is not a**
 3 **residential use of private real property for purposes of ORS 195.305.**

4 **SECTION 4.** ORS 215.213 is amended to read:

5 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
 6 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

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

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

25 (g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
 26 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-
 27 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
 28 edged under ORS 197.251.

29 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
 30 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
 31 compressors, separators and other customary production equipment for an individual well adjacent
 32 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 33 an exception under ORS 197.732 (2)(a) or (b).

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

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

40 (k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
 41 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
 42 hardship suffered by the existing resident or a relative of the resident. Within three months of the
 43 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
 44 ished or, in the case of an existing building, the building shall be removed, demolished or returned
 45 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-

1 view of the hardship claimed under this paragraph. A temporary residence approved under this
 2 paragraph is not eligible for replacement under paragraph (t) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

25 (C) Has interior wiring for interior lights;

26 (D) Has a heating system; and

27 (E) In the case of replacement:

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

42 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-
 43 ished within three months after the deferred replacement permit is issued. A deferred replacement
 44 permit allows construction of the replacement dwelling at any time. If, however, the established
 45 dwelling is not removed or demolished within three months after the deferred replacement permit

1 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
2 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to
3 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
4 or otherwise, except by the applicant to the spouse or a child of the applicant.

5 (u) Farm stands if:

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

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

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

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

26 (x) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
27 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
28 processed at the facility. The building established for the processing facility shall not exceed 10,000
29 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm
30 use or devote more than 10,000 square feet to the processing activities within another building
31 supporting farm uses. A processing facility shall comply with all applicable siting standards but the
32 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

39 (A) A public right of way;

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

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

43 (bb) Subject to the issuance of a license, permit or other approval by the Department of Envi-
44 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
45 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application

1 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
2 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
3 exclusive farm use zone under this chapter.

4 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
5 the following uses may be established in any area zoned for exclusive farm use subject to ORS
6 215.296:

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

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

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

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

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

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

23 (c) Commercial activities that are in conjunction with farm use, including the processing of farm
24 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(x) of this section.

25 (d) Operations conducted for:

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

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

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

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

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

45 (f) Golf courses.

- 1 (g) Commercial utility facilities for the purpose of generating power for public use by sale.
- 2 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
3 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-
4 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
5 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
6 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
7 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
8 granted through waiver action by the Oregon Department of Aviation in specific instances. A
9 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
10 ject to any applicable rules of the Oregon Department of Aviation.
- 11 (i) A facility for the primary processing of forest products, provided that such facility is found
12 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
13 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
14 renewable. These facilities are intended to be only portable or temporary in nature. The primary
15 processing of a forest product, as used in this section, means the use of a portable chipper or stud
16 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
17 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
18 contiguous land where the primary processing facility is located.
- 19 (j) A site for the disposal of solid waste approved by the governing body of a city or county or
20 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
21 mental Quality together with equipment, facilities or buildings necessary for its operation.
- 22 (k) Dog kennels not described in subsection (1)(L) of this section.
- 23 (L) Residential homes as defined in ORS 197.660, in existing dwellings.
- 24 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
25 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
26 shall not include any species under quarantine by the State Department of Agriculture or the United
27 States Department of Agriculture. The county shall provide notice of all applications under this
28 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
29 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
30 tive decision or initial public hearing on the application.
- 31 (n) Home occupations as provided in ORS 215.448.
- 32 (o) Transmission towers over 200 feet in height.
- 33 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way
34 but not resulting in the creation of new land parcels.
- 35 (q) Reconstruction or modification of public roads and highways involving the removal or dis-
36 placement of buildings but not resulting in the creation of new land parcels.
- 37 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh
38 stations and rest areas, where additional property or right of way is required but not resulting in
39 the creation of new land parcels.
- 40 (s) A destination resort that is approved consistent with the requirements of *[any]* **ORS 197.435**
41 **to 197.467 or a statewide land use** planning goal relating to the siting of a destination resort.
- 42 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
43 dences.
- 44 (u) A living history museum related to resource based activities owned and operated by a gov-
45 ernmental agency or a local historical society, together with limited commercial activities and fa-

1 cilities that are directly related to the use and enjoyment of the museum and located within
2 authentic buildings of the depicted historic period or the museum administration building, if areas
3 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
4 the museum administration buildings and parking lot are located within one quarter mile of the
5 metropolitan urban growth boundary. As used in this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing

1 body shall notify:

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

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

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

15 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
16 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

37 **SECTION 5.** ORS 215.283 is amended to read:

38 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

1 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
2 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
3 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
4 operator does or will require the assistance of the relative in the management of the farm use and
5 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
6 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
7 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
8 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
9 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
10 shall operate as a partition of the homesite to create a new parcel.

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

13 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
14 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
15 compressors, separators and other customary production equipment for an individual well adjacent
16 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
17 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

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

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

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

40 (r) Farm stands if:

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

1 and

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

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

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

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

9 (C) Has interior wiring for interior lights;

10 (D) Has a heating system; and

11 (E) In the case of replacement:

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

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

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

42 (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
 43 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
 44 processed at the facility. The building established for the processing facility shall not exceed 10,000
 45 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm

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

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

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

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

10 (A) A public right of way;

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

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

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

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

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

25 (a) Commercial activities that are in conjunction with farm use, including the processing of farm
 26 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(u) of this section.

27 (b) Operations conducted for:

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

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

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

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

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

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

1 (e) Community centers owned by a governmental agency or a nonprofit community organization
2 and operated primarily by and for residents of the local rural community. A community center au-
3 thorized under this paragraph may provide services to veterans, including but not limited to emer-
4 gency and transitional shelter, preparation and service of meals, vocational and educational
5 counseling and referral to local, state or federal agencies providing medical, mental health, disability
6 income replacement and substance abuse services, only in a facility that is in existence on January
7 1, 2006. The services may not include direct delivery of medical, mental health, disability income
8 replacement or substance abuse services.

9 (f) Golf courses.

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

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

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

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

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

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

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

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

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

43 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
44 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
45 shall not include any species under quarantine by the State Department of Agriculture or the United

1 States Department of Agriculture. The county shall provide notice of all applications under this
 2 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
 3 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
 4 tive decision or initial public hearing on the application.

5 (q) 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 (r) 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 (s) 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 (t) A destination resort that is approved consistent with the requirements of [*any*] **ORS 197.435**
 13 **to 197.467 or a statewide land use** planning goal relating to the siting of a destination resort.

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

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

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

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

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

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

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

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

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

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

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