

House Bill 3306

Sponsored by Representative CLEM

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**.

Changes nonfarm uses outright permitted and conditionally authorized on land zoned for exclusive farm use. Modifies requirements for specified nonfarm uses.

Prohibits use of changes as legal basis for claim for just compensation.

A BILL FOR AN ACT

1
2 Relating to uses of land zoned for exclusive farm use; creating new provisions; amending ORS 92.010,
3 197.065, 197.445, 197.455, 197.465, 215.203, 215.213, 215.246, 215.249, 215.251, 215.263, 215.275,
4 215.283, 215.417, 215.452, 215.780 and 308A.056; and repealing ORS 215.297.

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

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

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

9 *[(a) Public or private schools, including all buildings essential to the operation of a school.]*

10 *[(b)]* (a) Churches and cemeteries in conjunction with churches.

11 *[(c)]* (b) The propagation or harvesting of a forest product.

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

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

26 *[(f)]* (e) Nonresidential buildings customarily provided in conjunction with farm use.

27 *[(g)]* (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For
28 a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm op-
29 eration and is not smaller than the minimum lot size in a farm zone with a minimum lot size ac-
30 knowledged under ORS 197.251.

31 *[(h)]* (g) Operations for the exploration for and production of geothermal resources as defined

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

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

8 [(j)] *A site for the disposal of solid waste that has been ordered to be established by the Environ-
 9 mental Quality Commission under ORS 459.049, together with equipment, facilities or buildings neces-
 10 sary for its operation.*

11 [(k)] (i) One manufactured dwelling or recreational vehicle, or the temporary residential use of
 12 an existing building, in conjunction with an existing dwelling as a temporary use for the term of a
 13 hardship suffered by the existing resident or a relative of the resident. Within three months of the
 14 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
 15 ished or, in the case of an existing building, the building shall be removed, demolished or returned
 16 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
 17 view of the hardship claimed under this paragraph. A temporary residence approved under this
 18 paragraph is not eligible for replacement under paragraph [(t)] (p) of this subsection. **An applicant
 19 approved for a temporary dwelling under this paragraph must renew or confirm the status
 20 of the approval every two years. To renew or confirm the status of the approval, the appli-
 21 cant shall submit a notarized statement attesting either that the hardship for which the
 22 temporary dwelling was approved continues or that the hardship no longer exists and the
 23 manufactured dwelling has been removed.**

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

27 [(m)] (j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

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

32 [(o)] (L) Temporary public road and highway detours that will be abandoned and restored to
 33 original condition or use at such time as no longer needed.

34 [(p)] (m) Minor betterment of existing public road and highway related facilities, such as main-
 35 tenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and
 36 contiguous public-owned property utilized to support the operation and maintenance of public roads
 37 and highways.

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

40 [(r)] *Creation of, restoration of or enhancement of wetlands.*

41 [(s)] (o) A winery, as described in ORS 215.452.

42 [(t)] (p) Alteration, restoration or replacement of a lawfully established dwelling that:

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

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

1 (C) Has interior wiring for interior lights;

2 (D) Has a heating system; and

3 (E) In the case of replacement:

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

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

26 [(u)] (q) Farm stands if:

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

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

36 [(v)] (r) An armed forces reserve center, if the center is within one-half mile of a community
 37 college. For purposes of this paragraph, "armed forces reserve center" includes an armory or Na-
 38 tional Guard support facility.

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

1 *ground.*]

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

9 [(y)] (t) Fire service facilities providing rural fire protection services.

10 [(z)] (u) Irrigation canals, delivery lines and those structures and accessory operational facilities
 11 associated with a district as defined in ORS 540.505.

12 [(aa)] (v) Utility facility service lines. Utility facility service lines are utility lines and accessory
 13 facilities or structures that end at the point where the utility service is received by the customer
 14 and that are located on one or more of the following:

15 (A) A public right of way;

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

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

19 [(bb)] (w) Subject to the issuance of a license, permit or other approval by the Department of
 20 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance
 21 with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land appli-
 22 cation of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
 23 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
 24 exclusive farm use zone under this chapter.

25 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 26 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 27 215.296:

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

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

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

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

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

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

44 (c) Commercial activities that are in conjunction with farm use, including the processing of farm
 45 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection [(1)(x)] (1)(s) of this sec-

1 tion.

2 (d) Operations conducted for:

3 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
4 as defined by ORS 520.005, not otherwise permitted under subsection [(1)(h)] (1)(g) of this
5 section[;].

6 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
7 sources subject to ORS 215.298[;] **except that, in the Willamette Valley, mining, crushing or**
8 **stockpiling of aggregate may be conducted on a lot, parcel or tract of five acres or more**
9 **containing a combination of Class I and Class II prime and unique soils only after the appli-**
10 **cant demonstrates to the county that the proposed use cannot be accommodated reasonably**
11 **without providing additional public facilities or services:**

12 (i) **On nonresource land that would not require an exception under ORS 197.732;**

13 (ii) **On resource land that is irrevocably committed to nonresource uses; and**

14 (iii) **Inside an urban growth boundary, as defined in ORS 195.060.**

15 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement[; and].

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

17 (e) Community centers owned by a governmental agency or a nonprofit community organization
18 and operated primarily by and for residents of the local rural community, hunting and fishing pre-
19 serves, public and private parks, playgrounds and campgrounds. **Public and private parks may**
20 **not be sited on land that is high-value farmland, as defined in ORS 195.300.** Subject to the ap-
21 proval of the county governing body or its designee, a private campground may provide yurts for
22 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,
23 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent
24 foundation. Upon request of a county governing body, the Land Conservation and Development
25 Commission may provide by rule for an increase in the number of yurts allowed on all or a portion
26 of the campgrounds in a county if the commission determines that the increase will comply with the
27 standards described in ORS 215.296 (1). A public park or campground may be established as provided
28 under ORS 195.120. As used in this paragraph, “yurt” means a round, domed shelter of cloth or
29 canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appli-
30 ance.

31 (f) Golf courses **on land that is not high-value farmland, as defined in ORS 195.300.**

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

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

42 (i) A facility for the primary processing of forest products, provided that such facility is found
43 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
44 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
45 renewable. These facilities are intended to be only portable or temporary in nature. The primary

1 processing of a forest product, as used in this section, means the use of a portable chipper or stud
 2 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
 3 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
 4 contiguous land where the primary processing facility is located.

5 [(j) *A site for the disposal of solid waste approved by the governing body of a city or county or*
 6 *both and for which a permit has been granted under ORS 459.245 by the Department of Environmental*
 7 *Quality together with equipment, facilities or buildings necessary for its operation.*]

8 [(k) (j) Dog kennels *[not described in subsection (1)(L) of this section].*

9 [(L) (k) Residential homes as defined in ORS 197.660, in existing dwellings.

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

17 [(n) (m) Home occupations as provided in ORS 215.448.

18 [(o) (n) Transmission towers over 200 feet in height.

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

21 [(q) (p) Reconstruction or modification of public roads and highways involving the removal or
 22 displacement of buildings but not resulting in the creation of new land parcels.

23 [(r) (q) Improvement of public road and highway related facilities such as maintenance yards,
 24 weigh stations and rest areas, where additional property or right of way is required but not result-
 25 ing in the creation of new land parcels.

26 [(s) (r) A destination resort that is **not on high-value farmland, as defined in ORS 195.300,**
 27 **and that is** approved consistent with the requirements of any statewide planning goal relating to
 28 the siting of a destination resort. **A destination resort is not a residential use of private real**
 29 **property for purposes of ORS 195.305.**

30 [(t) (s) Room and board arrangements for a maximum of five unrelated persons in existing res-
 31 idences.

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

39 [(A) *“Living history museum” means a facility designed to depict and interpret everyday life and*
 40 *culture of some specific historic period using authentic buildings, tools, equipment and people to simu-*
 41 *late past activities and events; and]*

42 [(B) *“Local historical society” means the local historical society, recognized as such by the county*
 43 *governing body and organized under ORS chapter 65.]*

44 [(v) (t) Operations for the extraction and bottling of water.

45 [(w) *An aerial fireworks display business that has been in continuous operation at its current lo-*

1 *cation within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit*
 2 *to sell or provide fireworks.]*

3 [(x)] (u) A landscape contracting business, as defined in ORS 671.520, or a business providing
 4 landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunc-
 5 tion with the growing and marketing of nursery stock on the land that constitutes farm use.

6 (v) **Public or private primary and secondary schools, including all buildings essential to**
 7 **the operation of a school, operated primarily for residents of the local rural community.**

8 (w) **Creation of, restoration of or enhancement of wetlands.**

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

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

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

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

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

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

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

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

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

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

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

42 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days
 43 following the date of postmark of the notice to file a written objection on the grounds only that the
 44 dwelling or activities associated with it would force a significant change in or significantly increase
 45 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-

1 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-
 2 jection is received, the governing body shall set the matter for hearing in the manner prescribed in
 3 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required
 4 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of
 5 this section.

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

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

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

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

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

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

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

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

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

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

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

29 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

30 [(a) *Public or private schools, including all buildings essential to the operation of a school.*]

31 [(b)] (a) Churches and cemeteries in conjunction with churches.

32 [(c)] (b) The propagation or harvesting of a forest product.

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

37 [(e)] (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative
 38 of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grand-
 39 child, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if
 40 the farm operator does or will require the assistance of the relative in the management of the farm
 41 use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 42 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
 43 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 44 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
 45 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure

1 shall operate as a partition of the homesite to create a new parcel.

2 [(f)] (e) Primary or accessory dwellings and other buildings customarily provided in conjunction
3 with farm use.

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

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

12 [(i) *A site for the disposal of solid waste that has been ordered to be established by the Environ-
13 mental Quality Commission under ORS 459.049, together with equipment, facilities or buildings neces-
14 sary for its operation.*]

15 [(j) *The breeding, kenneling and training of greyhounds for racing.*]

16 [(k)] (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

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

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

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

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

29 [(p) *Creation of, restoration of or enhancement of wetlands.*]

30 [(q)] (m) A winery, as described in ORS 215.452.

31 [(r)] (n) Farm stands if:

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

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

41 [(s)] (o) Alteration, restoration or replacement of a lawfully established dwelling that:

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

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

45 (C) Has interior wiring for interior lights;

1 (D) Has a heating system; and

2 (E) In the case of replacement:

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

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

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

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

40 *[(v) (q) Fire service facilities providing rural fire protection services.*

41 *[(w) (r) Irrigation canals, delivery lines and those structures and accessory operational facili-
 42 ties associated with a district as defined in ORS 540.505.*

43 *[(x) (s) Utility facility service lines. Utility facility service lines are utility lines and accessory
 44 facilities or structures that end at the point where the utility service is received by the customer
 45 and that are located on one or more of the following:*

1 (A) A public right of way;

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

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

5 [(y)] (t) Subject to the issuance of a license, permit or other approval by the Department of
6 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance
7 with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land appli-
8 cation of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
9 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
10 exclusive farm use zone under this chapter.

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

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

16 (a) Commercial activities that are in conjunction with farm use, including the processing of farm
17 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection [(1)(u)] (1)(p) of this sec-
18 tion.

19 (b) Operations conducted for:

20 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
21 as defined by ORS 520.005 not otherwise permitted under subsection [(1)(g)] (1)(f) of this section[;].

22 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
23 sources subject to ORS 215.298[;] **except that, in the Willamette Valley, mining, crushing or**
24 **stockpiling of aggregate may be conducted on a lot, parcel or tract of five acres or more**
25 **containing a combination of Class I and Class II prime and unique soils only after the appli-**
26 **cant demonstrates to the county that the proposed use cannot be accommodated reasonably**
27 **without providing additional public facilities or services:**

28 (i) **On nonresource land that would not require an exception under ORS 197.732;**

29 (ii) **On resource land that is irrevocably committed to nonresource uses; and**

30 (iii) **Inside an urban growth boundary, as defined in ORS 195.060.**

31 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement[; and].

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

33 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. **Private parks**
34 **may not be sited on land that is high-value farmland, as defined in ORS 195.300.** 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 **on land that is not high-value farmland, as defined in ORS**
45 **195.300.** A public park may be established consistent with the provisions of 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 **on land that is not high-value farmland, as defined in ORS 195.300.**

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 Environmental*
 31 *Quality together with equipment, facilities or buildings necessary for its operation.]*

32 *[(L)]* **(k)** One manufactured dwelling or recreational vehicle, or the temporary residential use
 33 of an existing building, in conjunction with an existing dwelling as a temporary use for the term of
 34 a 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)]* **(1)(o)** of this section. **An appli-**
 40 **licant approved for a temporary dwelling under this paragraph must renew or confirm the**
 41 **status of the approval every two years. To renew or confirm the status of the approval, the**
 42 **applicant shall submit a notarized statement attesting either that the hardship for which the**
 43 **temporary dwelling was approved continues or that the hardship no longer exists and the**
 44 **manufactured dwelling has been removed.**

45 *[(m)]* **(L)** Transmission towers over 200 feet in height.

- 1 [(n)] (m) Dog kennels *[not described in subsection (1)(j) of this section]*.
- 2 [(o)] (n) Residential homes as defined in ORS 197.660, in existing dwellings.
- 3 [(p)] (o) The propagation, cultivation, maintenance and harvesting of aquatic species that are
4 not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect spe-
5 cies shall not include any species under quarantine by the State Department of Agriculture or the
6 United States Department of Agriculture. The county shall provide notice of all applications under
7 this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with
8 the county's land use regulations but shall be mailed at least 20 calendar days prior to any admin-
9 istrative decision or initial public hearing on the application.
- 10 [(q)] (p) Construction of additional passing and travel lanes requiring the acquisition of right
11 of way but not resulting in the creation of new land parcels.
- 12 [(r)] (q) Reconstruction or modification of public roads and highways involving the removal or
13 displacement of buildings but not resulting in the creation of new land parcels.
- 14 [(s)] (r) Improvement of public road and highway related facilities, such as maintenance yards,
15 weigh stations and rest areas, where additional property or right of way is required but not result-
16 ing in the creation of new land parcels.
- 17 [(t)] (s) A destination resort that is **not on high-value farmland, as defined in ORS 195.300,**
18 **and that is** approved consistent with the requirements of any statewide planning goal relating to
19 the siting of a destination resort. **A destination resort is not a residential use of private real**
20 **property for purposes of ORS 195.305.**
- 21 [(u)] (t) Room and board arrangements for a maximum of five unrelated persons in existing
22 residences.
- 23 [(v)] (u) Operations for the extraction and bottling of water.
- 24 [(w)] (v) Expansion of existing county fairgrounds and activities directly relating to county
25 fairgrounds governed by county fair boards established pursuant to ORS 565.210.
- 26 [(x)] *A living history museum related to resource based activities owned and operated by a gov-*
27 *ernmental agency or a local historical society, together with limited commercial activities and facilities*
28 *that are directly related to the use and enjoyment of the museum and located within authentic buildings*
29 *of the depicted historic period or the museum administration building, if areas other than an exclusive*
30 *farm use zone cannot accommodate the museum and related activities or if the museum administration*
31 *buildings and parking lot are located within one quarter mile of an urban growth boundary. As used*
32 *in this paragraph:]*
- 33 [(A)] *“Living history museum” means a facility designed to depict and interpret everyday life and*
34 *culture of some specific historic period using authentic buildings, tools, equipment and people to simu-*
35 *late past activities and events; and]*
- 36 [(B)] *“Local historical society” means the local historical society recognized by the county governing*
37 *body and organized under ORS chapter 65.]*
- 38 [(y)] *An aerial fireworks display business that has been in continuous operation at its current lo-*
39 *cation within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit*
40 *to sell or provide fireworks.]*
- 41 [(z)] (w) A landscape contracting business, as defined in ORS 671.520, or a business providing
42 landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunc-
43 tion with the growing and marketing of nursery stock on the land that constitutes farm use.
- 44 (x) **Public or private primary and secondary schools, including all buildings essential to**
45 **the operation of a school, operated primarily for residents of the local rural community.**

(y) Creation of, restoration of or enhancement of wetlands.

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

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

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

SECTION 3. ORS 92.010, as amended by section 3, chapter 12, Oregon Laws 2008, is amended to read:

92.010. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

(1) "Declarant" means the person who files a declaration under ORS 92.075.

(2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or partition plat was created.

(3)(a) "Lawfully established unit of land" means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) "Lawfully established unit of land" does not mean a unit of land created solely to establish a separate tax account.

(4) "Lot" means a single unit of land that is created by a subdivision of land.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.

(6) "Parcel" means a single unit of land that is created by a partition of land.

(7) "Partition" means either an act of partitioning land or an area or tract of land partitioned.

(8) "Partition plat" includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.

(9) "Partitioning land" means dividing land to create not more than three parcels of land within a calendar year, but does not include:

(a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;

(b) Adjusting a property line as property line adjustment is defined in this section;

(c) Dividing land as a result of the recording of a subdivision or condominium plat;

(d) Selling or granting by a person to a public agency or public body of property for state highway, county road, city street or other right of way purposes if the road or right of way complies with the applicable comprehensive plan and ORS 215.213 [(2)(p) to (r)] **(2)(o) to (q)** and 215.283 [(2)(q) to (s)] **(2)(p) to (r)**. However, any property sold or granted for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until the property is further subdivided or partitioned; or

(e) Selling or granting by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads,

1 city streets or other right of way purposes when the sale or grant is part of a property line ad-
 2 justment incorporating the excess right of way into adjacent property. The property line adjustment
 3 shall be approved or disapproved by the applicable local government. If the property line adjustment
 4 is approved, it shall be recorded in the deed records of the county where the property is located.

5 (10) "Plat" includes a final subdivision plat, replat or partition plat.

6 (11) "Property line" means the division line between two units of land.

7 (12) "Property line adjustment" means a relocation or elimination of all or a portion of the
 8 common property line between abutting properties that does not create an additional lot or parcel.

9 (13) "Replat" means the act of platting the lots, parcels and easements in a recorded subdivision
 10 or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to in-
 11 crease or decrease the number of lots in the subdivision.

12 (14) "Road" or "street" means a public or private way that is created to provide ingress or
 13 egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that
 14 is created to provide ingress or egress to such land in conjunction with the use of such land for
 15 forestry, mining or agricultural purposes.

16 (15) "Sale" or "sell" includes every disposition or transfer of land or an interest or estate
 17 therein.

18 (16) "Subdivide land" means to divide land to create four or more lots within a calendar year.

19 (17) "Subdivision" means either an act of subdividing land or an area or a tract of land subdi-
 20 vided.

21 (18) "Subdivision plat" includes a final map and other writing containing all the descriptions,
 22 locations, specifications, dedications, provisions and information concerning a subdivision.

23 (19) "Utility easement" means an easement noted on a subdivision plat or partition plat for the
 24 purpose of installing or maintaining public or private utility infrastructure for the provision of wa-
 25 ter, power, heat or telecommunications to the public.

26 **SECTION 4.** ORS 197.065 is amended to read:

27 197.065. (1) Prior to each legislative session, the Land Conservation and Development Commis-
 28 sion shall submit to the appropriate legislative committee a written report analyzing applications
 29 approved and denied for:

30 (a) New and replacement dwellings under:

31 (A) ORS 215.213 [(1)(e)] **(1)(d)** and [(g)] **(f)**, (2)(a) and (b), (3) and (4), 215.283 [(1)(e)] **(1)(d)** and
 32 [(f)] **(e)**, 215.284 and 215.705; and

33 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

34 (b) Divisions of land under:

35 (A) ORS 215.263 (2), (4) and (5); and

36 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

37 (c) Dwellings and land divisions approved for marginal lands under:

38 (A) ORS 215.317 or 215.327; and

39 (B) Any land zoned for forest use under any statewide planning goal that relates to forestland;
 40 and

41 (d) Such other matters pertaining to protection of agricultural or forest land as the commission
 42 deems appropriate.

43 (2) The governing body of each county shall provide the Department of Land Conservation and
 44 Development with a report of its actions involving those dwellings, land divisions and land desig-
 45 nations upon which the commission must report to the appropriate legislative committee under

1 subsection (1) of this section. The department shall establish, after consultation with county gov-
 2 erning bodies, an annual reporting period and may establish a schedule for receiving county reports
 3 at intervals within the reporting period. The report shall be on a standard form with a standardized
 4 explanation adopted by the commission and shall be eligible for grants by the commission. The re-
 5 port shall include the findings for each action except actions involving:

6 (a) Dwellings authorized by ORS 215.213 [(1)(e)] **(1)(d)** or 215.283 [(1)(e)] **(1)(d)**; or

7 (b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a
 8 minimum size established by the commission under ORS 215.780.

9 (3) The governing body of each county shall, upon request by the department, provide the de-
 10 partment with other information necessary to carry out subsection (1) of this section.

11 **SECTION 5.** ORS 197.445 is amended to read:

12 197.445. **(1)** A destination resort is a self-contained development that provides for visitor-
 13 oriented accommodations and developed recreational facilities in a setting with high natural amen-
 14 ities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and
 15 215.284, a proposed development must meet the following standards:

16 [(1)] **(a)** The resort must be located on a site of 160 acres or more except within two miles of
 17 the ocean shoreline where the site shall be 40 acres or more.

18 [(2)] **(b)** At least 50 percent of the site must be dedicated to permanent open space, excluding
 19 streets and parking areas.

20 **(c) The resort may not be sited on high-value farmland, as defined in ORS 195.300.**

21 [(3)] **(d)** At least \$7 million must be spent on improvements for on-site developed recreational
 22 facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities
 23 and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

24 [(4)] **(e)** Visitor-oriented accommodations including meeting rooms, restaurants with seating for
 25 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the
 26 rentable overnight lodging units may be phased in as follows:

27 [(a)] **(A)** On lands not described in [paragraph (b) of this subsection] **subparagraph (B) of this**
 28 **paragraph:**

29 [(A)] **(i)** A total of 150 units of overnight lodging must be provided.

30 [(B)] **(ii)** At least 75 units of overnight lodging, not including any individually owned homes, lots
 31 or units, must be constructed or guaranteed through surety bonding or equivalent financial assur-
 32 ance prior to the closure of sale of individual lots or units.

33 [(C)] **(iii)** The remaining overnight lodging units must be provided as individually owned lots or
 34 units subject to deed restrictions that limit their use to use as overnight lodging units. The deed
 35 restrictions may be rescinded when the resort has constructed 150 units of permanent overnight
 36 lodging as required by this [subsection] **paragraph.**

37 [(D)] **(iv)** The number of units approved for residential sale may not be more than two units for
 38 each unit of permanent overnight lodging provided under this [paragraph] **subparagraph.**

39 [(E)] **(v)** The development approval must provide for the construction of other required overnight
 40 lodging units within five years of the initial lot sales.

41 [(b)] **(B)** On lands in eastern Oregon, as defined in ORS 321.805:

42 [(A)] **(i)** A total of 150 units of overnight lodging must be provided.

43 [(B)] **(ii)** At least 50 units of overnight lodging must be constructed prior to the closure of sale
 44 of individual lots or units.

45 [(C)] **(iii)** At least 50 of the remaining 100 required overnight lodging units must be constructed

1 or guaranteed through surety bonding or equivalent financial assurance within five years of the in-
 2 itial lot sales.

3 [(D)] (iv) The remaining required overnight lodging units must be constructed or guaranteed
 4 through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

5 [(E)] (v) The number of units approved for residential sale may not be more than 2-1/2 units for
 6 each unit of permanent overnight lodging provided under this [paragraph] **subparagraph**.

7 [(F)] (vi) If the developer of a resort guarantees the overnight lodging units required under
 8 [subparagraphs (C) and (D) of this paragraph] **sub-subparagraphs (iii) and (iv) of this subpara-**
 9 **graph** through surety bonding or other equivalent financial assurance, the overnight lodging units
 10 must be constructed within four years of the date of execution of the surety bond or other equiv-
 11 alent financial assurance.

12 [(5)] (f) Commercial uses allowed are limited to types and levels of use necessary to meet the
 13 needs of visitors to the development. Industrial uses of any kind are not permitted.

14 [(6)] (2) In lieu of the standards in [subsections (1), (3) and (4)] **subsection (1)(a), (d) and (e)**
 15 of this section, the standards set forth in subsection [(7)] (3) of this section apply to a destination
 16 resort:

17 (a) On land that is not defined as agricultural or forest land under any statewide planning goal;

18 (b) On land where there has been an exception to any statewide planning goal on agricultural
 19 lands, forestlands, public facilities and services and urbanization; or

20 (c) On such secondary lands as the Land Conservation and Development Commission deems ap-
 21 propriate.

22 [(7)] (3) The following standards apply to [the provisions of] **a destination resort described in**
 23 subsection [(6)] (2) of this section:

24 (a) The resort must be located on a site of 20 acres or more.

25 (b) At least \$2 million must be spent on improvements for on-site developed recreational facili-
 26 ties and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and
 27 roads. Not less than one-third of this amount must be spent on developed recreational facilities.

28 (c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

29 (d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must
 30 be provided.

31 (e) Residential uses must be limited to those necessary for the staff and management of the re-
 32 sort.

33 (f) The governing body of the county or its designee has reviewed the resort proposed under this
 34 subsection and has determined that the primary purpose of the resort is to provide lodging and other
 35 services oriented to a recreational resource which can only reasonably be enjoyed in a rural area.
 36 Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing
 37 stream.

38 (g) The resort must be constructed and located so that it is not designed to attract highway
 39 traffic. Resorts may not use any manner of outdoor advertising signing except:

40 (A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

41 (B) On-site identification and directional signs.

42 [(8)] (4) Spending required under subsections (1)(d) and (3) [and (7)] of this section is stated in
 43 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in
 44 accordance with the United States Consumer Price Index.

45 [(9)] (5) When making a land use decision authorizing construction of a destination resort in

1 eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall
 2 require the resort developer to provide an annual accounting to document compliance with the
 3 overnight lodging standards of this section. The annual accounting requirement commences one year
 4 after the initial lot or unit sales. The annual accounting must contain:

5 (a) Documentation showing that the resort contains a minimum of 150 permanent units of over-
 6 night lodging or, during the phase-in period, documentation showing the resort is not yet required
 7 to have constructed 150 units of overnight lodging.

8 (b) Documentation showing that the resort meets the lodging ratio described in subsection [(4)]
 9 (1)(e) of this section.

10 (c) For a resort counting individually owned units as qualified overnight lodging units, the
 11 number of weeks that each overnight lodging unit is available for rental to the general public as
 12 described in ORS 197.435.

13 **SECTION 6.** ORS 197.455 is amended to read:

14 197.455. (1) A destination resort must be sited on lands mapped as eligible for destination resort
 15 siting by the affected county. The county may not allow destination resorts approved pursuant to
 16 ORS 197.435 to 197.467 to be sited in any of the following areas:

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

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

22 (B) On a site within three miles of a high value crop area unless the resort complies with the
 23 requirements of ORS 197.445 [(6)] (2) in which case the resort may not be closer to a high value crop
 24 area than one-half mile for each 25 units of overnight lodging or fraction thereof.

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

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

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

31 (2) In carrying out subsection (1) of this section, a county shall adopt, as part of its compre-
 32 hensive plan, a map consisting of eligible lands within the county. The map must be based on rea-
 33 sonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more
 34 frequently than once every 30 months. The county shall develop a process for collecting and pro-
 35 cessing concurrently all map amendments made within a 30-month planning period. A map adopted
 36 pursuant to this section shall be the sole basis for determining whether tracts of land are eligible
 37 for destination resort siting pursuant to ORS 197.435 to 197.467.

38 **SECTION 7.** ORS 197.465 is amended to read:

39 197.465. An acknowledged comprehensive plan that allows for siting of a destination resort shall
 40 include implementing measures which:

41 (1) Map areas where a destination resort described in ORS 197.445 (1) [to (5)] is permitted pur-
 42 suant to ORS 197.455;

43 (2) Limit uses and activities to those defined by ORS 197.435 and allowed by ORS 197.445; and

44 (3) Assure that developed recreational facilities and key facilities intended to serve the entire
 45 development and visitor-oriented accommodations are physically provided or are guaranteed through

1 surety bonding or substantially equivalent financial assurances prior to closure of sale of individual
 2 lots or units. In phased developments, developed recreational facilities and other key facilities in-
 3 tended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed
 4 through surety bonding.

5 **SECTION 8.** ORS 215.203 is amended to read:

6 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the
 7 county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use
 8 except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established
 9 only when such zoning is consistent with the comprehensive plan.

10 (2)(a) As used in this section, “farm use” means the current employment of land for the primary
 11 purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,
 12 breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or
 13 honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural
 14 use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage
 15 and disposal by marketing or otherwise of the products or by-products raised on such land for hu-
 16 man or animal use. “Farm use” also includes the current employment of land for the primary pur-
 17 pose of obtaining a profit in money by stabling or training equines including but not limited to
 18 providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propa-
 19 gation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under
 20 the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules
 21 adopted by the commission. “Farm use” includes the on-site construction and maintenance of
 22 equipment and facilities used for the activities described in this subsection. “Farm use” does not
 23 include the use of land subject to the provisions of ORS chapter 321, except land used exclusively
 24 for growing cultured Christmas trees as defined in subsection (3) of this section or land described
 25 in ORS 321.267 (3) or 321.824 (3).

26 (b) “Current employment” of land for farm use includes:

27 (A) Farmland, the operation or use of which is subject to any farm-related government program;

28 (B) Land lying fallow for one year as a normal and regular requirement of good agricultural
 29 husbandry;

30 (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D)
 31 of this paragraph, prior to maturity;

32 (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special
 33 farm use value in the year prior to planting the current crop and has been planted in orchards,
 34 cultured Christmas trees or vineyards for at least three years;

35 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
 36 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and
 37 which is not currently being used for any economic farm use;

38 (F) Except for land under a single family dwelling, land under buildings supporting accepted
 39 farm practices, including the processing facilities allowed by ORS 215.213 [(1)(x)] **(1)(s)** and 215.283
 40 [(1)(u)] **(1)(p)** and the processing of farm crops into biofuel as commercial activities in conjunction
 41 with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

42 (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

43 (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
 44 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
 45 in conjunction with farm use;

1 (I) Land lying idle for no more than one year where the absence of farming activity is due to
 2 the illness of the farmer or member of the farmer’s immediate family. For purposes of this paragraph,
 3 illness includes injury or infirmity whether or not such illness results in death;

4 (J) Any land described under ORS 321.267 (3) or 321.824 (3);

5 (K) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
 6 kenneling or training of greyhounds for racing; and

7 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

8 (i) Only the crops of the landowner are being processed;

9 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
 10 of the landowner; or

11 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
 12 for their use or sale.

13 (c) As used in this subsection, “accepted farming practice” means a mode of operation that is
 14 common to farms of a similar nature, necessary for the operation of such farms to obtain a profit
 15 in money, and customarily utilized in conjunction with farm use.

16 (3) “Cultured Christmas trees” means trees:

17 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-
 18 vation methods such as plowing or turning over the soil;

19 (b) Of a marketable species;

20 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
 21 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

22 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
 23 and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and
 24 disease control, stump culture, soil cultivation, irrigation.

25 **SECTION 9.** ORS 215.246 is amended to read:

26 215.246. (1) The uses allowed under ORS 215.213 [(1)(bb)] **(1)(w)** and 215.283 [(1)(y)] **(1)(t)**:

27 (a) Require a determination by the Department of Environmental Quality, in conjunction with
 28 the department’s review of a license, permit or approval, that the application rates and site man-
 29 agement practices for the land application of reclaimed water, agricultural or industrial process
 30 water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not
 31 reduce the productivity of the tract.

32 (b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS
 33 215.275 or 215.296.

34 (2) The use of a tract of land on which the land application of reclaimed water, agricultural or
 35 industrial process water or biosolids has occurred under this section may not be changed to allow
 36 a different use unless:

37 (a) The tract is included within an acknowledged urban growth boundary;

38 (b) The tract is rezoned to a zone other than an exclusive farm use zone;

39 (c) The different use of the tract is a farm use as defined in ORS 215.203; or

40 (d) The different use of the tract is a use allowed under:

41 (A) ORS 215.213 [(1)(c), (e) to (g), (k), (m) to (q), (s) to (u), (x), (z) or (aa)] **(1)(b), (d) to (f), (i) to**
 42 **(q), (s), (u) or (v)**;

43 (B) ORS 215.213 (2)(a) to (c), (i), [(m) or (p) to (r)] **(L) or (o) to (q)**;

44 (C) ORS 215.283 [(1)(c), (e), (f), (k) to (o), (q) to (s), (u), (w) or (x)] **(1)(b), (d), (e), (h) to (p), (r)**
 45 **or (s)**; or

1 (D) ORS 215.283 (2)(a), (j), [(L) or (p) to (s)] **(k) or (o) to (r)**.

2 (3) When a state agency or a local government makes a land use decision relating to the land
 3 application of reclaimed water, agricultural or industrial process water or biosolids under a license,
 4 permit or approval by the Department of Environmental Quality, the applicant shall explain in
 5 writing how alternatives identified in public comments on the land use decision were considered and,
 6 if the alternatives are not used, explain in writing the reasons for not using the alternatives. The
 7 applicant must consider only those alternatives that are identified with sufficient specificity to af-
 8 ford the applicant an adequate opportunity to consider the alternatives. A land use decision relating
 9 to the land application of reclaimed water, agricultural or industrial process water or biosolids may
 10 not be reversed or remanded under this subsection unless the applicant failed to consider identified
 11 alternatives or to explain in writing the reasons for not using the alternatives.

12 (4) The uses allowed under this section include:

13 (a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that
 14 occurs as a result of the land application;

15 (b) The establishment and use of facilities, including buildings, equipment, aerated and
 16 nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and
 17 reasonably necessary for the land application to occur on the subject tract;

18 (c) The establishment and use of facilities, including buildings and equipment, that are not on
 19 the tract on which the land application occurs for the transport of reclaimed water, agricultural or
 20 industrial process water or biosolids to the tract on which the land application occurs if the facili-
 21 ties are located within:

22 (A) A public right of way; or

23 (B) Other land if the landowner provides written consent and the owner of the facility complies
 24 with ORS 215.275 (4); and

25 (d) The transport by vehicle of reclaimed water or agricultural or industrial process water to
 26 a tract on which the water will be applied to land.

27 (5) Uses not allowed under this section include:

28 (a) The establishment and use of facilities, including buildings or equipment, for the treatment
 29 of reclaimed water, agricultural or industrial process water or biosolids other than those treatment
 30 facilities related to the treatment that occurs as a result of the land application; or

31 (b) The establishment and use of utility facility service lines allowed under ORS 215.213
 32 [(1)(aa)] **(1)(v)** or 215.283 [(1)(x)] **(1)(s)**.

33 **SECTION 10.** ORS 215.249 is amended to read:

34 215.249. Notwithstanding ORS 215.263, the governing body of a county or its designee may not
 35 approve a proposed division of land in an exclusive farm use zone for the land application of re-
 36 claimed water, agricultural or industrial process water or biosolids described in ORS 215.213
 37 [(1)(bb)] **(1)(w)** or 215.283 [(1)(y)] **(1)(t)**.

38 **SECTION 11.** ORS 215.251 is amended to read:

39 215.251. Nothing in ORS 215.213 [(1)(bb)] **(1)(w)**, 215.246 to 215.249 or 215.283 [(1)(y)] **(1)(t)** af-
 40 fects whether the land application of a substance not described in ORS 215.213 [(1)(bb)] **(1)(w)**,
 41 215.246 to 215.249 or 215.283 [(1)(y)] **(1)(t)** is a farm use as defined in ORS 215.203.

42 **SECTION 12.** ORS 215.263 is amended to read:

43 215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting
 44 in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the
 45 governing body or its designee of the county in which the land is situated. The governing body of

1 a county by ordinance shall require such prior review and approval for such divisions of land within
 2 exclusive farm use zones established within the county.

3 (2) The governing body of a county or its designee may approve a proposed division of land to
 4 create parcels for farm use as defined in ORS 215.203 if it finds:

5 (a) That the proposed division of land is appropriate for the continuation of the existing com-
 6 mercial agricultural enterprise within the area; or

7 (b) The parcels created by the proposed division are not smaller than the minimum size estab-
 8 lished under ORS 215.780.

9 (3) The governing body of a county or its designee may approve a proposed division of land in
 10 an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283
 11 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for
 12 the use. The governing body may establish other criteria as it considers necessary.

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

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

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

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

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

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

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

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

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

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

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

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

38 (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber;
 39 and

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

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

43 (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm
 44 crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-
 45 ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be con-

1 sidered unsuitable based solely on size or location if the parcel can reasonably be put to farm or
 2 forest use in conjunction with other land.

3 (5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

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

7 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

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

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

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

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

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

21 (A) The nonfarm dwellings have been approved under ORS 215.284 (7);

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

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

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

27 (i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber;
 28 and

29 (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90
 30 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage
 31 for grazing livestock. The Land Conservation and Development Commission, in cooperation with the
 32 State Department of Agriculture and other interested persons, may establish by rule objective cri-
 33 teria for identifying units of land that are not capable of producing adequate herbaceous forage for
 34 grazing livestock. In developing the criteria, the commission shall use the latest information from
 35 the United States Natural Resources Conservation Service and consider costs required to utilize
 36 grazing lands that differ in acreage and productivity level;

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

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

44 (6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within
 45 the boundaries designated for a farm use zone at the time the zone is established.

1 (7) This section does not apply to divisions of land resulting from lien foreclosures or divisions
 2 of land resulting from foreclosure of recorded contracts for the sale of real property.

3 (8) The governing body of a county may not approve any proposed division of a lot or parcel
 4 described in ORS 215.213 [(1)(e) or (k)] **(1)(d) or (i)**, 215.283 [(1)(e) or (2)(L)] **(1)(d) or (2)(k)** or
 5 215.284 (1), or a proposed division that separates a processing facility from the farm operation
 6 specified in ORS 215.213 [(1)(x)] **(1)(s)** or 215.283 [(1)(u)] **(1)(p)**.

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

9 (a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved
 10 under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

11 (b) For historic property that meets the requirements of ORS 215.213 [(1)(q)] **(1)(n)** and 215.283
 12 [(1)(o)] **(1)(L)**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (12) The governing body of a county may not approve a division of land for nonfarm use under
 42 subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the
 43 change in use has been paid.

44 (13) Parcels used or to be used for training or stabling facilities may not be considered appro-
 45 priate to maintain the existing commercial agricultural enterprise in an area where other types of

1 agriculture occur.

2 **SECTION 13.** ORS 215.275 is amended to read:

3 215.275. (1) A utility facility established under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c)
4 is necessary for public service if the facility must be sited in an exclusive farm use zone in order
5 to provide the service.

6 (2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS
7 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c) must show that reasonable alternatives have been
8 considered and that the facility must be sited in an exclusive farm use zone due to one or more of
9 the following factors:

10 (a) Technical and engineering feasibility;

11 (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if
12 it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reason-
13 ably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

14 (c) Lack of available urban and nonresource lands;

15 (d) Availability of existing rights of way;

16 (e) Public health and safety; and

17 (f) Other requirements of state or federal agencies.

18 (3) Costs associated with any of the factors listed in subsection (2) of this section may be con-
19 sidered, but cost alone may not be the only consideration in determining that a utility facility is
20 necessary for public service. Land costs shall not be included when considering alternative locations
21 for substantially similar utility facilities. The Land Conservation and Development Commission shall
22 determine by rule how land costs may be considered when evaluating the siting of utility facilities
23 that are not substantially similar.

24 (4) The owner of a utility facility approved under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)]
25 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricul-
26 tural land and associated improvements that are damaged or otherwise disturbed by the siting,
27 maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner
28 of the utility facility from requiring a bond or other security from a contractor or otherwise im-
29 posing on a contractor the responsibility for restoration.

30 (5) The governing body of the county or its designee shall impose clear and objective conditions
31 on an application for utility facility siting under ORS 215.213 [(1)(d)] (1)(c) or 215.283 [(1)(d)] (1)(c)
32 to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted
33 to farm use in order to prevent a significant change in accepted farm practices or a significant in-
34 crease in the cost of farm practices on the surrounding farmlands.

35 (6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas
36 pipelines and associated facilities authorized by and subject to regulation by the Federal Energy
37 Regulatory Commission.

38 **SECTION 14.** ORS 215.417 is amended to read:

39 215.417. (1) If a permit is approved under ORS 215.416 for a proposed residential development
40 on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293
41 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four
42 years.

43 (2) An extension of a permit described in subsection (1) of this section shall be valid for two
44 years.

45 (3) For the purposes of this section, "residential development" only includes the dwellings pro-

1 vided for under ORS 215.213 [(1)(t)] **(1)(p)**, (3) and (4), 215.283 [(1)(s)] **(1)(o)**, 215.284, 215.317, 215.705
 2 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

3 **SECTION 15.** ORS 215.452 is amended to read:

4 215.452. (1) A winery, authorized under ORS 215.213 [(1)(s)] **(1)(o)** and 215.283 [(1)(q)] **(1)(m)**, is
 5 a facility that produces wine with a maximum annual production of:

6 (a) Less than 50,000 gallons and that:

7 (A) Owns an on-site vineyard of at least 15 acres;

8 (B) Owns a contiguous vineyard of at least 15 acres;

9 (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a
 10 vineyard contiguous to the winery; or

11 (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

12 (b) At least 50,000 gallons and no more than 100,000 gallons and that:

13 (A) Owns an on-site vineyard of at least 40 acres;

14 (B) Owns a contiguous vineyard of at least 40 acres;

15 (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a
 16 vineyard contiguous to the winery; or

17 (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

18 (2) The winery described in subsection (1)(a) or (b) of this section shall allow only the sale of:

19 (a) Wines produced in conjunction with the winery; and

20 (b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site.
 21 Such items include those served by a limited service restaurant, as defined in ORS 624.010.

22 (3) Prior to the issuance of a permit to establish a winery under this section, the applicant shall
 23 show that vineyards, described in subsection (1)(a) and (b) of this section, have been planted or that
 24 the contract has been executed, as applicable.

25 (4) A local government shall adopt findings for each of the standards described in paragraphs
 26 (a) and (b) of this subsection. Standards imposed on the siting of a winery shall be limited solely
 27 to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farm-
 28 ing or forest practices on adjacent lands:

29 (a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and
 30 all public gathering places; and

31 (b) Provision of direct road access, internal circulation and parking.

32 (5) A local government shall also apply local criteria regarding floodplains, geologic hazards, the
 33 Willamette River Greenway, solar access, airport safety or other regulations for resource protection
 34 acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas
 35 and natural resources.

36 **SECTION 16.** ORS 215.780 is amended to read:

37 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or
 38 parcel sizes apply to all counties:

39 (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

40 (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

41 (c) For land designated forestland, at least 80 acres.

42 (2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1)
 43 of this section in any of the following circumstances:

44 (a) By demonstrating to the Land Conservation and Development Commission that it can do so
 45 while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning

1 goals adopted under ORS 197.230.

2 (b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed
3 farm and forest use, subject to the following requirements:

4 (A) The parcel established shall not be larger than five acres, except as necessary to recognize
5 physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

6 (B) The dwelling existed prior to June 1, 1995;

7 (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division stan-
8 dards of the zone; or

9 (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and
10 together the parcels meet the minimum land division standards of the zone; and

11 (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless sub-
12 sequently authorized by law or goal.

13 (c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for
14 mixed farm and forest use the following requirements apply:

15 (A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

16 (B) The tract shall be predominantly in forest use and that portion in forest use qualified for
17 special assessment under a program under ORS chapter 321.

18 (C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and
19 215.283 that are not allowed on forestland.

20 (d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that
21 results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this
22 section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

23 (A) Shall not be eligible for siting of a new dwelling;

24 (B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

25 (C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of
26 resource lands;

27 (D) Shall not result in a parcel of less than 35 acres, except:

28 (i) Where the purpose of the land division is to facilitate an exchange of lands involving a gov-
29 ernmental agency; or

30 (ii) Where the purpose of the land division is to allow transactions in which at least one par-
31 ticipant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

32 (E) If associated with the creation of a parcel where a dwelling is involved, shall not result in
33 a parcel less than the minimum lot or parcel size of the zone.

34 (e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under
35 a statewide planning goal protecting forestland if:

36 (A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

37 (B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213
38 [(1)(t)] **(1)(p)** or 215.283 [(1)(s)] **(1)(o)**;

39 (C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two
40 and five acres in size;

41 (D) At least one dwelling is located on each lot or parcel created under this paragraph; and

42 (E) The landowner of a lot or parcel created under this paragraph provides evidence that a re-
43 striction prohibiting the landowner and the landowner's successors in interest from further dividing
44 the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel
45 is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of

1 release is signed by the county planning director of the county in which the lot or parcel is located
 2 indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have
 3 been changed so that the lot or parcel is no longer subject to statewide planning goals protecting
 4 forestland or unless the land division is subsequently authorized by law or by a change in a state-
 5 wide planning goal for land zoned for forest use or mixed farm and forest use.

6 (f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as
 7 provided in ORS 215.783.

8 (3) A county planning director shall maintain a record of lots and parcels that do not qualify for
 9 division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record
 10 shall be readily available to the public.

11 (4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing
 12 dwelling on the lot or parcel was approved under:

13 (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that
 14 required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

15 (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest
 16 use zone under a statewide planning goal protecting forestland.

17 (5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to
 18 ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under
 19 ORS 197.628 to 197.650 that is smaller than those prescribed in subsection (1) of this section need
 20 not comply with subsection (2) of this section.

21 (6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall
 22 provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been
 23 recorded with the county clerk of the county where the property is located. An applicant for the
 24 creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a re-
 25 striction on the newly created parcel has been recorded with the county clerk of the county where
 26 the property is located. The restriction shall allow no dwellings unless authorized by law or goal
 27 on land zoned for forest use except as permitted under subsection (2) of this section.

28 (b) A restriction imposed under this subsection shall be irrevocable unless a statement of release
 29 is signed by the county planning director of the county where the property is located indicating that
 30 the comprehensive plan or land use regulations applicable to the property have been changed in
 31 such a manner that the parcel is no longer subject to statewide planning goals pertaining to agri-
 32 cultural land or forestland.

33 (c) The county planning director shall maintain a record of parcels that do not qualify for the
 34 siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily
 35 available to the public.

36 (7) A landowner allowed a land division under subsection (2) of this section shall sign a state-
 37 ment that shall be recorded with the county clerk of the county in which the property is located,
 38 declaring that the landowner and the landowner's successors in interest will not in the future com-
 39 plain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

40 **SECTION 17.** ORS 308A.056 is amended to read:

41 308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the current employment
 42 of land for the primary purpose of obtaining a profit in money by:

43 (a) Raising, harvesting and selling crops;

44 (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
 45 or the produce thereof;

- 1 (c) Dairying and selling dairy products;
- 2 (d) Stabling or training equines, including but not limited to providing riding lessons, training
- 3 clinics and schooling shows;
- 4 (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
- 5 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;
- 6 (f) On-site constructing and maintaining equipment and facilities used for the activities described
- 7 in this subsection;
- 8 (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
- 9 raised for human or animal use on land described in this section; or
- 10 (h) Using land described in this section for any other agricultural or horticultural use or animal
- 11 husbandry or any combination thereof.
- 12 (2) "Farm use" does not include the use of land subject to timber and forestland taxation under
- 13 ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land de-
- 14 scribed in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber,
- 15 including hybrid cottonwood).
- 16 (3) For purposes of this section, land is currently employed for farm use if the land is:
- 17 (a) Farmland, the operation or use of which is subject to any farm-related government program;
- 18 (b) Land lying fallow for one year as a normal and regular requirement of good agricultural
- 19 husbandry;
- 20 (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of
- 21 this subsection, prior to maturity;
- 22 (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special
- 23 farm use value in the year prior to planting the current crop and has been planted in orchards,
- 24 cultured Christmas trees or vineyards for at least three years;
- 25 (e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
- 26 tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that
- 27 is not currently being used for any economic farm use;
- 28 (f) Except for land under a single family dwelling, land under buildings supporting accepted
- 29 farming practices, including the processing facilities allowed by ORS 215.213 [(1)(x)] **(1)(s)** and
- 30 215.283 [(1)(u)] **(1)(p)** and the processing of farm crops into biofuel as commercial activities in con-
- 31 junction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);
- 32 (g) Water impoundments lying in or adjacent to and in common ownership with farm use land;
- 33 (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
- 34 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
- 35 in conjunction with farm use;
- 36 (i) Land lying idle for no more than one year when the absence of farming activity is the result
- 37 of the illness of the farmer or a member of the farmer's immediate family, including injury or
- 38 infirmity, regardless of whether the illness results in death;
- 39 (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain
- 40 hardwood timber, including hybrid cottonwood);
- 41 (k) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
- 42 kenneling or training greyhounds for racing; or
- 43 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
- 44 (i) Only the crops of the landowner are being processed;
- 45 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm

1 of the landowner; or

2 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
3 for their use or sale.

4 (4) As used in this section:

5 (a) "Accepted farming practice" means a mode of operation that is common to farms of a similar
6 nature, necessary for the operation of these similar farms to obtain a profit in money and custom-
7 arily utilized in conjunction with farm use.

8 (b) "Cultured Christmas trees" means trees:

9 (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cul-
10 tivation methods such as plowing or turning over the soil;

11 (B) Of a marketable species;

12 (C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
13 specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

14 (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
15 and brush control and one or more of the following practices:

16 (i) Basal pruning;

17 (ii) Fertilizing;

18 (iii) Insect and disease control;

19 (iv) Stump culture;

20 (v) Soil cultivation; or

21 (vi) Irrigation.

22 **SECTION 18. The amendments to ORS 215.213 and 215.283 by sections 1 and 2 of this 2009**
23 **Act are not a legal basis for an owner of private real property to make a claim for just**
24 **compensation under ORS 195.305.**

25 **SECTION 19. ORS 215.297 is repealed.**

26