

Senate Bill 434

Sponsored by Senator GEORGE

SUMMARY

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

Directs counties to establish minimum lot or parcel size for land zoned for exclusive farm use, for land zoned for forest use and for land zoned for mixed farm and forest use. Prohibits Land Conservation and Development Commission from establishing minimum lot or parcel size for land zoned for farm use, for forest use or for mixed farm and forest use.

A BILL FOR AN ACT

1
2 Relating to minimum lot size; creating new provisions; amending ORS 92.176, 92.178, 197.065, 197.650,
3 215.213, 215.262, 215.263 and 215.283; and repealing ORS 215.780.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 215.**

6 **SECTION 2. (1) A county shall establish a minimum lot or parcel size:**

7 (a) **For land zoned for exclusive farm use;**

8 (b) **For land zoned for forest use; and**

9 (c) **For land zoned for mixed farm and forest use.**

10 (2) **The Land Conservation and Development Commission may not establish a minimum**
11 **lot or parcel size for land zoned for exclusive farm use, for land zoned for forest use or for**
12 **land zoned for mixed farm and forest use.**

13 **SECTION 3. ORS 92.176 is amended to read:**

14 92.176. (1) A county or city may approve an application to validate a unit of land that was
15 created by a sale that did not comply with the applicable criteria for creation of a unit of land if
16 the unit of land:

17 (a) Is not a lawfully established unit of land; and

18 (b) Could have complied with the applicable criteria for the creation of a lawfully established
19 unit of land in effect when the unit of land was sold.

20 (2) Notwithstanding subsection (1)(b) of this section, a county or city may approve an application
21 to validate a unit of land under this section if the county or city approved a permit, as defined in
22 ORS 215.402 or 227.160, respectively, for the construction or placement of a dwelling or other
23 building on the unit of land after the sale. If the permit was approved for a dwelling, the county or
24 city must determine that the dwelling qualifies for replacement under the criteria set forth in ORS
25 215.755 (1)(a) to (e).

26 (3) A county or city may approve an application for a permit, as defined in ORS 215.402 or
27 227.160, respectively, or a permit under the applicable state or local building code for the continued
28 use of a dwelling or other building on a unit of land that was not lawfully established if:

29 (a) The dwelling or other building was lawfully established prior to January 1, 2007; and

30 (b) The permit does not change or intensify the use of the dwelling or other building.

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 (4) An application to validate a unit of land under this section is an application for a permit,
 2 as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject
 3 to *[the minimum lot or parcel sizes established by ORS 215.780]* **section 2 of this 2009 Act.**

4 (5) A unit of land becomes a lawfully established parcel when the county or city validates the
 5 unit of land under this section if the owner of the unit of land causes a partition plat to be recorded
 6 within 90 days after the date the county or city validates the unit of land.

7 (6) A county or city may not approve an application to validate a unit of land under this section
 8 if the unit of land was unlawfully created on or after January 1, 2007.

9 (7) Development or improvement of a parcel created under subsection (5) of this section must
 10 comply with the applicable laws in effect when a complete application for the development or im-
 11 provement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a).

12 **SECTION 4.** ORS 92.178 is amended to read:

13 92.178. (1) The governing body of a county may approve an application requesting formation of
 14 one parcel if the county issued a land use decision approving the parcel prior to January 1, 1994,
 15 and:

16 (a) A plat implementing the previous land use decision was not recorded; or

17 (b) A condition of approval of the previously approved land use decision requiring consolidation
 18 of adjacent lots or parcels was not complied with by a previous owner of the land.

19 (2) An application under this section is not subject to *[ORS 215.780]* **section 2 of this 2009**
 20 **Act.**

21 (3) Approval of an application under this section does not affect the legal status of land that is
 22 not the subject of the application.

23 (4) As used in this section:

24 (a) "Lot" has the meaning given the term in ORS 92.010.

25 (b) "Parcel" has the meaning given the term in ORS 92.010.

26 **SECTION 5.** 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) and (g), (2)(a) and (b), (3) and (4), 215.283 (1)(e) and (f), 215.284 and 215.705;
 32 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) or 215.283 (1)(e); 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*] **a county pursuant to section 2**
 9 **of this 2009 Act.**

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

12 **SECTION 6.** ORS 197.650 is amended to read:

13 197.650. (1) A Land Conservation and Development Commission order may be appealed to the
 14 Court of Appeals in the manner provided in ORS 183.482 by the following persons:

15 (a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings
 16 under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS
 17 197.251 or 197.633, 197.636 or 197.644;

18 (b) Persons who submitted comments or objections pursuant to procedures adopted by the com-
 19 mission for certification of state agency coordination programs and are appealing a certification is-
 20 sued under ORS 197.180 (6); **or**

21 (c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition
 22 was dismissed[; *or*]

23 [*(d) Persons who submitted oral or written testimony in a proceeding before the commission pur-*
 24 *suant to ORS 215.780*].

25 (2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state
 26 the nature of the order petitioner desires reviewed and whether the petitioner submitted comments
 27 or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644.

28 (3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition
 29 shall be served by registered or certified mail upon the Department of Land Conservation and De-
 30 velopment, the local government and all persons who filed comments or objections.

31 **SECTION 7.** ORS 215.213 is amended to read:

32 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
 33 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

41 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 42 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 43 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 44 operator does or will require the assistance of the relative in the management of the farm use and
 45 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

1 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements [*under ORS*
2 *215.780*] **established by a county pursuant to section 2 of this 2009 Act**, if the owner of a
3 dwelling described in this paragraph obtains construction financing or other financing secured by
4 the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose
5 on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the
6 homesite to create a new parcel.

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

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

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

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

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

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

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

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

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

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

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

45 (q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has

1 been listed in a county inventory as historic property as defined in ORS 358.480.

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

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

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

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

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

8 (C) Has interior wiring for interior lights;

9 (D) Has a heating system; and

10 (E) In the case of replacement:

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

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

33 (u) Farm stands if:

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

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

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

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

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

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

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

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

22 (A) A public right of way;

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

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

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

32 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
33 the following uses may be established in any area zoned for exclusive farm use subject to ORS
34 215.296:

35 (a) 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 if the farm op-
37 eration or woodlot:

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

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

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

45 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar

1 years out of the three calendar years before the year in which the application for the dwelling was
2 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000
3 in annual gross farm income; or

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

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

8 (d) Operations conducted for:

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

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

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

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

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

28 (f) Golf courses.

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

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

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

1 contiguous land where the primary processing facility is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
44 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

20 **SECTION 8.** ORS 215.262 is amended to read:

21 215.262. *[(1)]* The Legislative Assembly declares that the creation of small parcels for nonfarm
22 dwellings in exclusive farm use zones introduces potential conflicts into commercial agricultural
23 areas and allows a limited number of nonfarm dwellings in exclusive farm use zones. To protect the
24 state's land base for commercial agriculture from being divided into multiple parcels for nonfarm
25 dwellings while continuing to allow a limited number of nonfarm dwellings on less productive agri-
26 cultural land not suitable for farm use, it is necessary to:

27 *[(a)]* **(1)** Limit the incremental division of lots or parcels larger than the minimum size estab-
28 lished *[under ORS 215.780]* **by a county pursuant to section 2 of this 2009 Act** into smaller lots
29 or parcels for the purpose of creating new nonfarm dwellings; and

30 *[(b)]* **(2)** Allow a limited number of lots or parcels equal to or less than the minimum size es-
31 tablished *[under ORS 215.780]* **by a county pursuant to section 2 of this 2009 Act** to be parti-
32 tioned into not more than two parcels unsuitable for farm use and eligible for siting nonfarm
33 dwellings under ORS 215.284.

34 *[(2) The amendments to ORS 215.263 by section 3, chapter 704, Oregon Laws 2001, address the*
35 *partition of land within an exclusive farm use zone to create parcels smaller than the minimum size*
36 *established under ORS 215.780 for the purpose of siting dwellings not provided in conjunction with*
37 *farm use in eastern Oregon, as defined in ORS 321.805, and in western Oregon, as defined in ORS*
38 *321.257.]*

39 **SECTION 9.** ORS 215.263 is amended to read:

40 215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting
41 in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the
42 governing body or its designee of the county in which the land is situated. The governing body of
43 a county by ordinance shall require such prior review and approval for such divisions of land within
44 exclusive farm use zones established within the county.

45 (2) The governing body of a county or its designee may approve a proposed division of land to

1 create parcels for farm use as defined in ORS 215.203 if it finds:

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

4 (b) The parcels created by the proposed division are not smaller than the minimum size estab-
5 lished [*under ORS 215.780*] **by the county pursuant to section 2 of this 2009 Act.**

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

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

12 (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels
13 smaller than the minimum size established [*under ORS 215.780*] **by the county pursuant to section**
14 **2 of this 2009 Act**, each to contain a dwelling not provided in conjunction with farm use if:

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

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

18 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with
19 the minimum size established [*under ORS 215.780*] **by the county pursuant to section 2 of this**
20 **2009 Act**;

21 (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings
22 complies with the minimum size established [*under ORS 215.780*] **by the county pursuant to sec-**
23 **tion 2 of this 2009 Act**; and

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

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

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

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

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

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

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

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

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

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

1 forest use in conjunction with other land.

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

3 (a) May approve a division of land in an exclusive farm use zone to create up to two new parcels
4 smaller than the minimum size established [*under ORS 215.780*] **by the county pursuant to section**
5 **2 of this 2009 Act**, each to contain a dwelling not provided in conjunction with farm use if:

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

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

9 (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with
10 the minimum size established [*under ORS 215.780*] **by the county pursuant to section 2 of this**
11 **2009 Act**;

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*] **by the county pursuant to sec-**
14 **tion 2 of this 2009 Act**; and

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

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

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

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

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

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

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

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

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

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

45 (6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within

1 the boundaries designated for a farm use zone at the time the zone is established.

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

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

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

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

12 (b) For historic property that meets the requirements of ORS 215.213 (1)(q) and 215.283 (1)(o).

13 (10)(a) Notwithstanding [*ORS 215.780*] **a minimum lot or parcel size established by a county**
14 **pursuant to section 2 of this 2009 Act**, the governing body of [*a*] **the county** or its designee may
15 approve a proposed division of land provided:

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

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

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

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

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

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

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

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

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

32 (11) The governing body of a county or its designee may approve a division of land smaller than
33 the minimum lot or parcel size [*described in ORS 215.780 (1) and (2)*] **established by the county**
34 **pursuant to section 2 of this 2009 Act** in an exclusive farm use zone provided:

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

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

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

39 (d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size
40 [*described in ORS 215.780 (1) and (2)*] **established by the county pursuant to section 2 of this**
41 **2009 Act** either by itself or after it is consolidated with another lot or parcel.

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

45 (13) Parcels used or to be used for training or stabling facilities may not be considered appro-

1 puate to maintain the existing commercial agricultural enterprise in an area where other types of
2 agriculture occur.

3 **SECTION 10.** ORS 215.283 is amended to read:

4 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

12 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
13 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
14 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
15 operator does or will require the assistance of the relative in the management of the farm use and
16 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
17 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements [*under ORS*
18 *215.780*] **established by a county pursuant to section 2 of this 2009 Act**, if the owner of a
19 dwelling described in this paragraph obtains construction financing or other financing secured by
20 the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose
21 on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the
22 homesite to create a new parcel.

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

25 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
26 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
27 compressors, separators and other customary production equipment for an individual well adjacent
28 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
29 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

44 (n) Minor betterment of existing public road and highway related facilities such as maintenance
45 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous

1 public-owned property utilized to support the operation and maintenance of public roads and high-
2 ways.

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

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

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

7 (r) Farm stands if:

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

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

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

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

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

21 (C) Has interior wiring for interior lights;

22 (D) Has a heating system; and

23 (E) In the case of replacement:

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

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

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

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

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

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

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

22 (A) A public right of way;

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

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

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

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

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

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

39 (b) Operations conducted for:

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

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

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

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

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

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

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

21 (f) Golf courses.

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

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

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

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

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

44 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
45 existing building, in conjunction with an existing dwelling as a temporary use for the term of a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SECTION 11. ORS 215.780 is repealed.**

12 **SECTION 12. (1) Each county shall establish minimum lot or parcel sizes under section**
13 **2 of this 2009 Act by ordinance that takes effect July 1, 2010.**

14 **(2) The amendments to ORS 92.176, 92.178, 197.065, 197.650, 215.213, 215.262, 215.263 and**
15 **215.283 by sections 3 to 10 of this 2009 Act and the repeal of ORS 215.780 by section 11 of this**
16 **2009 Act become operative July 1, 2010.**

17