

Senate Bill 435

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**.

Establishes program of marginal lands designation.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to marginal lands; creating new provisions; amending ORS 197.298, 215.213, 215.253, 215.316,
3 215.317 and 215.327; and declaring an emergency.

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 197.**

6 **SECTION 2. (1) For purposes of this section:**

7 (a)(A) **"Contiguous" means lots, parcels or lots and parcels that have a common bound-**
8 **ary.**

9 (B) **"Contiguous" does not mean lots, parcels or lots and parcels that are separated only**
10 **by a public road.**

11 (b) **"Lot" has the meaning given that term in ORS 92.010.**

12 (c) **"Parcel" has the meaning given that term in ORS 92.010.**

13 (2) **In accordance with ORS 197.240 and 197.245, the Land Conservation and Development**
14 **Commission shall amend the goals to authorize counties to designate land as marginal land**
15 **if the land meets the criteria set forth in this subsection and subsections (3) to (5) of this**
16 **section.**

17 (3) **Counties may designate land as marginal land if:**

18 (a) **The proposed marginal land was not managed, during three of the five calendar years**
19 **preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in an-**
20 **annual gross income or a forest operation capable of producing an average, over the growth**
21 **cycle, of \$10,000 in annual gross income; and**

22 (b) **The proposed marginal land meets at least one of the following tests:**

23 (A) **At least 50 percent of the proposed marginal land plus the lots or parcels at least**
24 **partially located within one-quarter mile of the perimeter of the proposed marginal land**
25 **consists of lots or parcels 20 acres or less in size on July 1, 1983;**

26 (B) **The proposed marginal land is located within an area of not less than 240 acres of**
27 **which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on**
28 **July 1, 1983; or**

29 (C) **The proposed marginal land is composed predominantly of soils in capability classes**
30 **V to VIII in the Agricultural Capability Classification System in use by the United States**
31 **Department of Agriculture Natural Resources Conservation Service on October 15, 1983, and**

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 is not capable of producing 50 cubic feet of merchantable timber per acre per year in those
2 counties east of the summit of the Cascade Mountains and 85 cubic feet of merchantable
3 timber per acre per year in those counties west of the summit of the Cascade Mountains.
4 As used in this subparagraph, "summit of the Cascade Mountains" has the meaning given
5 that term in ORS 477.001.

6 (4) For the purposes of subsection (3)(b)(A) and (B) of this section:

7 (a) Lots and parcels located within an urban growth boundary adopted by a city may not
8 be included in the calculation; and

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

10 (A) A lot or parcel included in the area described in subsection (3)(b)(A) of this section
11 is contiguous to one or more such lots or parcels;

12 (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots
13 or parcels by the same person, parents, children, sisters, brothers or spouses, separately or
14 in tenancy in common; and

15 (C) One relative described in subparagraph (B) of this paragraph held the interest in the
16 contiguous lots or parcels before transfer to another relative.

17 (5) For the purposes of subsection (3)(b)(B) of this section, lots and parcels located within
18 an area for which an exception has been adopted by the county may not be included in the
19 calculation.

20 (6) A county may use statistical information compiled by the Oregon State University
21 Extension Service or other objective criteria to calculate income for the purposes of sub-
22 section (3)(a) of this section.

23 (7) Notwithstanding the limitation on the amount of land that may be designated as
24 marginal land for the purposes of establishing the test area under subsection (3)(b)(A) of this
25 section, a lot or parcel that is within the test area and meets the income test established in
26 subsection (3)(a) of this section may be designated as marginal land.

27 (8) The amended goals shall permit counties to authorize the uses on and divisions of
28 marginal land set out in ORS 215.317 and 215.327.

29 (9) The provisions of this section do not affect the applicability of a goal, except the goals
30 on agricultural lands and forestlands, to a land use decision.

31 **SECTION 3.** ORS 197.298 is amended to read:

32 197.298. (1) In addition to any requirements established by rule addressing urbanization, land
33 may not be included within an urban growth boundary except under the following priorities:

34 (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or met-
35 ropolitan service district action plan.

36 (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of
37 land needed, second priority is land adjacent to an urban growth boundary that is identified in an
38 acknowledged comprehensive plan as an exception area or nonresource land. Second priority may
39 include resource land that is completely surrounded by exception areas unless such resource land
40 is high-value farmland as described in ORS 215.710.

41 (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the
42 amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247
43 (1991 Edition) or section 2 of this 2009 Act.

44 (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the
45 amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan

1 for agriculture or forestry, or both.

2 (2) Higher priority shall be given to land of lower capability as measured by the capability
 3 classification system or by cubic foot site class, whichever is appropriate for the current use.

4 (3) Land of lower priority under subsection (1) of this section may be included in an urban
 5 growth boundary if land of higher priority is found to be inadequate to accommodate the amount
 6 of land estimated in subsection (1) of this section for one or more of the following reasons:

7 (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority
 8 lands;

9 (b) Future urban services could not reasonably be provided to the higher priority lands due to
 10 topographical or other physical constraints; or

11 (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion
 12 of lower priority lands in order to include or to provide services to higher priority lands.

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

14 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
 15 Edition) or **section 2 of this 2009 Act**, the following uses may be established in any area zoned for
 16 exclusive farm use:

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

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

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

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

24 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 25 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 26 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 27 operator does or will require the assistance of the relative in the management of the farm use and
 28 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 29 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
 30 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 31 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
 32 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
 33 shall operate as a partition of the homesite to create a new parcel.

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

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

39 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
 40 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
 41 compressors, separators and other customary production equipment for an individual well adjacent
 42 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 43 an exception under ORS 197.732 (2)(a) or (b).

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

1 (2)(a) or (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (C) Has interior wiring for interior lights;

36 (D) Has a heating system; and

37 (E) In the case of replacement:

38 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
 39 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
 40 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
 41 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
 42 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
 43 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
 44 deed records for the county where the property is located a deed restriction prohibiting the siting
 45 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless

1 a statement of release is placed in the deed records for the county. The release shall be signed by
2 the county or its designee and state that the provisions of this paragraph regarding replacement
3 dwellings have changed to allow the siting of another dwelling. The county planning director or the
4 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
5 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
6 and release statements filed under this paragraph; and

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

15 (u) Farm stands if:

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

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

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

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

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

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

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

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

4 (A) A public right of way;

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

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

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

14 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition)
15 **or section 2 of this 2009 Act**, the following uses may be established in any area zoned for exclusive
16 farm use subject to ORS 215.296:

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

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

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

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

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

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

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

35 (d) Operations conducted for:

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

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

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

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

42 (e) Community centers owned by a governmental agency or a nonprofit community organization
43 and operated primarily by and for residents of the local rural community, hunting and fishing pre-
44 serves, public and private parks, playgrounds and campgrounds. Subject to the approval of the
45 county governing body or its designee, a private campground may provide yurts for overnight

1 camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include
2 a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.
3 Upon request of a county governing body, the Land Conservation and Development Commission may
4 provide by rule for an increase in the number of yurts allowed on all or a portion of the
5 campgrounds in a county if the commission determines that the increase will comply with the stan-
6 dards described in ORS 215.296 (1). A public park or campground may be established as provided
7 under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or
8 canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appli-
9 ance.

10 (f) Golf courses.

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

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

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

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

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

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

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

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

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

45 (q) Reconstruction or modification of public roads and highways involving the removal or dis-

1 placement of buildings but not resulting in the creation of new land parcels.

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

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

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

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

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

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

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

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

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

28 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition)
29 **or section 2 of this 2009 Act**, a single-family residential dwelling not provided in conjunction with
30 farm use may be established on a lot or parcel with soils predominantly in capability classes IV
31 through VIII as determined by the Agricultural Capability Classification System in use by the
32 United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed
33 dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive
34 farm use upon written findings showing all of the following:

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

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

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

43 (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition)
44 **or section 2 of this 2009 Act**, one single-family dwelling, not provided in conjunction with farm use,
45 may be established in any area zoned for exclusive farm use on a lot or parcel described in sub-

1 section (7) of this section that is not larger than three acres upon written findings showing:

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

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

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

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

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

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

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

25 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
26 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

45 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development

1 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

2 **SECTION 5.** Section 6 of this 2009 Act is added to and made a part of ORS chapter 215.

3 **SECTION 6.** (1) If a county does not amend its comprehensive plan or land use regu-
4 lations to allow for the designation of marginal land under section 2 of this 2009 Act, or to
5 allow the establishment of a dwelling under ORS 215.213 (4) to (8), the county may apply ORS
6 215.213 (1) to (3) or 215.283 to land zoned for exclusive farm use under ORS 215.203.

7 (2) If a county amends its comprehensive plan or land use regulations to allow for the
8 designation of marginal land under section 2 of this 2009 Act, or to allow the establishment
9 of a dwelling under ORS 215.213 (4) to (8), the county shall apply ORS 215.213 (1) to (3) to land
10 zoned for exclusive farm use under ORS 215.203.

11 **SECTION 7.** ORS 215.253 is amended to read:

12 215.253. (1) No state agency, city, county or political subdivision of this state may exercise any
13 of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any
14 farm use land situated within an exclusive farm use zone established under ORS 215.203 or within
15 an area designated as marginal land under ORS 197.247 (1991 Edition) **or section 2 of this 2009**
16 **Act** in a manner that would restrict or regulate farm structures or that would restrict or regulate
17 farming practices if conditions from such practices do not extend into an adopted urban growth
18 boundary in such manner as to interfere with the lands within the urban growth boundary. "Farming
19 practice" as used in this subsection shall have the meaning set out in ORS 30.930.

20 (2) Nothing in this section is intended to limit or restrict the lawful exercise by any state
21 agency, city, county or political subdivision of its power to protect the health, safety and welfare
22 of the citizens of this state.

23 **SECTION 8.** ORS 215.316 is amended to read:

24 215.316. [(1) Unless a county applies the provisions of ORS 215.705 to 215.730 to land zoned for
25 exclusive farm use,] A county that adopted marginal lands provisions under ORS 197.247 (1991 Edi-
26 tion), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edi-
27 tion) may continue to apply those provisions. [After January 1, 1993, no county may adopt marginal
28 lands provisions.]

29 [(2) If a county that had adopted marginal lands provisions before January 1, 1993, subsequently
30 sites a dwelling under ORS 215.705 to 215.750 on land zoned for exclusive farm use, the county shall
31 not later apply marginal lands provisions, including those set forth in ORS 215.213, to lots or parcels
32 other than those to which the county applied the marginal lands provisions before the county sited a
33 dwelling under ORS 215.705 to 215.750.]

34 **SECTION 9.** ORS 215.317 is amended to read:

35 215.317. (1) A county may allow the following uses to be established on land designated as
36 marginal land under ORS 197.247 (1991 Edition) **or section 2 of this 2009 Act:**

37 (a) Intensive farm or forest operations, including but not limited to "farm use" as defined in ORS
38 215.203.

39 (b) Part-time farms.

40 (c) Woodlots.

41 (d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2).

42 (e) One single-family dwelling on a lot or parcel of any size if the lot or parcel was created be-
43 fore July 1, 1983, subject to subsection (2) of this section.

44 (f) The nonresidential uses authorized in exclusive farm use zones under ORS 215.213 (1) and (2).

45 (g) One manufactured dwelling or recreational vehicle in conjunction with an existing dwelling

1 as a temporary use for the term of a hardship suffered by the existing resident or a relative of the
2 resident.

3 (2) If a lot or parcel described in subsection (1)(e) of this section is located within the Willamette
4 River Greenway, a floodplain or a geological hazard area, approval of a single-family dwelling shall
5 be subject to local ordinances relating to the Willamette River Greenway, floodplains or geological
6 hazard areas, whichever is applicable.

7 **SECTION 10.** ORS 215.327 is amended to read:

8 215.327. A county may allow the following divisions of marginal land:

9 (1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel
10 is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land,
11 the land qualifies for designation as marginal land under ORS 197.247 (1991 Edition) **or section 2**
12 **of this 2009 Act.**

13 (2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel
14 is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as
15 marginal land under ORS 197.247 (1991 Edition) **or section 2 of this 2009 Act.**

16 (3) Divisions of land to create a parcel or lot necessary for those uses authorized by ORS 215.317
17 (1)(f).

18 **SECTION 11. In reviewing a decision of a county approving or denying a marginal land**
19 **designation under section 2 of this 2009 Act, the reviewing body is bound by a finding of fact**
20 **for which there is substantial evidence in the record of the local government proceedings.**

21 **SECTION 12. This 2009 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
23 **on its passage.**

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