

House Bill 2341

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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**.

Authorizes conditional approval of temporary promotional activities or events subordinate to agricultural activities on lands zoned for exclusive farm use. Requires periodic review of approved special use permits.

A BILL FOR AN ACT

1
2 Relating to special use permitting of activities in exclusive farm use zones; amending ORS 215.213,
3 215.246, 215.283 and 215.296.

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

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

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

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

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

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

14 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
15 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
16 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
17 operator does or will require the assistance of the relative in the management of the farm use and
18 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
19 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
20 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
21 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
22 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
23 shall operate as a partition of the homesite to create a new parcel.

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

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

29 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
30 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of

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 compressors, separators and other customary production equipment for an individual well adjacent
 2 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 3 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

28 (o) Creation, restoration or enhancement of wetlands.

29 (p) A winery, as described in ORS 215.452.

30 (q) Alteration, restoration or replacement of a lawfully established dwelling that:

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

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

34 (C) Has interior wiring for interior lights;

35 (D) Has a heating system; and

36 (E) In the case of replacement:

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

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

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

14 (r) Farm stands if:

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

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

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

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

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

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

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

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

6 (A) A public right of way;

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

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

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

16 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 17 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 18 215.296:

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

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

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

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

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

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

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

37 (d) Operations conducted for:

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

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

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

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

44 (e) Community centers owned by a governmental agency or a nonprofit community organization
 45 and operated primarily by and for residents of the local rural community, hunting and fishing pre-

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

12 (f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

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

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

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

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

34 (k) Dog kennels.

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

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

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

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

45 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way

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

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

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

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

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

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

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

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

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

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

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

30 (y) Public or private schools for kindergarten through grade 12, including all buildings essential
 31 to the operation of a school, primarily for residents of the rural area in which the school is located.

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

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

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

45 (c) Complies with such other conditions as the governing body or its designee considers neces-

1 sary.

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

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

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

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

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

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

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

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

29 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
30 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

44 (10) Roads, highways and other transportation facilities and improvements not allowed under
45 subsections (1) and (2) of this section may be established, subject to the approval of the governing

1 body or its designee, in areas zoned for exclusive farm use subject to:

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

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

6 **(11)(a) Events or activities intended to promote agriculture in the area and agri-tourism**
7 **may be established, subject to ORS 215.296, temporarily and subordinate to agricultural ac-**
8 **tivities on a tract subject to the approval of the governing body of the county or its designee**
9 **in any area zoned for exclusive farm use. The number of events and activities under a spe-**
10 **cial use permit authorized under this subsection may not exceed _____ within a calendar**
11 **year. A special use permit authorized by this subsection:**

12 **(A) Is personal to the applicant and not transferable to any other person.**

13 **(B) Is subject to review every _____ years to ensure compliance with this subsection**
14 **and any conditions established by the county that issued the special use permit.**

15 **(b) The governing body of the county or its designee may approve temporary structures**
16 **as part of the approval process for events and activities allowable under this subsection.**

17 **(c) An application for a special use permit under this subsection must contain:**

18 **(A) A narrative describing the temporary use, the number and duration of events or ac-**
19 **tivities planned during a calendar year, the anticipated daily attendance at events or activ-**
20 **ities and the hours of operation.**

21 **(B) A site plan that identifies the location of existing structures, access and egress,**
22 **parking facilities and the proposed location of temporary structures for which approval is**
23 **sought.**

24 **(C) A plan for managing solid waste and providing sanitation facilities.**

25 **(D) A plan for managing traffic at the site and in the area.**

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

27 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

28 (a) Churches and cemeteries in conjunction with churches.

29 (b) The propagation or harvesting of a forest product.

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

34 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
35 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
36 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
37 operator does or will require the assistance of the relative in the management of the farm use and
38 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
39 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
40 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
41 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
42 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
43 shall operate as a partition of the homesite to create a new parcel.

44 (e) Primary or accessory dwellings and other buildings customarily provided in conjunction with
45 farm use.

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

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

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

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

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

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

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

22 (m) Creation, restoration or enhancement of wetlands.

23 (n) A winery, as described in ORS 215.452.

24 (o) Farm stands if:

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

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

34 (p) Alteration, restoration or replacement of a lawfully established dwelling that:

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

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

38 (C) Has interior wiring for interior lights;

39 (D) Has a heating system; and

40 (E) In the case of replacement:

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

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

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

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

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

36 (s) Fire service facilities providing rural fire protection services.

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

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

42 (A) A public right of way;

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

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

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

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

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

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

14 (b) Operations conducted for:

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

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

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

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

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

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

33 (e) Community centers owned by a governmental agency or a nonprofit community organization
 34 and operated primarily by and for residents of the local rural community. A community center au-
 35 thorized under this paragraph may provide services to veterans, including but not limited to emer-
 36 gency and transitional shelter, preparation and service of meals, vocational and educational
 37 counseling and referral to local, state or federal agencies providing medical, mental health, disability
 38 income replacement and substance abuse services, only in a facility that is in existence on January
 39 1, 2006. The services may not include direct delivery of medical, mental health, disability income
 40 replacement or substance abuse services.

41 (f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

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

43 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
 44 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-
 45 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional

1 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
2 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
3 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
4 granted through waiver action by the Oregon Department of Aviation in specific instances. A
5 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
6 ject to any applicable rules of the Oregon Department of Aviation.

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

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

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

19 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
20 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
21 hardship suffered by the existing resident or a relative of the resident. Within three months of the
22 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
23 ished or, in the case of an existing building, the building shall be removed, demolished or returned
24 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
25 view of the hardship claimed under this paragraph. A temporary residence approved under this
26 paragraph is not eligible for replacement under subsection (1)(p) of this section.

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

28 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (aa) Public or private schools for kindergarten through grade 12, including all buildings essential
 25 to the operation of a school, primarily for residents of the rural area in which the school is located.

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

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

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

33 **(4)(a) Events or activities intended to promote agriculture in the area and agri-tourism**
 34 **may be established, subject to ORS 215.296, temporarily and subordinate to agricultural ac-**
 35 **tivities on a tract subject to the approval of the governing body of the county or its designee**
 36 **in any area zoned for exclusive farm use. The number of events and activities under a spe-**
 37 **cial use permit authorized under this subsection may not exceed _____ within a calendar**
 38 **year. A special use permit authorized by this subsection:**

39 **(A) Is personal to the applicant and not transferable to any other person.**

40 **(B) Is subject to review every _____ years to ensure compliance with this subsection**
 41 **and any conditions established by the county that issued the special use permit.**

42 **(b) The governing body of the county or its designee may approve temporary structures**
 43 **as part of the approval process for events and activities allowable under this subsection.**

44 **(c) An application for a special use permit under this subsection must contain:**

45 **(A) A narrative describing the temporary use, the number and duration of events or ac-**

1 **tivities planned during a calendar year, the anticipated daily attendance at events or activ-**
 2 **ities and the hours of operation.**

3 **(B) A site plan that identifies the location of existing structures, access and egress,**
 4 **parking facilities and the proposed location of temporary structures for which approval is**
 5 **sought.**

6 **(C) A plan for managing solid waste and providing sanitation facilities.**

7 **(D) A plan for managing traffic at the site and in the area.**

8 **SECTION 3.** ORS 215.246 is amended to read:

9 215.246. (1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

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

15 (b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS
 16 215.275 or 215.296.

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

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

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

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

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

24 (A) ORS 215.213 (1)(b), (d) to (f), (i) to (n), (p) to (r), (u), (w) or (x);

25 (B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);

26 **(C) ORS 215.213 (11);**

27 **[(C)] (D) ORS 215.283 (1)(b), (d), (e), (h) to (L), (n) to (p), (r), (t) or (u); [or]**

28 **[(D)] (E) ORS 215.283 (2)(a), (j), (L) or (p) to (s); or**

29 **(F) ORS 215.283 (4).**

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

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

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

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

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

5 (A) A public right of way; or

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

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

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

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

14 (b) The establishment and use of utility facility service lines allowed under ORS 215.213 (1)(x)
 15 or 215.283 (1)(u).

16 **SECTION 4.** ORS 215.296 is amended to read:

17 215.296. (1) A use allowed under ORS 215.213 (2) **or (11)** or 215.283 (2) **or (4)** may be approved
 18 only where the local governing body or its designee finds that the use will not:

19 (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted
 20 to farm or forest use; or

21 (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands
 22 devoted to farm or forest use.

23 (2) An applicant for a use allowed under ORS 215.213 (2) **or (11)** or 215.283 (2) **or (4)** may
 24 demonstrate that the standards for approval set forth in subsection (1) of this section will be satis-
 25 fied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

26 (3) A person engaged in farm or forest practices on lands devoted to farm or forest use may file
 27 a complaint with the local governing body or its designee alleging:

28 (a) That a condition imposed pursuant to subsection (2) of this section has been violated;

29 (b) That the violation has:

30 (A) Forced a significant change in accepted farm or forest practices on surrounding lands de-
 31 voted to farm or forest use; or

32 (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands
 33 devoted to farm or forest use; and

34 (c) That the complainant is adversely affected by the violation.

35 (4) Upon receipt of a complaint filed under this section or ORS 215.218, the local governing body
 36 or its designee shall:

37 (a) Forward the complaint to the operator of the use;

38 (b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and

39 (c) Determine whether the allegations made in a complaint filed under this section or ORS
 40 215.218 are true.

41 (5) Upon a determination that the allegations made in a complaint are true, the local governing
 42 body or its designee at a minimum shall notify the violator that a violation has occurred, direct the
 43 violator to correct the conditions that led to the violation within a specified time period and warn
 44 the violator against the commission of further violations.

45 (6) If the conditions that led to a violation are not corrected within the time period specified

1 pursuant to subsection (5) of this section, or if there is a determination pursuant to subsection (4)
 2 of this section following the receipt of a second complaint that a further violation has occurred, the
 3 local governing body or its designee at a minimum shall assess a fine against the violator.

4 (7) If the conditions that led to a violation are not corrected within 30 days after the imposition
 5 of a fine pursuant to subsection (6) of this section, or if there is a determination pursuant to sub-
 6 section (4) of this section following the receipt of a third or subsequent complaint that a further
 7 violation has occurred, the local governing body or its designee shall at a minimum order the sus-
 8 pension of the use until the violator corrects the conditions that led to the violation.

9 (8) If a use allowed under ORS 215.213 (2) **or (11)** or 215.283 (2) **or (4)** is initiated without prior
 10 approval pursuant to subsection (1) of this section, the local governing body or its designee at a
 11 minimum shall notify the user that prior approval is required, direct the user to apply for approval
 12 within 21 days and warn the user against the commission of further violations. If the user does not
 13 apply for approval within 21 days, the local governing body or its designee shall order the suspen-
 14 sion of the use until the user applies for and receives approval. If there is a determination pursuant
 15 to subsection (4) of this section following the receipt of a complaint that a further violation occurred
 16 after approval was granted, the violation shall be deemed a second violation and the local governing
 17 body or its designee at a minimum shall assess a fine against the violator.

18 (9)(a) The standards set forth in subsection (1) of this section do not apply to farm or forest uses
 19 conducted within:

20 (A) Lots or parcels with a single-family residential dwelling approved under ORS 215.213 (3),
 21 215.284 (1), (2), (3), (4) or (7) or 215.705;

22 (B) An exception area approved under ORS 197.732; or

23 (C) An acknowledged urban growth boundary.

24 (b) A person residing in a single-family residential dwelling which was approved under ORS
 25 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705, which is within an exception area approved un-
 26 der ORS 197.732 or which is within an acknowledged urban growth boundary may not file a com-
 27 plaint under subsection (3) of this section.

28 (10) *[Nothing in]* This section *[shall]* **does not** prevent a local governing body approving a use
 29 allowed under ORS 215.213 (2) **or (11)** or 215.283 (2) **or (4)** from establishing standards in addition
 30 to those set forth in subsection (1) of this section or from imposing conditions to *[insure]* **ensure**
 31 conformance with *[such]* additional standards.

32