

A-Engrossed
House Bill 3290

Ordered by the Senate June 2
Including Senate Amendments dated June 2

Sponsored by Representative THOMPSON; Representatives BOONE, ESQUIVEL, GILLIAM

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.

Modifies application of farm income standard adopted by Land Conservation and Development Commission for establishing primary and accessory dwellings customarily provided in conjunction with farm use in areas zoned for exclusive farm use.

A BILL FOR AN ACT

1
2 Relating to farm income standard for dwellings; creating new provisions; and amending ORS 215.213
3 and 215.283.

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

5 **SECTION 1. In any rule adopted by the Land Conservation and Development Commission**
6 **that establishes a farm income standard to determine whether a dwelling is customarily**
7 **provided in conjunction with farm use on a tract, the commission shall allow a farm operator**
8 **to satisfy the income standard by earning the required amount or more of farm income on**
9 **the tract:**

10 (1) **In at least three of the last five years;**

11 (2) **In each of the last two years; or**

12 (3) **Based on the average farm income earned on the tract in the best three of the last**
13 **five years.**

14 **SECTION 1a. Section 1 of this 2011 Act is added to and made a part of ORS chapter 215.**

15 **SECTION 2. ORS 215.213 is amended to read:**

16 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
17 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

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

20 (c) 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 (d) 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.

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 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
2 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
3 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
4 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
5 shall operate as a partition of the homesite to create a new parcel.

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

7 (f) **Subject to section 1 of this 2011 Act**, primary or accessory dwellings customarily provided
8 in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that
9 is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone
10 with a minimum lot size acknowledged under ORS 197.251.

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

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

19 (i) 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 paragraph (q) of this subsection.

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

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

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

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

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

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

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

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

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

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

1 (C) Has interior wiring for interior lights;

2 (D) Has a heating system; and

3 (E) In the case of replacement:

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

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

26 (r) Farm stands if:

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

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

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

39 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
40 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
41 area or placed on a permanent foundation unless the building or facility preexisted the use approved
42 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
43 the surface preexisted the use approved under this paragraph. An owner of property used for the
44 purpose authorized in this paragraph may charge a person operating the use on the property rent
45 for the property. An operator may charge users of the property a fee that does not exceed the

1 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model
2 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
3 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
4 ground.

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

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

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

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

18 (A) A public right of way;

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

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

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

28 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
29 the following uses may be established in any area zoned for exclusive farm use subject to ORS
30 215.296:

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

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

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

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

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

45 (B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross an-

1 nual income.

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

4 (d) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

- 1 (k) Dog kennels.
- 2 (L) Residential homes as defined in ORS 197.660, in existing dwellings.
- 3 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
4 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
5 shall not include any species under quarantine by the State Department of Agriculture or the United
6 States Department of Agriculture. The county shall provide notice of all applications under this
7 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
8 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
9 tive decision or initial public hearing on the application.
- 10 (n) Home occupations as provided in ORS 215.448.
- 11 (o) Transmission towers over 200 feet in height.
- 12 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way
13 but not resulting in the creation of new land parcels.
- 14 (q) Reconstruction or modification of public roads and highways involving the removal or dis-
15 placement of buildings but not resulting in the creation of new land parcels.
- 16 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh
17 stations and rest areas, where additional property or right of way is required but not resulting in
18 the creation of new land parcels.
- 19 (s) A destination resort that is approved consistent with the requirements of any statewide
20 planning goal relating to the siting of a destination resort.
- 21 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
22 dences.
- 23 (u) A living history museum related to resource based activities owned and operated by a gov-
24 ernmental agency or a local historical society, together with limited commercial activities and fa-
25 cilities that are directly related to the use and enjoyment of the museum and located within
26 authentic buildings of the depicted historic period or the museum administration building, if areas
27 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
28 the museum administration buildings and parking lot are located within one quarter mile of the
29 metropolitan urban growth boundary. As used in this paragraph:
30 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
31 culture of some specific historic period using authentic buildings, tools, equipment and people to
32 simulate past activities and events; and
33 (B) "Local historical society" means the local historical society, recognized as such by the
34 county governing body and organized under ORS chapter 65.
- 35 (v) Operations for the extraction and bottling of water.
- 36 (w) An aerial fireworks display business that has been in continuous operation at its current
37 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
38 permit to sell or provide fireworks.
- 39 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-
40 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction
41 with the growing and marketing of nursery stock on the land that constitutes farm use.
- 42 (y) Public or private schools for kindergarten through grade 12, including all buildings essential
43 to the operation of a school, primarily for residents of the rural area in which the school is located.
- 44 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
45 a single-family residential dwelling not provided in conjunction with farm use may be established

1 on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by
2 the Agricultural Capability Classification System in use by the United States Department of Agri-
3 culture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval
4 of the governing body or its designee in any area zoned for exclusive farm use upon written findings
5 showing all of the following:

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

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

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

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

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

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

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

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

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

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

41 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
42 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

19 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

26 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
27 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
28 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
29 operator does or will require the assistance of the relative in the management of the farm use and
30 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
31 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
32 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
33 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
34 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
35 shall operate as a partition of the homesite to create a new parcel.

36 (e) **Subject to section 1 of this 2011 Act**, primary or accessory dwellings and other buildings
37 customarily provided in conjunction with farm use.

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

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

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

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

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

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

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

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

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

16 (o) Farm stands if:

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

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

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

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

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

30 (C) Has interior wiring for interior lights;

31 (D) Has a heating system; and

32 (E) In the case of replacement:

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

1 and release statements filed under this paragraph; and

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

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

21 (r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
22 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
23 processed at the facility. The building established for the processing facility shall not exceed 10,000
24 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm
25 use or devote more than 10,000 square feet to the processing activities within another building
26 supporting farm uses. A processing facility shall comply with all applicable siting standards but the
27 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

34 (A) A public right of way;

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

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

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

44 (w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to
45 provide rural law enforcement services primarily in rural areas, including parole and post-prison

1 supervision, but not including a correctional facility as defined under ORS 162.135.

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

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

6 (b) Operations conducted for:

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

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

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

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

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

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

25 (e) Community centers owned by a governmental agency or a nonprofit community organization
26 and operated primarily by and for residents of the local rural community. A community center au-
27 thorized under this paragraph may provide services to veterans, including but not limited to emer-
28 gency and transitional shelter, preparation and service of meals, vocational and educational
29 counseling and referral to local, state or federal agencies providing medical, mental health, disability
30 income replacement and substance abuse services, only in a facility that is in existence on January
31 1, 2006. The services may not include direct delivery of medical, mental health, disability income
32 replacement or substance abuse services.

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

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

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

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

45 (j) A facility for the primary processing of forest products, provided that such facility is found

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

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

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

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

20 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

43 (x) A living history museum related to resource based activities owned and operated by a gov-
44 ernmental agency or a local historical society, together with limited commercial activities and fa-
45 cilities that are directly related to the use and enjoyment of the museum and located within

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

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

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

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

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

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

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

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

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

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