

# House Bill 3624

Sponsored by Representative HOLVEY, Senator PROZANSKI

## 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**.

Modifies authority for establishment of winery and for winery sales and services in exclusive farm use zone and on other agricultural land.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to wineries; creating new provisions; amending ORS 215.213, 215.283, 215.452, 215.455 and  
3 308A.053; repealing section 3, chapter 97, Oregon Laws 2010; and declaring an emergency.

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

5 **SECTION 1. Section 3, chapter 97, Oregon Laws 2010, is repealed.**

6 **SECTION 2.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, is  
7 amended to read:

8 215.452. (1) A winery may be established as an outright permitted use in an area zoned for ex-  
9 clusive farm use under ORS 215.213 (1)(p) and 215.283 (1)(n) if the winery produces wine with a  
10 maximum annual production of:

11 (a) Less than 50,000 gallons and *[that]*:

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

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

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

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

17 (b) At least 50,000 gallons and *[no more than 100,000 gallons and that]*:

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

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

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

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

23 (2) A winery described in subsection (1) of this section may sell only:

24 (a) Wines produced *[in conjunction with]* **by** the winery; and

25 (b) Items directly related to the sale and promotion of wine produced *[in conjunction with]* **by**  
26 the winery, the sale of which is incidental to retail sale of wine on-site, including food and beverages  
27 served by a limited service restaurant, as defined in ORS 624.010, **wine not produced by the**  
28 **winery and gifts.**

29 **(3) A winery established pursuant to this section must provide on-site parking for all**  
30 **activities or uses of the lot, parcel or tract on which the winery is established.**

31 *[(3)]* (4) Prior to the issuance of a permit to establish a winery under this section, the applicant

**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 shall show that vineyards described in subsection (1) of this section have been planted or that the  
2 contract has been executed, as applicable.

3 [(4)] (5) A local government shall adopt findings for each of the standards described in [*para-*  
4 *graphs (a) and (b) of*] this subsection. Standards imposed on the siting of a winery shall be limited  
5 solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted  
6 farming or forest practices on adjacent lands:

7 (a) Establishment of a setback[, *not to exceed*] **of at least** 100 feet[,], from all property lines for  
8 the winery and all public gathering places; and

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

10 [(5)] (6) A local government shall also apply local criteria regarding floodplains, geologic haz-  
11 ards, the Willamette River Greenway, solar access, airport safety or other regulations for resource  
12 protection acknowledged to comply with any statewide goal respecting open spaces, scenic and his-  
13 toric areas and natural resources.

14 (7) **If a winery meets the criteria described in subsection (1) of this section for estab-**  
15 **lishment as an outright permitted use in an area zoned for exclusive farm use under ORS**  
16 **215.213 (1)(p) or 215.283 (1)(n), a local government may authorize the winery to sell or deliver**  
17 **items or services not described in subsection (2)(b) of this section under the criteria for**  
18 **commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).**

19 (8) **If a winery does not meet the criteria described in subsection (1) of this section for**  
20 **establishment as an outright permitted use in an area zoned for exclusive farm use under**  
21 **ORS 215.213 (1)(p) or 215.283 (1)(n), a local government may authorize establishment of the**  
22 **winery in an area zoned for exclusive farm use under the criteria for commercial activity in**  
23 **conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).**

24 **SECTION 3. (1) A winery may be established, or qualified to operate, as an outright**  
25 **permitted use in an area zoned for exclusive farm use under ORS 215.213 (1)(p) or 215.283**  
26 **(1)(n), or in any area zoned for agricultural use, on a lot, parcel or tract of land consisting**  
27 **of at least 80 contiguous acres in Oregon if:**

28 (a) **The owner of the winery owns the lot, parcel or tract and at least 50 acres of the lot,**  
29 **parcel or tract have vineyards planted at least five years before the winery is established,**  
30 **or qualified to operate, under this section;**

31 (b) **The owner of the winery owns at least 80 additional acres in Oregon of contiguous**  
32 **planted vineyards that need not be contiguous to the acreage described in paragraph (a) of**  
33 **this subsection; and**

34 (c) **The winery has produced annually, at the same or a different location, at least 150,000**  
35 **gallons of wine in at least three of the five calendar years before establishment, or quali-**  
36 **fication to operate, under this section.**

37 (2) **A winery described in subsection (1) of this section may sell only:**

38 (a) **Wines produced by the winery;**

39 (b) **Items directly related to the sale and promotion of wine produced by the winery, the**  
40 **sale of which is incidental to retail sale of wine on-site, including food and beverages served**  
41 **by a limited service restaurant, as defined in ORS 624.010, wine not produced by the winery**  
42 **and gifts; and**

43 (c) **Services directly related to the sale and promotion of wine produced by the winery,**  
44 **the sale and delivery of which are incidental to retail sale of wine on-site, including catered**  
45 **dinner, weddings, charitable or political fundraisers and other private events, hosted by the**

1 winery or by patrons of the winery, at which wine produced by the winery is featured.

2 (3) A winery established, or qualified to operate, under this section may operate a full  
3 service restaurant, as defined in ORS 624.010.

4 (4) A winery established, or qualified to operate, under this section must provide on-site  
5 parking for all activities or uses of the lot, parcel or tract on which the winery is established.

6 (5) A person may not have a substantial ownership interest in more than one winery  
7 operating a full service restaurant under this section.

8 (6) Prior to the issuance of a permit to establish a winery under this section, the appli-  
9 cant shall show that vineyards described in subsection (1) of this section have been planted.

10 (7) A local government shall adopt findings for each of the standards described in this  
11 subsection. Standards imposed on the siting of a winery are for the sole purpose of limiting  
12 demonstrated conflicts with accepted farming or forest practices on adjacent lands and are  
13 limited solely to each of the following:

14 (a) Establishment of a setback of at least 100 feet from all property lines for the winery  
15 and all public gathering places; and

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

17 (8) A local government shall also apply local criteria regarding floodplains, geologic haz-  
18 ards, the Willamette River Greenway, solar access, airport safety or other regulations for  
19 resource protection acknowledged to comply with any statewide goal respecting open spaces,  
20 scenic and historic areas and natural resources.

21 (9) If a winery meets the criteria described in subsection (1) of this section for estab-  
22 lishment, or qualification to operate, as an outright permitted use in an area zoned for ex-  
23 clusive farm use under ORS 215.213 (1)(p) or 215.283 (1)(n), a local government may authorize  
24 the winery to sell or deliver items or services not described in subsection (2)(b) or (c) or (3)  
25 of this section under the criteria for commercial activity in conjunction with farm use under  
26 ORS 215.213 (2)(c) or 215.283 (2)(a). In an area that is not zoned for exclusive farm use, but  
27 is zoned for agricultural use, a county may authorize a winery to sell or deliver items or  
28 services not described in subsection (2)(b) or (c) or (3) of this section subject to conditions  
29 imposed by the county.

30 (10) If a winery does not meet the criteria described in subsection (1) of this section for  
31 establishment, or qualification to operate, as an outright permitted use in an area zoned for  
32 exclusive farm use under ORS 215.213 (1)(p) or 215.283 (1)(n), a local government may au-  
33 thorize establishment of the winery in an area zoned for exclusive farm use under the cri-  
34 teria for commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283  
35 (2)(a). In an area that is not zoned for exclusive farm use, but is zoned for agricultural use,  
36 a county may authorize establishment of a winery subject to conditions imposed by the  
37 county.

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

39 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991  
40 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

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

43 (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
44 not including commercial facilities for the purpose of generating electrical power for public use by  
45 sale or transmission towers over 200 feet in height. A utility facility necessary for public service

1 may be established as provided in ORS 215.275.

2 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
3 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
4 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
5 operator does or will require the assistance of the relative in the management of the farm use and  
6 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
7 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
8 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
9 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
10 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
11 shall operate as a partition of the homesite to create a new parcel.

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

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

17 (g) Operations for the exploration for and production of geothermal resources as defined by ORS  
18 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
19 compressors, separators and other customary production equipment for an individual well adjacent  
20 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
21 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

- 1 (o) Creation, restoration or enhancement of wetlands.
- 2 (p) A winery, as described in ORS 215.452 **or section 3 of this 2011 Act.**
- 3 (q) Alteration, restoration or replacement of a lawfully established dwelling that:
- 4 (A) Has intact exterior walls and roof structure;
- 5 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to
- 6 a sanitary waste disposal system;
- 7 (C) Has interior wiring for interior lights;
- 8 (D) Has a heating system; and
- 9 (E) In the case of replacement:
- 10 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
- 11 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
- 12 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
- 13 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
- 14 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
- 15 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
- 16 deed records for the county where the property is located a deed restriction prohibiting the siting
- 17 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
- 18 a statement of release is placed in the deed records for the county. The release shall be signed by
- 19 the county or its designee and state that the provisions of this paragraph regarding replacement
- 20 dwellings have changed to allow the siting of another dwelling. The county planning director or the
- 21 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
- 22 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
- 23 and release statements filed under this paragraph; and
- 24 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-
- 25 ished within three months after the deferred replacement permit is issued. A deferred replacement
- 26 permit allows construction of the replacement dwelling at any time. If, however, the established
- 27 dwelling is not removed or demolished within three months after the deferred replacement permit
- 28 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
- 29 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to
- 30 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
- 31 or otherwise, except by the applicant to the spouse or a child of the applicant.
- 32 (r) Farm stands if:
- 33 (A) The structures are designed and used for the sale of farm crops or livestock grown on the
- 34 farm operation, or grown on the farm operation and other farm operations in the local agricultural
- 35 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm
- 36 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-
- 37 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;
- 38 and
- 39 (B) The farm stand does not include structures designed for occupancy as a residence or for
- 40 activity other than the sale of farm crops or livestock and does not include structures for banquets,
- 41 public gatherings or public entertainment.
- 42 (s) An armed forces reserve center, if the center is within one-half mile of a community college.
- 43 For purposes of this paragraph, "armed forces reserve center" includes an armory or National
- 44 Guard support facility.
- 45 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as

1 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
2 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
3 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
4 the surface preexisted the use approved under this paragraph. An owner of property used for the  
5 purpose authorized in this paragraph may charge a person operating the use on the property rent  
6 for the property. An operator may charge users of the property a fee that does not exceed the  
7 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model  
8 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
9 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
10 ground.

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

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

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

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

24 (A) A public right of way;

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

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

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

34 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
35 the following uses may be established in any area zoned for exclusive farm use subject to ORS  
36 215.296:

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

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

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

44 (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest  
45 product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than re-

1 required under paragraph (a) of this subsection, if the lot or parcel:

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

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

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

10 (d) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

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

7 (k) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-



1   scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction  
2   with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this section.

2 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,  
3 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

24 **SECTION 5.** ORS 215.283 is amended to read:

25 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

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

44 (f) Operations for the exploration for and production of geothermal resources as defined by ORS  
45 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of

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

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

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

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

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

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

21 (n) A winery, as described in ORS 215.452 **or section 3 of this 2011 Act.**

22 (o) Farm stands if:

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

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

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

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

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

36 (C) Has interior wiring for interior lights;

37 (D) Has a heating system; and

38 (E) In the case of replacement:

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

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

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

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

27 (r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS  
 28 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops  
 29 processed at the facility. The building established for the processing facility shall not exceed 10,000  
 30 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm  
 31 use or devote more than 10,000 square feet to the processing activities within another building  
 32 supporting farm uses. A processing facility shall comply with all applicable siting standards but the  
 33 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

40 (A) A public right of way;

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

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

44 (v) Subject to the issuance of a license, permit or other approval by the Department of Envi-  
 45 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with

1 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application  
2 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
3 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
4 exclusive farm use zone under this chapter.

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

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

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

12 (b) Operations conducted for:

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

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

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

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

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

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

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

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

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

41 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
42 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-  
43 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
44 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
45 erations. No aircraft may be based on a personal-use airport other than those owned or controlled

1 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
2 granted through waiver action by the Oregon Department of Aviation in specific instances. A  
3 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
4 ject to any applicable rules of the Oregon Department of Aviation.

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

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

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

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

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

26 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **SECTION 6.** ORS 215.455 is amended to read:

32 215.455. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 **and section 3**  
33 **of this 2011 Act** is not a basis for an exception under ORS 197.732 (2)(a) or (b).

34 **SECTION 7.** ORS 308A.053 is amended to read:

35 308A.053. As used in ORS 308A.050 to 308A.128:

36 (1) "Exclusive farm use zone" means a zoning district established by a county or a city under  
37 the authority granted by ORS chapter 215 or 227 that is consistent with the farm use zone pro-  
38 visions set forth in ORS 215.203 to 215.311, 215.438, 215.448, 215.452, 215.455 or 215.700 to 215.780  
39 **or section 3 of this 2011 Act.**

40 (2) "Exclusive farm use zone farmland" means land that qualifies for special assessment under  
41 ORS 308A.062.

42 (3) "Homesite" means the land, including all tangible improvements to the land under and ad-  
43 jacent to a dwelling and other structures, if any, that are customarily provided in conjunction with  
44 a dwelling.

45 (4) "Nonexclusive farm use zone farmland" means land that is not within an exclusive farm use

1 zone but that qualifies for farm use special assessment under ORS 308A.068.

2 (5) "Remediation plan" means a plan certified by an extension agent of the Oregon State Uni-  
3 versity Extension Service to remediate or mitigate severe adverse conditions on farmland.

4 (6) "Severe adverse conditions on farmland" means conditions that render impracticable contin-  
5 ued farm use and that are not due to an intentional or negligent act or omission by the owner,  
6 tenant or lessee of the farmland or the applicant for certification of a remediation plan.

7 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
9 **on its passage.**

10