

A-Engrossed
Senate Bill 829

Ordered by the Senate April 26
Including Senate Amendments dated April 26

Sponsored by Senator EDWARDS; Senator BOQUIST

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.

[Changes type of restaurant allowed at winery located in exclusive farm use zone. Continues current law allowing winery located in exclusive farm use zone to provide services related to sale and promotion of wine, including private events hosted by winery or winery patrons.]

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 Section 3, chapter 97, Oregon Laws 2010, is repealed.**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]* **150,000** 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

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 served by a limited service restaurant, as defined in ORS 624.010, **wine not produced by the**
2 **winery and gifts.**

3 **(3) A winery established pursuant to subsection (1) of this section must provide on-site**
4 **parking for all activities or uses of the lot, parcel or tract on which the winery is established.**

5 [(3)] (4) Prior to the issuance of a permit to establish a winery under **subsection (1) of this**
6 section, the applicant shall show that vineyards described in subsection (1) of this section have been
7 planted or that the contract has been executed, as applicable.

8 [(4)] (5) A local government shall adopt findings for each of the standards described in [*para-*
9 *graphs (a) and (b) of*] this subsection. Standards imposed on the siting of a winery shall be limited
10 solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted
11 farming or forest practices on adjacent lands:

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

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

15 [(5)] (6) A local government shall also apply local criteria regarding floodplains, geologic haz-
16 ards, the Willamette River Greenway, solar access, airport safety or other regulations for resource
17 protection acknowledged to comply with any statewide goal respecting open spaces, scenic and his-
18 toric areas and natural resources.

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

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

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

29 (c) **The winery has produced annually, at the same or a different location, at least 150,000**
30 **gallons of wine in at least three of the five calendar years before the winery is established,**
31 **or qualified to operate, under this section.**

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

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

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

38 (c) **Services directly related to the sale and promotion of wine produced by the winery,**
39 **the sale and delivery of which are incidental to retail sale of wine on-site, including catered**
40 **dinners, weddings, charitable or political fundraisers and other private events, hosted by the**
41 **winery or by patrons of the winery, at which wine produced by the winery is featured.**

42 (3) **A winery established, or qualified to operate, under subsection (1) of this section may**
43 **operate a full service restaurant, as defined in ORS 624.010.**

44 (4) **A winery established, or qualified to operate, under subsection (1) of this section must**
45 **provide on-site parking for all activities or uses of the lot, parcel or tract on which the**

1 winery is established.

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

4 (6) Prior to the issuance of a permit to establish a winery under subsection (1) of this
5 section, the applicant shall show that vineyards described in subsection (1) of this section
6 have been planted.

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

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

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

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

18 (9) If a winery meets the criteria described in subsection (1) of this section for estab-
19 lishment, or qualification to operate, as an outright permitted use in an area zoned for ex-
20 clusive farm use under ORS 215.213 (1)(p) or 215.283 (1)(n), a local government may authorize
21 the winery to sell or deliver items or services not described in subsection (2)(b) or (c) or (3)
22 of this section under the criteria for commercial activity in conjunction with farm use under
23 ORS 215.213 (2)(c) or 215.283 (2)(a).

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

25 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
26 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

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

44 (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
45 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-

1 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
2 edged under ORS 197.251.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (C) Has interior wiring for interior lights;

39 (D) Has a heating system; and

40 (E) In the case of replacement:

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

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

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

18 (r) Farm stands if:

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

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

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

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

42 (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS
43 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops
44 processed at the facility. The building established for the processing facility shall not exceed 10,000
45 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm

1 use or devote more than 10,000 square feet to the processing activities within another building
2 supporting farm uses. A processing facility shall comply with all applicable siting standards but the
3 standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

10 (A) A public right of way;

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

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

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

20 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
21 the following uses may be established in any area zoned for exclusive farm use subject to ORS
22 215.296:

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

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

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

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

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

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

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

41 (d) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

38 (k) Dog kennels.

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

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

1 tive decision or initial public hearing on the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and

1 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location
2 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size
3 or location if it can reasonably be put to farm use in conjunction with other land.

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

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

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

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

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

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

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

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

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

33 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
34 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

11 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

18 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
19 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
20 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
21 operator does or will require the assistance of the relative in the management of the farm use and
22 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
23 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
24 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
25 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
26 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
27 shall operate as a partition of the homesite to create a new parcel.

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

30 (f) Operations for the exploration for and production of geothermal resources as defined by ORS
31 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
32 compressors, separators and other customary production equipment for an individual well adjacent
33 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
34 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

45 (k) Minor betterment of existing public road and highway related facilities such as maintenance

1 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
2 public-owned property utilized to support the operation and maintenance of public roads and high-
3 ways.

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

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

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

8 (o) Farm stands if:

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

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

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

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

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

22 (C) Has interior wiring for interior lights;

23 (D) Has a heating system; and

24 (E) In the case of replacement:

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

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

1 or otherwise, except by the applicant to the spouse or a child of the applicant.

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

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

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

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

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

26 (A) A public right of way;

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

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

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

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

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

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

43 (b) Operations conducted for:

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

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

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

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

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

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

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. A community center au-
19 thorized under this paragraph may provide services to veterans, including but not limited to emer-
20 gency and transitional shelter, preparation and service of meals, vocational and educational
21 counseling and referral to local, state or federal agencies providing medical, mental health, disability
22 income replacement and substance abuse services, only in a facility that is in existence on January
23 1, 2006. The services may not include direct delivery of medical, mental health, disability income
24 replacement or substance abuse services.

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

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

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

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

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

45 (k) A site for the disposal of solid waste approved by the governing body of a city or county or

1 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
2 mental Quality together with equipment, facilities or buildings necessary for its operation.

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

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

12 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

45 (B) "Local historical society" means the local historical society recognized by the county gov-

1 erning body and organized under ORS chapter 65.

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

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

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

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

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

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

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

18 215.455. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 **and section 3**
19 **of this 2011 Act** is not a basis for an exception under ORS 197.732 (2)(a) or (b).

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

21 308A.053. As used in ORS 308A.050 to 308A.128:

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

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

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

31 (4) "Nonexclusive farm use zone farmland" means land that is not within an exclusive farm use
32 zone but that qualifies for farm use special assessment under ORS 308A.068.

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

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

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

41