

Senate Bill 940

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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 to use lands in exclusive farm use zones for sale of wine and other beverages pursuant to liquor license.

Eliminates sunset of certain provisions related to regulation of wineries in exclusive farm use zones. Retains current law allowing private events hosted by winery or patrons of winery, allowing sale of wine not produced in conjunction with winery and limiting value of incidental sales and services to 25 percent of gross income from retail sale of wine produced in conjunction with winery.

Allows public events hosted by winery or patrons.

Requires winery to obtain special use permit or multiyear permit to provide certain public or private events hosted by winery or patrons.

A BILL FOR AN ACT

1
2 Relating to the sale of wine on land zoned for exclusive farm use; creating new provisions; amending
3 ORS 215.213, 215.283 and 215.452; and repealing section 3, chapter 97, Oregon Laws 2010.

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 Section 3, chapter 97, Oregon Laws 2010, is repealed.**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) **As used in this section:**

9 (a) **“Commercial kitchen” means a restaurant as defined in ORS 624.010, the use of which**
10 **under the license is limited as provided in this section.**

11 (b) **“Limited service restaurant” has the meaning given that term in ORS 624.010.**

12 (c) **“Public and private events” means _____.**

13 (d) **“Winery” means the licensed premises of a holder of a winery license under ORS**
14 **471.223.**

15 (2) A winery may be established as an outright permitted use in an area zoned for exclusive
16 farm use under ORS 215.213 (1)(p) and 215.283 (1)(n) if the winery produces wine with a maximum
17 annual production of:

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

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

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

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

23 (D) Obtains grapes from *[any combination of subparagraph (A), (B) or (C) of]* **a combination of**
24 **vineyards described in** this paragraph; or

25 (b) At least 50,000 gallons and no more than *[100,000]* **150,000** gallons and *[that]*:

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

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

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

3 (D) Obtains grapes from *[any combination of subparagraph (A), (B) or (C) of]* **a combination of**
4 **vineyards described in** this paragraph.

5 [(2)] (3) A winery *[described in subsection (1) of this section]* may sell only:

6 (a) Wines produced in conjunction with the winery^{]; and}.

7 (b) Items directly related to the sale and promotion of wine produced in conjunction with the
8 winery, the sale of which is incidental to retail sale of wine on-site, including *[food and beverages*
9 *served by a limited service restaurant, as defined in ORS 624.010.]*:

10 (A) **Wine not produced in conjunction with the winery;**

11 (B) **Gifts; and**

12 (C) **Food and nonalcoholic beverages including, but not limited to, food and nonalcoholic**
13 **beverages prepared as provided in subsection (6) of this section.**

14 (c) **Services directly related to the sale and promotion of wine produced in conjunction**
15 **with the winery, the sale and delivery of which are incidental to retail sale of wine on-site,**
16 **including public and private events hosted by the winery or by patrons of the winery, at**
17 **which wine produced in conjunction with the winery is featured.**

18 (4) **The gross income from the sale of incidental items and services under subsection**
19 **(3)(b) and (c) of this section may not exceed 25 percent of the gross income from the retail**
20 **sale on-site of wine produced in conjunction with the winery.**

21 (5) **A winery may provide on-site retail floor space, including a tasting room, in which to**
22 **provide or pay for sample tastings of wine.**

23 (6) **A winery may include a commercial kitchen the use of which is limited to the prepa-**
24 **ration of food and beverages:**

25 (a) **Required by rule of the Oregon Liquor Control Commission to be available when wine**
26 **is served on the licensed premises.**

27 (b) **Served by a limited service restaurant.**

28 (c) **For on-site consumption at catered events permitted under this section.**

29 (7) **If approved through a special use permit or a multiyear permit, public and private**
30 **events permitted under subsection (3)(c) of this section include facility rentals, celebratory**
31 **events and outdoor concerts. A county shall:**

32 (a) **Issue permits under this subsection; and**

33 (b) **Require mitigation to minimize off-site impacts of public and private events author-**
34 **ized by this subsection and to ensure compatibility of the events with local agricultural ac-**
35 **tivities.**

36 [(3)] (8) Prior to the issuance of a permit to establish a winery under this section, the applicant
37 shall show that vineyards described in subsection [(1)] (2) of this section have been planted or that
38 the contract has been executed, as applicable.

39 [(4)] (9) A local government shall adopt findings for each of the standards described in para-
40 graphs (a) and (b) of this subsection. Standards imposed on the siting of a winery shall be limited
41 solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted
42 farming or forest practices on adjacent lands:

43 (a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and
44 all public gathering places; and

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

1 ~~[(5)]~~ **(10)** A local government shall also apply local criteria regarding floodplains, geologic haz-
 2 ards, the Willamette River Greenway, solar access, airport safety or other regulations for resource
 3 protection acknowledged to comply with any statewide goal respecting open spaces, scenic and his-
 4 toric areas and natural resources.

5 **SECTION 3. Subject to the limitations imposed by a liquor license on the holder of a li-**
 6 **quor license, a county shall adopt standards regulating public and private events and on-site**
 7 **sales of wine at:**

8 **(1) A commercial producer of wine that:**

9 **(a) Is conditionally allowable under ORS 215.213 (2)(c)(B) or 215.283 (2)(a)(B); and**

10 **(b) Does not meet the minimum acreage requirements of a winery permitted outright**
 11 **under ORS 215.452.**

12 **(2) A farm stand that holds a liquor license authorizing on-premises sales of wine and**
 13 **that is either:**

14 **(a) Conditionally allowable under ORS 215.213 (2)(c)(C) or 215.283 (2)(a)(C); or**

15 **(b) Permitted outright under ORS 215.213 (1)(r)(A) or 215.283 (1)(o)(A).**

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

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

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

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

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

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

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

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

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

45 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or

1 construction relating to such operations shall not be a basis for an exception under ORS 197.732
2 (2)(a) or (b).

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

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

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

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

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

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

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

25 (p) A winery[, *as described in*] **subject to** ORS 215.452.

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

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

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

30 (C) Has interior wiring for interior lights;

31 (D) Has a heating system; and

32 (E) In the case of replacement:

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

1 and release statements filed under this paragraph; and

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

10 *[(r) Farm stands if:]*

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

16 *[(B) The farm stand does not include structures designed for occupancy as a residence or for ac-*
 17 *tivity other than the sale of farm crops or livestock and does not include structures for banquets, public*
 18 *gatherings or public entertainment.]*

19 **(r) A farm stand if the farm stand does not include structures designed or used for oc-**
 20 **cupancy as a residence, for activity other than the sale of farm crops or livestock, for ban-**
 21 **quets, for public gatherings or for public entertainment and if either:**

22 **(A)(i) The structures are designed for the sale of farm crops or livestock, not including**
 23 **wine and other beverages the sale of which requires a license issued under ORS chapter 471,**
 24 **grown on the farm operation or grown on the farm operation and other farm operations in**
 25 **the local agricultural area; and**

26 **(ii) The retail sale of incidental items, including wine and other beverages the sale of**
 27 **which requires a license issued under ORS chapter 471, and fee-based activity to promote**
 28 **farm crops or livestock sold at the farm stand do not make up more than 25 percent of the**
 29 **total annual sales of the farm stand; or**

30 **(B)(i) The structures are designed for the sale of farm crops or livestock, including wine**
 31 **and other beverages the sale of which requires a license issued under ORS chapter 471,**
 32 **grown on the farm operation or grown on the farm operation and other farm operations in**
 33 **the local agricultural area;**

34 **(ii) The retail sale of incidental items and fee-based activity to promote farm crops or**
 35 **livestock sold at the farm stand do not make up more than 25 percent of the total annual**
 36 **sales of the farm stand; and**

37 **(iii) The farm stand is on the site of the farm operation containing a vineyard of at least**
 38 **15 acres, is under common ownership with a contiguous farm operation containing a vineyard**
 39 **of at least 15 acres, has a long-term contract for the purchase of all of the grapes from at**
 40 **least 15 acres of vineyards on a farm operation contiguous to the farm stand or obtains**
 41 **grapes from a combination of vineyards described in this sub-subparagraph.**

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:

9 (A) The processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or sub-
10 section (1)(u) of this section.

11 **(B) Subject to standards adopted under section 3 of this 2011 Act, the operation of a**
12 **commercial producer of wine other than a winery that qualifies as an outright permitted use**
13 **under subsection (1)(p) of this section.**

14 **(C) The operation of a farm stand other than a farm stand that qualifies as an outright**
15 **permitted use under subsection (1)(r) of this section.**

16 (d) Operations conducted for:

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

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

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

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

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

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

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

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

1 ject to any applicable rules of the Oregon Department of Aviation.

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

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

13 (k) Dog kennels.

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

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

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

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

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

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

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

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

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

35 (u) 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 the
41 metropolitan urban 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 as such by the

1 county governing body and organized under ORS chapter 65.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days
45 following the date of postmark of the notice to file a written objection on the grounds only that the

1 dwelling or activities associated with it would force a significant change in or significantly increase
 2 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-
 3 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-
 4 jection is received, the governing body shall set the matter for hearing in the manner prescribed in
 5 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required
 6 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of
 7 this section.

8 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
 9 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

31 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

38 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 39 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 40 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 41 operator does or will require the assistance of the relative in the management of the farm use and
 42 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 43 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
 44 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 45 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-

1 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
2 shall operate as a partition of the homesite to create a new parcel.

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

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

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

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

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

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

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

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

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

27 (n) A winery[, *as described in*] **subject to** ORS 215.452.

28 [(o) *Farm stands if:*]

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

34 [(B) *The farm stand does not include structures designed for occupancy as a residence or for ac-*
35 *tivity other than the sale of farm crops or livestock and does not include structures for banquets, public*
36 *gatherings or public entertainment.*]

37 **(o) A farm stand if the farm stand does not include structures designed or used for oc-**
38 **cupancy as a residence, for activity other than the sale of farm crops or livestock, for ban-**
39 **quets, for public gatherings or for public entertainment and if either:**

40 **(A)(i) The structures are designed for the sale of farm crops or livestock, not including**
41 **wine and other beverages the sale of which requires a license issued under ORS chapter 471,**
42 **grown on the farm operation or grown on the farm operation and other farm operations in**
43 **the local agricultural area; and**

44 **(ii) The retail sale of incidental items, including wine and other beverages the sale of**
45 **which requires a license issued under ORS chapter 471, and fee-based activity to promote**

1 **farm crops or livestock sold at the farm stand do not make up more than 25 percent of the**
 2 **total annual sales of the farm stand; or**

3 **(B)(i) The structures are designed for the sale of farm crops or livestock, including wine**
 4 **and other beverages the sale of which requires a license issued under ORS chapter 471,**
 5 **grown on the farm operation or grown on the farm operation and other farm operations in**
 6 **the local agricultural area;**

7 **(ii) The retail sale of incidental items and fee-based activity to promote farm crops or**
 8 **livestock sold at the farm stand do not make up more than 25 percent of the total annual**
 9 **sales of the farm stand; and**

10 **(iii) The farm stand is on the site of the farm operation containing a vineyard of at least**
 11 **15 acres, is under common ownership with a contiguous farm operation containing a vineyard**
 12 **of at least 15 acres, has a long-term contract for the purchase of all of the grapes from at**
 13 **least 15 acres of vineyards on a farm operation contiguous to the farm stand or obtains**
 14 **grapes from a combination of vineyards described in this sub-subparagraph.**

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

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

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

19 (C) Has interior wiring for interior lights;

20 (D) Has a heating system; and

21 (E) In the case of replacement:

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

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

44 (q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
 45 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor

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

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

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

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

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

23 (A) A public right of way;

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

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

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

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

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

38 (a) Commercial activities that are in conjunction with farm use, including:

39 (A) The processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or sub-
 40 section (1)(r) of this section.

41 (B) **Subject to standards adopted under section 3 of this 2011 Act, the operation of a**
 42 **commercial producer of wine other than a winery that qualifies as an outright permitted use**
 43 **under subsection (1)(n) of this section.**

44 (C) **The operation of a farm stand other than a farm stand that qualifies as an outright**
 45 **permitted use under subsection (1)(o) of this section.**

1 (b) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

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

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

1 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
2 contiguous land where the primary processing facility is located.

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

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

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

15 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

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

45 (A) "Living history museum" means a facility designed to depict and interpret everyday life and

1 culture of some specific historic period using authentic buildings, tools, equipment and people to
2 simulate past activities and events; and

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

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

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

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

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

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

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

20 **SECTION 6. Section 3 of this 2011 Act, the amendments to ORS 215.213, 215.283 and**
21 **215.452 by sections 2, 4 and 5 of this 2011 Act and the repeal of section 3, chapter 97, Oregon**
22 **Laws 2010, by section 1 of this 2011 Act apply to activities permitted outright or conditionally**
23 **allowed in exclusive farm use zones on or after the effective date of this 2011 Act.**

24