



# Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Jim Rue, Acting Director  
Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 5, January 26, 2012, LCDC Meeting**

## **PUBLIC HEARING AND ADOPTION OF HOUSEKEEPING AMENDMENTS TO ADMINISTRATIVE RULES TO IMPLEMENT NEW STATUTES**

Under this item, the Land Conservation and Development Commission (LCDC) will hold a public hearing on proposed amendments to several administrative rules in order to implement, or to conform to, new statutes enacted in the 2011 legislative session. The rules proposed for amendment under this item include:

- OAR 660, divisions 7 and 8, regarding needed housing;
- OAR 660, division 27, regarding roads in Metro Urban Reserves;
- OAR 660, division 28, regarding the Transfer of Development Rights Pilot Program; and
- OAR 660, division 33, regarding several issues related to uses on farm land.

The proposed rule amendments are attached to this report (Attachment A).

The department issued notice for this rulemaking on December 30, 2011 (Attachment C). If adopted by LCDC, these rules would take effect upon filing with the Secretary of State, estimated to be approximately February 1, 2012. Comments the department has received in response to the notice are included in Attachment D.

For additional information regarding this item, please contact Bob Rindy at (503) 373-0050 ext. 229, or by email at [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us). For information about proposed rule amendments pertaining to OAR 660, division 33, contact Katherine Daniels at (503) 373-0050 ext. 329, or by email at [katherine.daniels@state.or.us](mailto:katherine.daniels@state.or.us).

## I. **BACKGROUND**

The 2011 Legislature enacted four pieces of legislation that require amendments to DLCD rules under this agenda item (Attachment B). These include the department's bills: HB 2130 concerning needed housing and HB 2131 concerning the Transfer of Development Rights (TDR) Pilot Program. In addition, HB 3225 was enacted to allow new roads in Metro Urban Reserves, and HB 2154 was enacted to modify provisions concerning Farmworker Housing, except farmworker housing on EFU land (for which the requirements did not change). Three other bills, HB 3408, HB 3280 and SB 960, also pertained to uses on farmland and therefore require rule adjustments. In the case of division 33 rules concerning farmland, some additional minor amendments to the rules not necessarily related to new legislation are also proposed, as described below.

## II. **PROPOSED RULE AMENDMENTS**

### A. **Amendments to Rules Regarding Needed Housing**

HB 2130 was the department's bill. The department intended to resolve conflicting wording and clarify state policy with respect to statutes on "needed housing" for urban areas. Two administrative rule divisions pertain to needed housing: OAR 660, divisions 7 and 8 (regarding housing for Metro and statewide, respectively). The proposed amendments in Attachment A add the new statutory wording to the applicable rules.

### B. **Amendments to Rule Regarding Planning for Metro Urban Reserves**

HB 3225 authorizes a county to take an exception to a statewide planning goal where necessary to allow establishment of transportation facilities in an area designated as Metro urban reserve. This bill conflicts with LCDC rules at OAR 660-027-0070. As such, the proposed amendments will correct this conflict and allow an exception for transportation facilities.

### C. **Amendments to Rules Regarding TDR Pilot Program**

Nearly all of the changes to division 28 are based on HB 2132. They include revisions throughout the division that allow other types of development in receiving areas in addition to residential. Other changes specific to rules include the following:

**OAR 660-028-0020.** Staff proposes to extend the pilot project submission deadline to September 1, 2012. Alternatively, LCDC could choose to select another date or leave the deadline open-ended.

**OAR 660-028-0030.** The revisions in this section expand possible receiving area locations to include: 1) resort communities and rural service centers that contain at least 100 dwellings and 2) exception areas adjacent to urban unincorporated communities and rural communities. The section also reduces the required authorized minimum residential densities for exception areas adjacent to UGBs and for land within unincorporated communities and adjacent exceptions

areas. The section further allows up to a 2:1 transfer ratio for development rights used in receiving areas within unincorporated communities, but requires that this ratio be consistent with public facilities and services. This section also eliminates the previous requirement that public access be provided to receiving area properties under easement. Finally, the section allows intergovernmental agreements that can provide for revenue sharing.

**D. Amendments to Rules in OAR 660, Division 33, Concerning Farmland**

The great majority of the proposed “housekeeping changes” to these rules are intended to provide consistency with new legislation adopted in 2011. Other housekeeping changes include the correction of a couple of inadvertent omissions of intended approval options, as described below. OAR 660-033-0100 has been renumbered for better organization. Several other very minor grammatical, word usage or other similar housekeeping revisions are also proposed to rules in division 33.

**OAR 660-033-0030 and -0045 concerning soils analysis.** The amendments to OAR 660-033-0030 would delete section (9) but move the content, unchanged (except for numbering) into a proposed new rule at 660-033-0045 entitled “Soils Assessments by Professional Soils Classifiers.” This move retains the overall framework for the new soils assessment process at the existing location and heading, under “Identifying Agricultural Land,” while creating a separate, cross-referenced location for the detailed assessment process itself.

**OAR 660-033-0120 Table 1.** Table 1, which implements division 33, has been revised for consistency with HB 3408, HB 3280 and SB 960 (2011) to add three new permitted uses in EFU zones, along with references to applicable review criteria. These uses include, respectively, irrigation reservoirs, restaurants and events in conjunction with wineries, and agri-tourism events. Fire service facilities was moved to be located under “Parks/Public/Quasi-Public” instead of under “Utility/Solid Waste Disposal Facilities.”

**OAR 660-033-0130.** OAR 660-033-0130(24)(a)(B)(iv) is proposed to be amended for consistency with new legislation (HB 2154) by clarifying that a new and broader definition of “farmworker housing,” applicable to the Department of Housing and Community Services for tax credit purposes, is not the same definition to be used for land use purposes on farmland. The proposed amended subparagraph will cross-reference and require the use of the definition of farmworker housing currently used by the department, which has been moved by the legislation (HB 2154) and is now incorporated into ORS 215.278. The subparagraph has also been revised to allow multi-unit farmworker housing to be located on the primary farm parcel as well as on other parcels, as is currently allowed. The omission of this siting option appears to have been an oversight in previous versions of DLCD rules.

**OAR 660-033-0130(24) and -0135.** These rules have been revised for consistency with HB 3290 to modify the farm income standard to allow the averaging of three years’ farm income, as applied to the approval of farm dwellings and accessory farm dwellings.

5. *OAR 660-033-0130(29)*: This rule has been revised to allow composting that is auxiliary to farm use on non-high value farmland without going through a conditional use process, just as it is currently allowed on high-value farmland. The omission of this option was apparently an oversight.

### **III. SUMMARY OF REQUIRED LCDC RULEMAKING CRITERIA AND PROCEDURES**

The commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC's procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The commission is also guided by ORS 197.040, as follows:

(1) The Land Conservation and Development Commission shall: \* \* \*

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b).

\* \* \*

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.

#### **IV. NOTICE OF RULEMAKING**

The department issued formal rulemaking notice for publication in the January 1, 2012, Secretary of State's Bulletin, and has mailed notices to interested parties (See Attachment C).

The commission has also adopted "Citizen Involvement Guidelines for Policy Development" (the "CIG") in order "... to provide and promote clear procedures for public involvement in the development of Commission policy on land use," which LCDC has committed to follow "to the extent practicable in the development of new or amended statewide planning goals and related administrative rules." The CIG recommends that, as part of a rulemaking process, the department

...shall, to the extent practicable: Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.

The department has followed the above guidelines with respect to this rulemaking. We note that the CIG authorizes LCDC to "choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes." In this case, and in previous LCDC "housekeeping" rulemaking to conform rules to new statutes, a workgroup was not appointed because the rulemaking minor and technical and provides little discretion to the commission in conforming to new statutes.

#### **V. RECOMMENDATION**

The department recommends the commission open the continued public hearing on the proposed amendments described in this and the previous report, close the public hearing following testimony, and adopt the proposed rule amendments in Attachment A to this report.

#### **ATTACHMENTS**

- A. Proposed rule amendments
- B. New statutes related to proposed rule amendments
- C. Notices
- D. Comments

**DIVISION 7**  
**METROPOLITAN HOUSING**  
Draft Housekeeping Amendments November 1, 2011

1    **660-007-0000**  
2    **Statement of Purpose**

3    The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed  
4    housing units and the efficient use of land within the Metropolitan Portland (Metro) urban  
5    growth boundary, to provide greater certainty in the development process and so to reduce  
6    housing costs. OAR 660-007-0030 through 660-007-0037 are intended to establish by rule  
7    regional residential density and mix standards to measure Goal 10 Housing compliance for cities  
8    and counties within the Metro urban growth boundary, and to ensure the efficient use of  
9    residential land within the regional UGB consistent with Goal 14 Urbanization. OAR 660-007-  
10   0035 implements the Commission's determination in the Metro UGB acknowledgment  
11   proceedings that region wide, planned residential densities must be considerably in excess of the  
12   residential density assumed in Metro's "UGB Findings". The new construction density and mix  
13   standards and the criteria for varying from them in this rule take into consideration and also  
14   satisfy the price range and rent level criteria for needed housing as set forth in ORS 197.303.

15   Stat. Auth.: ORS 183 & ORS 197  
16   Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490  
17   Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

18   **660-007-0005**  
19   **Definitions**

20   For the purposes of this rule, the definitions in ORS 197.015, 197.295, and 197.303 shall apply.  
21   In addition, the following definitions apply:

22   (1) A "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable  
23   land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces  
24   and restricted resource protection areas.

25   (2) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each  
26   dwelling unit occupies a separate lot.

27   (3) "Buildable Land" means residentially designated land within the Metro urban growth  
28   boundary, including both vacant and developed land likely to be redeveloped, that is suitable,  
29   available and necessary for residential uses. Publicly owned land is generally not considered  
30   available for residential uses. Land is generally considered "suitable and available" unless it:

31   (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

32   (b) Is subject to natural resource protection measures determined under statewide Planning Goals  
33   5, 6 or 15;

34   (c) Has slopes of 25 percent or greater;

1 (d) Is within the 100-year flood plain; or

2 (e) Cannot be provided with public facilities.

3 (4) "Detached Single Family Housing" means a housing unit that is free standing and separate  
4 from other housing units.

5 (5) "Housing Needs **Forecast** [~~Projection~~]" refers to a local determination, justified in the plan,  
6 as to the housing types, **amounts** and densities that will be:

7 (a) Commensurate with the financial capabilities of present and future area residents of all  
8 income levels during the planning period;

9 (b) Consistent with OAR 660-007-0010 through 660-007-0037 and any other adopted regional  
10 housing standards; and

11 (c) Consistent with Goal 14 requirements for the efficient provision of public facilities and  
12 services, and efficiency of land use.

13 (6) "Multiple Family Housing" means attached housing where each dwelling unit is not located  
14 on a separate lot.

15 **(7) "Needed Housing" means housing types determined to meet the need shown for housing**  
16 **within an urban growth boundary at particular price ranges and rent levels, including at**  
17 **least the following housing types:**

18 **(a) Attached and detached single-family housing and multiple family housing for both**  
19 **owner and renter occupancy;**

20 **(b) Government assisted housing;**

21 **(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;**

22 **(d) Manufactured homes on individual lots planned and zoned for single-family residential**  
23 **use that are in addition to lots within designated manufactured dwelling subdivisions; and**

24 **(e) Housing for farmworkers.**

25 ([7]8) "Redevelopable Land" means land zoned for residential use on which development has  
26 already occurred but on which, due to present or expected market forces, there exists the  
27 likelihood that existing development will be converted to more intensive residential uses during  
28 the planning period.

29 Stat. Auth.: ORS 197.040

30 Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

1 Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDC 3-1990, f. & cert.  
2 ef. 6-6-90; LCDD 3-2008, f. & cert. ef. 4-18-08

3 **660-007-0015**

4 **Clear and Objective Approval Standards Required**

5  
6 **(1)**[Local approval standards, special conditions and procedures regulating the development of  
7 needed housing must be clear and objective, and must not have the effect, either of themselves or  
8 cumulatively, of discouraging needed housing through unreasonable cost or delay.] **Except as**  
9 **provided in section (2) of this rule, a local government may adopt and apply only clear and**  
10 **objective standards, conditions and procedures regulating the development of needed**  
11 **housing on buildable land. The standards, conditions and procedures may not have the**  
12 **effect, either in themselves or cumulatively, of discouraging needed housing through**  
13 **unreasonable cost or delay.**

14 **(2) In addition to an approval process for needed housing based on clear and objective**  
15 **standards, conditions and procedures as provided in section (1) of this rule, a local**  
16 **government may adopt and apply an optional alternative approval process for applications**  
17 **and permits for residential development based on approval criteria regulating, in whole or**  
18 **in part, appearance or aesthetics that are not clear and objective if:**

19 **(a) The applicant retains the option of proceeding under the approval process that meets**  
20 **the requirements of section (1);**

21 **(b) The approval criteria for the alternative approval process comply with applicable**  
22 **statewide land use planning goals and rules; and**

23 **(c) The approval criteria for the alternative approval process authorize a density at or**  
24 **above the density level authorized in the zone under the approval process provided in**  
25 **section (1) of this rule.**

26 **(3) Subject to section (1), this rule does not infringe on a local government's prerogative to:**

27 **(a) Set approval standards under which a particular housing type is permitted outright;**

28 **(b) Impose special conditions upon approval of a specific development proposal; or**

29 **(c) Establish approval procedures.**

30 Stat. Auth.: ORS 183 & ORS 197

31 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

32 Hist.: LCD 10-1981, f. & ef. 12-11-81

1 **660-007-0018**

2 **Specific Plan Designations Required**

3 (1) Plan designations that allow or require residential uses shall be assigned to all buildable land.  
4 Such designations may allow nonresidential uses as well as residential uses. Such designations  
5 may be considered to be "residential plan designations" for the purposes of this division. The  
6 plan designations assigned to buildable land shall be specific so as to accommodate the varying  
7 housing types and densities identified in OAR 660-007-0030 through 660-007-0037.

8 (2) A local government may defer the assignment of specific residential plan designations only  
9 when the following conditions have been met:

10 (a) Uncertainties concerning the funding, location and timing of public facilities have been  
11 identified in the local comprehensive plan;

12 (b) The decision not to assign specific residential plan designations is specifically related to  
13 identified public facilities constraints and is so justified in the plan; and

14 (c) The plan includes a time-specific strategy for resolution of identified public facilities  
15 uncertainties and a policy commitment to assign specific residential plan designations when  
16 identified public facilities uncertainties are resolved.

17 Stat. Auth.: ORS 183 & ORS 197

18 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

19 Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 4-1999, f. & cert. ef. 7-2-99

20 **660-007-0020**

21 **The Rezoning Process**

22 A local government may defer rezoning of land within the urban growth boundary to maximum  
23 planned residential density provided that the process for future rezoning is reasonably justified:

24 (1) The plan must contain a justification for the rezoning process and policies which explain how  
25 this process will be used to provide for needed housing.

26 (2) Standards and procedures governing the process for future rezoning shall be based on the  
27 rezoning justification and policy statement, and must be clear and objective.

28 Stat. Auth.: ORS 183 & ORS 197

29 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

30 Hist.: LCD 10-1981, f. & ef. 12-11-81

1 **660-007-0022**

2 **Restrictions on Housing Tenure**

3 Any local government that restricts the construction of either rental or owner occupied housing  
4 on or after its first periodic review shall either justify such restriction by an analysis of housing  
5 need according to tenure or otherwise demonstrate that such restrictions comply with ORS  
6 197.303(a) and 197.307(3).

7 Stat. Auth.: ORS 183 & ORS 197

8 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

9 Hist.: LCDC 1-1987, f. & ef. 2-18-87

10 **660-007-0030**

11 **New Construction Mix**

12 (1) Jurisdictions other than small developed cities must either designate sufficient buildable land  
13 to provide the opportunity for at least 50 percent of new residential units to be attached single  
14 family housing or multiple family housing or justify an alternative percentage based on changing  
15 circumstances. Factors to be considered in justifying an alternate percentage shall include, but  
16 need not be limited to:

17 (a) Metro forecasts of dwelling units by type;

18 (b) Changes in household structure, size, or composition by age;

19 (c) Changes in economic factors impacting demand for single family versus multiple family  
20 units; and

21 (d) Changes in price ranges and rent levels relative to income levels.

22 (2) The considerations listed in section (1) of this rule refer to county-level data within the UGB  
23 and data on the specific jurisdiction.

24 Stat. Auth.: ORS 183 & ORS 197

25 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

26 Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

27 **660-007-0033**

28 **Consideration of Other Housing Types**

29 Each local government shall consider the needs for manufactured housing and government  
30 assisted housing within the Portland Metropolitan UGB in arriving at an allocation of housing  
31 types.

1 Stat. Auth.: ORS 183 & ORS 197  
2 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490  
3 Hist.: LCDC 1-1987, f. & ef. 2-18-87

4 **660-007-0035**  
5 **Minimum Residential Density Allocation for New Construction**

6 The following standards shall apply to those jurisdictions which provide the opportunity for at  
7 least 50 percent of new residential units to be attached single family housing or multiple family  
8 housing:

9 (1) The Cities of Cornelius, Durham, Fairview, Happy Valley and Sherwood must provide for an  
10 overall density of six or more dwelling units per net buildable acre. These are relatively small  
11 cities with some growth potential (i.e. with a regionally coordinated population projection of less  
12 than 8,000 persons for the active planning area).

13 (2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie,  
14 Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density  
15 of eight or more dwelling units per net buildable acre.

16 (3) Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego  
17 and Tigard must provide for an overall density of ten or more dwelling units per net buildable  
18 acre. These are larger urbanized jurisdictions with regionally coordinated population projections  
19 of 50,000 or more for their active planning areas, which encompass or are near major  
20 employment centers, and which are situated along regional transportation corridors.

21 (4) Regional housing density and mix standards as stated in OAR 660-007-0030 and sections (1),  
22 (2), and (3) of this rule do not apply to small developed cities which had less than 50 acres of  
23 buildable land in 1977 as determined by criteria used in Metro's UGB Findings. These cities  
24 include King City, Rivergrove, Maywood Park, Johnson City and Wood Village.

25 Stat. Auth.: ORS 183 & ORS 197  
26 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490  
27 Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

28 **660-007-0037**  
29 **Alternate Minimum Residential Density Allocation for New Construction**

30 The density standards in OAR 660-007-0035 shall not apply to a jurisdiction which justifies an  
31 alternative new construction mix under the provisions of OAR 660-007-0030. The following  
32 standards shall apply to these jurisdictions:

33 (1) The jurisdiction must provide for the average density of detached single family housing to be  
34 equal to or greater than the density of detached single family housing provided for in the plan at  
35 the time of original LCDC acknowledgment.

1 (2) The jurisdiction must provide for the average density of multiple family housing to be equal  
2 to or greater than the density of multiple family housing provided for in the plan at the time of  
3 original LCDC acknowledgment.

4 (3) A jurisdiction which justifies an alternative new construction mix must also evaluate whether  
5 the factors in OAR 660-007-0030 support increases in the density of either detached single  
6 family or multiple family housing or both. If the evaluation supports increases in density, then  
7 necessary amendments to residential plan and zone designations must be made.

8 Stat. Auth.: ORS 183 & ORS 197

9 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

10 Hist.: LCDC 1-1987, f. & ef. 2-18-87

11 **660-007-0045**

12 **Computation of Buildable Lands**

13 (1) The local buildable lands inventory must document the amount of buildable land in each  
14 residential plan designation.

15 (2) The Buildable Land Inventory (BLI): The mix and density standards of OAR 660-007-0030,  
16 660-007-0035 and 660-007-0037 apply to land in a buildable land inventory required by OAR  
17 660-007-0010, as modified herein. Except as provided below, the buildable land inventory at  
18 each jurisdiction's choice shall either be based on land in a residential plan/zone designation  
19 within the jurisdiction at the time of periodic review or based on the jurisdiction BLI at the time  
20 of acknowledgment as updated. Each jurisdiction must include in its computations all plan and/or  
21 zone changes involving residential land which that jurisdiction made since acknowledgment. A  
22 jurisdiction need not include plan and/or zone changes made by another jurisdiction before  
23 annexation to a city. The adjustment of the BLI at the time of acknowledgment shall:

24 (a) Include changes in zoning ordinances or zoning designations on residential planned land if  
25 allowed densities are changed;

26 (b) Include changes in planning or zoning designations either to or from residential use. A city  
27 shall include changes to annexed or incorporated land if the city changed type or density or the  
28 plan/zone designation after annexation or incorporation;

29 (c) The county and one or more cities affected by annexations or incorporations may consolidate  
30 buildable land inventories. A single calculation of mix and density may be prepared.  
31 Jurisdictions which consolidate their buildable lands inventories shall conduct their periodic  
32 review simultaneously;

33 (d) A new density standard shall be calculated when annexation, incorporation or consolidation  
34 results in mixing two or more density standards (OAR 660-007-0035). The calculation shall be  
35 made as follows:

36 (A)(i)  $BLI \text{ Acres} \times 6 \text{ Units/Acre} = \text{Num. of Units};$

1 (ii)  $\text{BLI Acres} \times 8 \text{ Units/Acre} = \text{Num. of Units}$ ;

2 (iii)  $\text{BLI Acres} \times 10 \text{ Units/Acre} = \text{Num. of Units}$ ;

3 (iv)  $\text{Total Acres (TA)} - \text{Total Units (TU)}$ .

4 (B)  $\text{Total units divided by Total Acres} = \text{New Density Standard}$ ;

5 (C) Example:

6 (i) Cities A and B have 100 acres and a 6-unit-per-acre standard:  $(100 \times 6 = 600 \text{ units})$ ; City B  
7 has 300 acres and a 10-unit-per-acre standard:  $(300 \times 10 = 3000 \text{ units})$ ; County has 200 acres and  
8 an 8-unit-per-acre standard:  $(200 \times 08 = 1600 \text{ units})$ ; Total acres = 600 -- Total Units = 5200.

9 (ii)  $5200 \text{ units divided by } 600 \text{ acres} = 8.66 \text{ units per acre standard}$ .

10 (3) Mix and Density Calculation: The housing units allowed by the plan/zone designations at  
11 periodic review, except as modified by section (2) of this rule, shall be used to calculate the mix  
12 and density. The number of units allowed by the plan/zone designations at the time of  
13 development shall be used for developed residential land.

14 Stat. Auth.: ORS 183 & ORS 197

15 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

16 Hist.: LCDC 1-1987, f. & ef. 2-18-87

17 **660-007-0050**

18 **Regional Coordination**

19 (1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB.  
20 They shall determine whether the buildable land within the UGB satisfies housing needs by type  
21 and density for the region's long-range population and housing projections.

22 (2) Metro shall ensure that needed housing is provided for on a regional basis through  
23 coordinated comprehensive plans.

24 Stat. Auth.: ORS 183 & ORS 197

25 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

26 Hist.: LCDC 1-1987, f. & ef. 2-18-87

27 **660-007-0060**

28 **Applicability**

29 (1) The new construction mix and minimum residential density standards of OAR 660-007-0030  
30 through 660-007-0037 shall be applicable at each periodic review. During each periodic review  
31 local government shall prepare findings regarding the cumulative effects of all plan and zone  
32 changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant

1 to OAR 660-007-0045) shall be a supporting document to the local jurisdiction's periodic review  
2 order.

3 (2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the  
4 local jurisdiction shall either:

5 (a) Demonstrate through findings that the mix and density standards in this Division are met by  
6 the amendment; or

7 (b) Make a commitment through the findings associated with the amendment that the jurisdiction  
8 will comply with provisions of this Division for mix or density through subsequent plan  
9 amendments.

10 Stat. Auth.: ORS 183 & ORS 197

11 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

12 Hist.: LCDC 1-1987, f. & ef. 2-18-87

13

**DIVISION 8**  
**INTERPRETATION OF GOAL 10 HOUSING**  
Draft Housekeeping Amendments November 1, 2011

1    **660-008-0000**

2    **Purpose**

3    (1) The purpose of this rule is to [as]ensure opportunity for the provision of adequate numbers of  
4    needed housing units, the efficient use of buildable land within urban growth boundaries, and to  
5    provide greater certainty in the development process so as to reduce housing costs. This [rule]  
6    **division** is intended to [define] **provide** standards for compliance with Goal 10 "Housing" and to  
7    implement ORS 197.303 through 197.307.

8    (2) OAR 660[~~-007-0000 et seq.~~], **division 7**, Metropolitan Housing, [are] **is** intended to  
9    complement and be consistent with OAR 660[~~-008-0000 et seq.~~], **division 8, and Statewide**  
10   **Planning** Goal 10 Housing (**OAR 660-015-0000(10)**). Should differences in interpretation  
11   between OAR 660[~~-008-0000 et seq.~~], **division 8** and **OAR 660, division 7** [~~660-007-0000 et~~  
12   ~~seq.~~] arise, the provisions of OAR 660[~~-007-0000 et seq.~~], **division 7** shall prevail for cities and  
13   counties within the Metro urban growth boundary.

14   Stat. Auth.: ORS 197

15   Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

16   Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 3-2004, f. & cert. ef. 5-7-04

17   **660-008-0005**

18   **Definitions**

19   For the purpose of this rule, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In  
20   addition, the following definitions shall apply:

21   (1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each  
22   dwelling unit occupies a separate lot.

23   (2) "Buildable Land" means residentially designated land within the urban growth boundary,  
24   including both vacant and developed land likely to be redeveloped, that is suitable, available and  
25   necessary for residential uses. Publicly owned land is generally not considered available for  
26   residential uses. Land is generally considered "suitable and available" unless it:

27   (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

28   (b) Is subject to natural resource protection measures determined under statewide Planning Goals  
29   5, 6, 15, 16, 17, or 18;

30   (c) Has slopes of 25 percent or greater;

31   (d) Is within the 100-year flood plain; or

32   (e) Cannot be provided with public facilities.

1 (3) “Detached Single Family Housing” means a housing unit that is free standing and separate  
2 from other housing units.

3 (4) “Housing Needs **Forecast**[Projection]” refers to a local determination, justified in the plan, of  
4 the mix of housing types, **amounts** and densities that will be:

5 (a) Commensurate with the financial capabilities of present and future area residents of all  
6 income levels during the planning period;

7 (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation  
8 and Development Commission administrative rules; and

9 (c) Consistent with Goal 14 requirements.

10 (5) “Multiple Family Housing” means attached housing where each dwelling unit is not located  
11 on a separate lot.

12 **(6) “Needed Housing” means housing types determined to meet the need shown for housing**  
13 **within an urban growth boundary at particular price ranges and rent levels, including at**  
14 **least the following housing types:**

15 **(a) Attached and detached single-family housing and multiple family housing for both**  
16 **owner and renter occupancy;**

17 **(b) Government assisted housing;**

18 **(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;**

19 **(d) Manufactured homes on individual lots planned and zoned for single-family residential**  
20 **use that are in addition to lots within designated manufactured dwelling subdivisions; and**

21 **(e) Housing for farmworkers.**

22 ([6]7) “Redevelopable Land” means land zoned for residential use on which development has  
23 already occurred but on which, due to present or expected market forces, there exists the strong  
24 likelihood that existing development will be converted to more intensive residential uses during  
25 the planning period.

26 Stat. Auth.: ORS 183, 196 & 197

27 Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

28 Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. &  
29 cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08

30 **660-008-0010**

31 **Allocation of Buildable Land**

1 The mix and density of needed housing is determined in the housing needs projection. Sufficient  
2 buildable land shall be designated on the comprehensive plan map to satisfy housing needs by  
3 type and density range as determined in the housing needs projection. The local buildable lands  
4 inventory must document the amount of buildable land in each residential plan designation.

5 Stat. Auth.: ORS 197

6 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

7 Hist.: LCDC 3-1982, f. & ef. 7-21-82

## 8 **660-008-0015**

### 9 **Clear and Objective Approval Standards Required**

10 ~~(1) [Local approval standards, special conditions and procedures regulating the development of~~  
11 ~~needed housing must be clear and objective, and must not have the effect, either of themselves or~~  
12 ~~cumulatively, of discouraging needed housing through unreasonable cost or delay.] **Except as**~~  
13 ~~**provided in section (2) of this rule, a local government may adopt and apply only clear and**~~  
14 ~~**objective standards, conditions and procedures regulating the development of needed**~~  
15 ~~**housing on buildable land. The standards, conditions and procedures may not have the**~~  
16 ~~**effect, either in themselves or cumulatively, of discouraging needed housing through**~~  
17 ~~**unreasonable cost or delay.**~~

18 **(2) In addition to an approval process for needed housing based on clear and objective**  
19 **standards, conditions and procedures as provided in section (1) of this rule, a local**  
20 **government may adopt and apply an optional alternative approval process for applications**  
21 **and permits for residential development based on approval criteria regulating, in whole or**  
22 **in part, appearance or aesthetics that are not clear and objective if:**

23 **(a) The applicant retains the option of proceeding under the approval process that meets**  
24 **the requirements of section (1);**

25 **(b) The approval criteria for the alternative approval process comply with applicable**  
26 **statewide land use planning goals and rules; and**

27 **(c) The approval criteria for the alternative approval process authorize a density at or**  
28 **above the density level authorized in the zone under the approval process provided in**  
29 **section (1) of this rule.**

30 **(3) Subject to section (1), this rule does not infringe on a local government's prerogative to:**  
31 **(a) Set approval standards under which a particular housing type is permitted outright;**  
32 **(b) Impose special conditions upon approval of a specific development proposal; or**  
33 **(c) Establish approval procedures.**

34 Stat. Auth.: ORS 197

35 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

36 Hist.: LCDC 3-1982, f. & ef. 7-21-82

1 **660-008-0020**

2 **Specific Plan Designations Required**

3 (1) Plan designations that allow or require residential uses shall be assigned to all buildable land.  
4 Such designations may allow nonresidential uses as well as residential uses. Such designations  
5 may be considered to be "residential plan designations" for the purposes of this division. The  
6 plan designations assigned to buildable land shall be specific so as to accommodate the varying  
7 housing types and densities identified in the local housing needs projection.

8 (2) A local government may defer the assignment of specific residential plan designations only  
9 when the following conditions have been met:

10 (a) Uncertainties concerning the funding, location and timing of public facilities have been  
11 identified in the local comprehensive plan;

12 (b) The decision not to assign specific residential plan designations is specifically related to  
13 identified public facilities constraints and is so justified in the plan; and

14 (c) The plan includes a time-specific strategy for resolution of identified public facilities  
15 uncertainties and a policy commitment to assign specific residential plan designations when  
16 identified public facilities uncertainties are resolved.

17 Stat. Auth.: ORS 197

18 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

19 Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 5-1999, f. & cert. ef. 7-2-99

20 **660-008-0025**

21 **The Rezoning Process**

22 A local government may defer rezoning of land within an urban growth boundary to maximum  
23 planned residential density provided that the process for future rezoning is reasonably justified. If  
24 such is the case, then:

25 (1) The plan shall contain a justification for the rezoning process and policies which explain how  
26 this process will be used to provide for needed housing.

27 (2) Standards and procedures governing the process for future rezoning shall be based on the  
28 rezoning justification and policy statement, and must be clear and objective **and meet other**  
29 **requirements in OAR 660-008-0015.**

30 Stat. Auth.: ORS 197

31 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

32 Hist.: LCDC 3-1982, f. & ef. 7-21-82

33 **660-008-0030**

34 **Regional Coordination**

1 (1) Each local government shall consider the needs of the relevant region in arriving at a fair  
2 allocation of housing types and densities.

3 (2) The local coordination body shall be responsible for ensuring that the regional housing  
4 impacts of restrictive or expansive local government programs are considered. The local  
5 coordination body shall ensure that needed housing is provided for on a regional basis through  
6 coordinated comprehensive plans.

7 Stat. Auth.: ORS 197

8 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

9 Hist.: LCDC 3-1982, f. & ef. 7-21-82

10 **660-008-0035**

11 **Substantive Standards for Taking a Goal 2, Part II Exception Pursuant to ORS 197.303(3)**

12 (1) A local government may satisfy the substantive standards for exceptions contained in Goal 2,  
13 Part II, upon a demonstration in the local housing needs [projection] **forecast**, supported by  
14 compelling reasons and facts, that:

15 (a) The needed housing type is being provided for elsewhere in the region in sufficient numbers  
16 to meet regional needs;

17 (b) Sufficient buildable land has been allocated within the local jurisdiction for other types of  
18 housing which can meet the need for shelter at the particular price ranges and rent levels that  
19 would have been met by the excluded housing type; and

20 (c) The decision to substitute other housing types for the excluded needed housing type furthers  
21 the policies and objectives of the local comprehensive plan, and has been coordinated with other  
22 affected units of government.

23 (2) The substantive standards listed in section (1) of this rule shall apply to the ORS 197.303(3)  
24 exceptions process in lieu of the substantive standards in Goal 2, Part II. The standards listed in  
25 section (1) of this rule shall not apply to the exceptions process authorized by OAR 660-007-  
26 0360.

27 Stat. Auth.: ORS 197

28 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

29 Hist.: LCDC 3-1982, f. & ef. 7-21-82

1 **660-008-0040**

2 **Restrictions on Housing Tenure**

3 Any local government that restricts the construction of either rental or owner occupied housing  
4 [~~on or after its first periodic review~~] shall include a determination of housing need according to  
5 tenure as part of the local housing needs [~~projection~~] **forecast**.

6 Stat. Auth.: ORS 197

7 Stats. Implemented: ORS 197.295 - ORS 197.314 & ORS 197.475 - ORS 197.490

8 Hist.: LCDC 3-1982, f. & ef. 7-21-82

9

**Division 27**  
**Urban and Rural Reserves in the Portland Metro Area**  
**Draft Housekeeping Amendments November 1, 2011**

1 **660-027-0070**

2 **Planning of Urban and Rural Reserves**

3 (1) Urban reserves are the highest priority for inclusion in the urban growth boundary when  
4 Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS  
5 197.298.

6 (2) In order to maintain opportunities for orderly and efficient development of urban uses and  
7 provision of urban services when urban reserves are added to the UGB, counties shall not  
8 amend comprehensive plan provisions or land use regulations for urban reserves designated  
9 under this division to allow uses that were not allowed, or smaller lots or parcels than were  
10 allowed, at the time of designation as urban reserves until the reserves are added to the UGB,  
11 except as specified in sections (4) through (6) of this rule.

12 (3) Counties that designate rural reserves under this division shall not amend comprehensive  
13 plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or  
14 parcels than were allowed, at the time of designation as rural reserves unless and until the  
15 reserves are re-designated, consistent with this division, as land other than rural reserves,  
16 except as specified in sections (4) through (6) of this rule.

17 (4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt  
18 or amend comprehensive plan provisions or land use regulations as they apply to lands in urban  
19 reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order  
20 to allow:

21 (a) Uses that the county inventories as significant Goal 5 resources, including programs to  
22 protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried  
23 cultural resources as provided under OAR chapter 660, division 16;

24 (b) Public park uses, subject to the adoption or amendment of a park master plan as provided in  
25 OAR chapter 660, division 34;

26 (c) Roads, highways and other transportation and public facilities and improvements, as  
27 provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural  
28 land) or OAR chapter 660, division 6 (forest lands);

29 (d) Other uses and land divisions that a county could have allowed under ORS 215.130(5) –  
30 (11) or as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or  
31 Goal 4 if the county had amended its comprehensive plan to conform to the applicable state  
32 statute or administrative rule prior to its designation of rural reserves;

33 (5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend  
34 its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve  
35 that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the

1 subject property as urban or rural reserves, in order to authorize an alteration or expansion of  
2 uses allowed on the land under the exception provided:

3 (a) The alteration or expansion would comply with the requirements described in ORS 215.296,  
4 applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

5 (b) The alteration or expansion conforms to applicable requirements for exceptions and  
6 amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;  
7 and

8 (c) The alteration or expansion would not expand the boundaries of the exception area unless  
9 such alteration or expansion is necessary in response to a failing on-site wastewater disposal  
10 system.

11 (6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may  
12 amend its comprehensive plan or land use regulations as they apply to lands in urban reserves  
13 or rural reserves or both in order to allow establishment of a new sewer system or the extension  
14 of a sewer system provided the exception meets the requirements under OAR 660-011-  
15 0060(9)(a).

16 **(7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take**  
17 **an exception to a statewide land use planning goal in order to allow the establishment of a**  
18 **transportation facility in an area designated as urban reserve.**

19 (7) Counties, cities and Metro may adopt and amend conceptual plans for the eventual  
20 urbanization of urban reserves designated under this division, including plans for eventual  
21 provision of public facilities and services, roads, highways and other transportation facilities,  
22 and may enter into urban service agreements among cities, counties and special districts serving  
23 or projected to serve the designated urban reserve area.

24 (8) Metro shall ensure that lands designated as urban reserves, considered alone or in  
25 conjunction with lands already inside the UGB, are ultimately planned to be developed in a  
26 manner that is consistent with the factors in OAR 660-027-0050.

27 Stat. Auth.: ORS 195.141 & 197.040

28 Stats. Implemented: ORS 195.137 - 195.145

29 Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2010, f. 4-29-10, cert. ef. 4-30-10; LCDD  
30 10-2010, f. & cert. ef. 10-20-10

31

**OR 660, DIVISION 28**  
**OREGON TRANSFER OF DEVELOPMENT RIGHTS PILOT PROGRAM**  
Housekeeping Amendments  
Draft December 7, 2011

1 **660-028-0010**

2 **Definitions**

3 For purposes of this division, the definitions contained in ORS 197.015 and the Statewide  
4 Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following  
5 definitions apply:

6  
7 (1) "Conservation easement" has the meaning provided in ORS 271.715.

8  
9 (2) "Local Government" means a city, county, metropolitan service district or state  
10 agency as defined in ORS 171.133.

11  
12 (3) "Receiving area" means a designated area of land to which a holder of development  
13 rights generated from a sending area may transfer the development rights, and in which  
14 additional residential **or other** uses or development, not otherwise allowed, are allowed by  
15 reason of the transfer.

16  
17 (4) "Sending area" means a designated area of resource land from which development  
18 rights generated from forgone development are transferable, for residential uses or development  
19 not otherwise allowed, to a receiving area.

20  
21 (5) "Transferable development right or TDR" means a severable residential development  
22 interest in real property that can be transferred from a lot, parcel or tract in a sending area to a  
23 lot, parcel or tract in a receiving area. This term has the same meaning as "transferable  
24 development credit" under Oregon Laws 2009, chapter 504, section 2(10)[~~except that, for~~  
25 ~~purposes of this division and the Oregon Transfer of Development Rights Pilot Program,~~  
26 ~~"severable development interests" are limited to residential uses, including ancillary uses~~  
27 ~~subordinate to residential uses].~~

28  
29 Stat. Auth.: ORS 197.040

30 Stats. Implemented: OL 2009, ch 636, § 6

31 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10

32  
33 **660-028-0020**

34 **Selection of Pilot Projects**

35 (1) This rule establishes the process for the commission to select up to three TDR pilot  
36 projects from among projects nominated by one or more local governments, **as provided in**  
37 **Oregon Laws 2009, chapter 636.**

38  
39 (2) A proposed TDR pilot project will be considered by the department and the  
40 commission if the local governments with land use jurisdiction over the proposed sending and  
41 receiving areas submit, on or before **September 1, 2012**[~~June 1, 2010~~]:

42  
43 (a) A completed application form;

1  
2 (b) A letter of interest along with the owner(s) of at least fifty percent of the land in the  
3 proposed sending area;

4  
5 (c) A concept plan consistent with the requirements of OAR 660-028-0030 that describes  
6 the proposed TDR pilot project and that includes:

7  
8 (A) Proposed amendments to the local government comprehensive plan and land use  
9 regulations necessary to implement the pilot project, a tentative schedule for adoption of the  
10 amendments, and a description of any other proposed actions intended to implement the  
11 proposed TDR pilot project;

12  
13 (B) Maps and other pertinent information describing the proposed sending areas and  
14 receiving areas;

15  
16 (C) Proposed transfer ratios as specified in OAR 660-028-0030(5) and other incentives  
17 for participation; and

18  
19 (D) A letter from a qualified entity as defined in ORS 271.715 expressing interest in  
20 holding and monitoring any conservation easement or similar restriction to ensure that  
21 development rights are transferred off of the proposed sending area.

22  
23 (3) The commission may extend the deadline in [sub]section (2) of this rule if it finds that  
24 additional time is necessary to ensure a satisfactory pool of applications for consideration under  
25 this program.

26  
27 (4) The department will review applications and submit its recommendations for review  
28 by the commission within 120 days of the deadline established under section (2) or (3) of this  
29 rule. The department will base its recommendations on its assessment of:

30  
31 (a) The beneficial qualities and attributes of the lands in the proposed sending area for  
32 forest management and the degree of risk that those qualities and attributes will be lost in the  
33 absence of the proposed project based on information in the proposal and other available  
34 information provided by the State Forestry Department and others;

35  
36 (b) The location, attributes, size and configuration of proposed sending and receiving  
37 areas, including the quality of the forest land intended to be conserved under the proposed TDR  
38 pilot project;

39  
40 (c) The demonstrated intent and ability of the local government and other participants to  
41 implement the proposed TDR pilot project within a reasonable timeframe; and

42  
43 (d) The likelihood that the proposed TDR pilot project will succeed and achieve the  
44 purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009,  
45 chapter 636.

46

1 (5) Upon review of the applications, the commission may select up to three qualified  
2 TDR pilot projects for inclusion in the Oregon TDR Pilot Program. In deciding which TDR pilot  
3 projects to select, the commission must consider the department's recommendations, the written  
4 applications and concept plans, and any other available and pertinent information it deems  
5 relevant to its decision.

6  
7 (6) When selecting a TDR pilot project the commission must find that the pilot project  
8 will comply with the requirements specified in OAR 660-028-0030 and other requirements of  
9 law, and that the pilot project is:

10  
11 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural  
12 economy of this state and achieve the purposes and requirements of the Oregon TDR Pilot  
13 Program expressed in Oregon Laws 2009, chapter 636;

14  
15 (b) Designed to avoid or minimize adverse effects on transportation, natural resources,  
16 public facilities and services, nearby urban areas and nearby farm and forest uses; and

17  
18 (c) Designed so that new development authorized in a receiving area as a result of the  
19 transferred development rights will not conflict with:

20  
21 (A) Significant Goal 5 resources, including natural, scenic, and historic resources, open  
22 spaces and other resources and resource areas inventoried in accordance with Goal 5 and OAR  
23 chapter 660, division 23 or OAR chapter 660, division 16; or

24  
25 (B) Areas identified as conservation opportunity areas in the Oregon Department of Fish  
26 and Wildlife's 2006 "Oregon Conservation Strategy."

27  
28 Stat. Auth.: ORS 197.040

29 Stats. Implemented: OL 2009, ch 636, § 6

30 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10

31  
32 **660-028-0030**

33 **Requirements for TDR Pilot Projects**

34 (1) At the time the local government(s) submits an application for a proposed TDR pilot  
35 project, the proposed sending area must be planned and zoned for forest use, may not exceed  
36 10,000 acres, and must contain four or fewer dwelling units per square mile.

37  
38 (2) At the time the local government(s) submits an application for a proposed TDR pilot  
39 project, the proposed receiving area or areas may not be located within 10 miles of the Portland  
40 metropolitan area urban growth boundary. The receiving area or areas must be only the  
41 appropriate size necessary to accommodate the anticipated development rights that will  
42 reasonably be generated and transferred from the sending area, with consideration of uses and  
43 density to be authorized under the proposed amendments to the local government comprehensive  
44 plan and land use regulations to implement the proposed TDR pilot project if it is selected.

45  
46 (3) In proposing a receiving area for a TDR pilot project, the local government must  
47 select the area based on consideration of the following priorities:

1 (a) First priority is lands within an urban growth boundary.<sup>[5]</sup>  
2

3 (b) Second priority is lands that are adjacent to an urban growth boundary and that are  
4 subject to an exception to Goal 3 or Goal 4.<sup>[5]</sup>  
5

6 (c) Third priority is lands that are  
7

8 (A) [w]Within a designated urban unincorporated community or rural community, [in an  
9 acknowledged comprehensive plan.] or  
10

11 (B) In a resort community or a rural service center, as defined in OAR 660-022-0010  
12 and designated in an acknowledged comprehensive plan, that contains at least 100 dwelling  
13 units at the time the pilot project is approved.  
14

15 (d) Fourth priority is exception areas approved under ORS 197.732 that are  
16 adjacent to an urban unincorporated community or rural community, provided the county  
17 agrees:  
18

19 (A)To include the receiving area within the boundaries of the community and  
20

21 (B) To ensure the community is provided with water and sewer service.  
22

23 (4) With respect to the priority of receiving areas described in subsection (3) of this rule,  
24 the commission may authorize a local government to select lower priority lands over higher  
25 priority lands for a receiving area in a TDR pilot project only if the local government has  
26 established, to the satisfaction of the commission, that selecting higher priority lands as the  
27 receiving area is not likely to result in the severance and transfer of a significant proportion of  
28 the development interests in the sending area within five years after the receiving area is  
29 established.  
30

31 (5) The minimum residential density of development allowed in receiving areas  
32 intended for residential development is:  
33

34 (a) For second priority lands described in subsection (3)(b) of this rule, at least five  
35 dwelling units per net acre or 125 percent of the average residential density allowed within  
36 the urban growth boundary when the pilot project is approved by the commission,  
37 whichever is greater.  
38

39 (b) For third priority and fourth priority lands described in subsection (3)(c) and (d)  
40 of this rule, at least 125 percent of the average residential density allowed on land planned  
41 for residential use within the unincorporated community when the pilot project is  
42 approved by the commission.  
43

44 (c) For third and fourth priority lands described in subsection (3)(c) and (d) of this  
45 rule that are within one jurisdiction but adjacent to another jurisdiction, the written  
46 consent of the adjacent jurisdiction is required for designation of the receiving area.  
47

1           ~~(6)~~~~(5)~~ The ratio of transferable development rights to severed residential development  
2 interests in a sending area must be calculated to protect lands planned and zoned for forest use  
3 and to create incentives for owners of land in the sending and receiving areas to participate in the  
4 TDR pilot project. The **maximum** ratio:

5           ~~(a)~~ ~~[m]~~ **May not exceed one transferable development right to one severed development**  
6 **interest if the receiving area is outside of ~~[an]~~ urban growth ~~[boundary]~~ **boundaries and outside****  
7 **unincorporated communities**, except that this maximum ratio does not apply to an exception  
8 area described in subsection (3)(b) of this rule provided the TDR pilot project concept plan  
9 ensures the inclusion of the receiving area within an urban growth boundary, either under  
10 applicable requirements of Goal 14 and other laws or the alternative provisions in section (11) of  
11 this rule. The concept plan may allow the transfer of development rights authorized in this  
12 subsection prior to the inclusion of the receiving area in an acknowledged urban growth  
13 boundary provided the amended comprehensive plan and land use regulations ensure that the  
14 transferred rights cannot be exercised at a higher ratio than specified in this rule until the  
15 receiving area is included in the urban growth boundary.

16  
17           ~~(b)~~ **May not exceed two transferable development rights to one severed development**  
18 **interest if the receiving area is in an unincorporated community; and**

19  
20           ~~(c)~~ **Must be consistent with plans for public facilities and services in the receiving**  
21 **area.**

22  
23           ~~(7)~~~~(6)~~ Within one year after the commission has approved a proposed concept plan, the  
24 local governments having land use jurisdiction over the affected sending and receiving areas  
25 must adopt overlay zone provisions and corresponding amendments to the comprehensive plan  
26 and land use regulations to implement the concept plan and to identify and authorize the  
27 additional residential development allowed through participation in the pilot project. The local  
28 governments must submit and the commission must review the comprehensive plan and land use  
29 regulation amendments in the manner of periodic review under ORS 197.628 to 197.650.  
30 Transfer of development interests may not occur prior to the commission's acknowledgment of  
31 the comprehensive plan and land use regulation amendments.

32  
33           ~~(8)~~~~(7)~~ The comprehensive plan and land use regulation amendments required by section  
34 ~~(7)~~~~(6)~~ of this rule must specify the type and density of the additional ~~[residential]~~ development  
35 to be transferred and allowed in a receiving area through participation in a TDR pilot project, in  
36 accordance with the concept plan approved by the commission and other applicable requirements  
37 of this rule.

38  
39           ~~(9)~~~~(8)~~ In addition to the requirements of section ~~(7)~~~~(6)~~ of this rule, before any  
40 development rights may be exercised in the receiving area, the participating owners of land in a  
41 sending area must~~[-~~:

42  
43           ~~(a)~~~~G~~ grant a conservation easement pursuant to ORS 271.715 to 271.795 or otherwise  
44 ensure on a permanent basis that additional residential development does not occur in the  
45 sending area~~[-~~; and

1           ~~(b) Allow reasonable public access to the property. The commission may agree to limits~~  
2 ~~on public access in the event the landowner demonstrates there are significant risks to forest~~  
3 ~~resources or management practices that would result without such limits-].~~  
4

5           **(10)[(9)]** If the receiving area for a TDR pilot project is **intended for residential**  
6 **development and is** within an urban growth boundary expansion area approved under section  
7 **(12)[(11)]** of this rule, or is in an exception area described in subsection (3)(b) and section  
8 **(11)[(10)]** of this rule, the amended comprehensive plan and land use regulations required by  
9 section **(7)[(6)]** of this rule must authorize a residential density of ~~[at least 10 dwelling units per~~  
10 ~~net acre for the receiving area.]~~;

11  
12           **(a) For second priority lands described in subsection (3)(b), at least five dwelling**  
13 **units per net acre or 125 percent of the average residential density allowed within the**  
14 **urban growth boundary when the pilot project is approved by the commission, whichever**  
15 **is greater.**

16  
17           **(b) For third priority and fourth priority lands described in subsections (3)(c) and**  
18 **(d), at least 125 percent of the average residential density allowed on land planned for**  
19 **residential use within the unincorporated community when the pilot project is approved by**  
20 **the commission.**

21  
22           **(11)[(10)]** Notwithstanding contrary provisions of statewide land use planning Goals 11  
23 and 14 and related rules, and notwithstanding ORS 215.700 to 215.780, if the commission  
24 approves a TDR pilot project, a local government may amend its comprehensive plan and land  
25 use regulations to allow transferred rights under an approved TDR pilot project to develop as  
26 urban level ~~[residential]~~ development, with urban levels of public facilities and services,  
27 including transportation, in a receiving area that consists of land adjacent to an urban growth  
28 boundary **or unincorporated community boundary** and subject to an exception to Goal 3 or  
29 Goal 4, consistent with subsection (3)(b), **(c) and (d)** and section **10[(9)]** of this rule. The  
30 concept plan described under OAR 660-028-0020(2)(b) must indicate whether a local  
31 government intends to change comprehensive plan and land use regulations to allow urban level  
32 of development and urban levels of public facilities and services in the receiving area and, **where**  
33 **intended for residential development**, must include an agreement to rezone the receiving area  
34 to authorize a residential density ~~[of at least 10 dwelling units per net acre]~~ as provided in section  
35 **(10)[(9)]** of this rule.

36  
37           **(12)[(11)]** Notwithstanding ORS 197.296 and 197.298, statewide land use planning Goal  
38 14 and its implementing rules (OAR chapter 660, division 24), a local government may amend  
39 its urban growth boundary **or unincorporated community boundary** to include land that is in a  
40 receiving area of a selected TDR pilot project and that is adjacent to an urban growth boundary  
41 and subject to an exception to Goal 3 ~~or~~**and** Goal 4. The proposed concept plan described  
42 under OAR 660-028-0020(2)(c) must indicate whether a local government intends to include  
43 adjacent exception lands in a receiving area approved as a pilot project under this program, and,  
44 **where intended for residential development**, must include an agreement to rezone the  
45 receiving area to authorize a residential density ~~[of at least 10 dwelling units per net acre]~~ as  
46 provided in section **(10)[(9)]** of this rule.  
47

1           (13)~~(12)~~ Local governments or other entities may establish a development rights bank  
2 or other system to facilitate the transfer of development rights.  
3

4           **(14) When development rights transfers authorized by the pilot project under**  
5 **sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights**  
6 **from the jurisdiction of one local government to another local government and cause a**  
7 **potential shift of ad valorem tax revenues between jurisdictions, the local governments may**  
8 **enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for**  
9 **sharing between the local governments of the prospective ad valorem tax revenues derived**  
10 **from new development in the receiving area.**  
11

12           **(15) When development rights transfers authorized by the pilot project under**  
13 **sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights**  
14 **from the jurisdiction of one local government to another local government and cause a**  
15 **potential shift of ad valorem tax revenues between jurisdictions, the local governments may**  
16 **enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for**  
17 **sharing between the local governments of the prospective ad valorem tax revenues derived**  
18 **from new development in the receiving area.**  
19

20  
21 Stat. Auth.: ORS 197.040  
22 Stats. Implemented: OL 2009, ch 636, § 6  
23 Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10  
24  
25

## DIVISION 33

### AGRICULTURAL LAND

1 **660-033-0010**

2 **Purpose**

3 The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3  
4 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and  
5 215.700 through 215.799.

6 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

7 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700

8 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 4-  
9 2011, f. & cert. ef. 3-16-11

10 **660-033-0020**

11 **Definitions**

12 For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and  
13 OAR chapter 660 shall apply. In addition, the following definitions shall apply:

14 (1)(a) "Agricultural Land" as defined in Goal 3 includes:

15 (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as  
16 predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

17 (B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a),  
18 taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and  
19 future availability of water for farm irrigation purposes; existing land use patterns; technological  
20 and energy inputs required; and accepted farming practices; and

21 (C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby  
22 agricultural lands.

23 (b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands  
24 in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even  
25 though this land may not be cropped or grazed;

26 (c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or  
27 land within acknowledged exception areas for Goal 3 or 4.

28 (2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

29 (A) Contribute in a substantial way to the area's existing agricultural economy; and

- 1 (B) Help maintain agricultural processors and established farm markets.
- 2 (b) When determining whether a farm is part of the commercial agricultural enterprise, not only  
3 what is produced, but how much and how it is marketed shall be considered. These are important  
4 factors because of the intent of Goal 3 to maintain the agricultural economy of the state.
- 5 (3) "Contiguous" means connected in such a manner as to form a single block of land.
- 6 (4) "Date of Creation and Existence". When a lot, parcel or tract is reconfigured pursuant to  
7 applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for  
8 the siting of a dwelling, the date of the reconfiguration is the date of creation or existence.  
9 Reconfigured means any change in the boundary of the lot, parcel or tract.
- 10 (5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the  
11 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
12 County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes  
13 and Klamath to the southern boundary of the State of Oregon.
- 14 (6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4 because  
15 the area is the subject of a site specific exception acknowledged pursuant to ORS 197.732 and  
16 OAR chapter 660, division 4.
- 17 (7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as  
18 defined in ORS 215.203.
- 19 (b) As used in the definition of "farm use" in ORS 215.203 and in this division:
- 20 (A) "Preparation" of products or by-products includes but is not limited to the cleaning,  
21 treatment, sorting, or packaging of the products or by-products; and
- 22 (B) "Products or by-products raised on such land" means that those products or by-products are  
23 raised on the farm operation where the preparation occurs or on other farm land provided the  
24 preparation is occurring only on land being used for the primary purpose of obtaining a profit in  
25 money from the farm use of the land.
- 26 (8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:
- 27 (A) Irrigated and classified prime, unique, Class I or II; or
- 28 (B) Not irrigated and classified prime, unique, Class I or II.
- 29 (b) In addition to that land described in subsection (a) of this section, high-value farmland, if  
30 outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by  
31 the most recent aerial photography of the Agricultural Stabilization and Conservation Service of  
32 the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials"  
33 means perennials grown for market or research purposes including, but not limited to, nursery

1 stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay,  
2 pasture or alfalfa;

3 (c) In addition to that land described in subsection (a) of this section, high-value farmland, if in  
4 the Willamette Valley, includes tracts composed predominantly of the following soils in Class III  
5 or IV or composed predominantly of a combination of the soils described in subsection (a) of this  
6 section and the following soils:

7 (A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton,  
8 Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hult, Jory,  
9 Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum,  
10 Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

11 (B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick  
12 surface) and Sifton (occasionally flooded);

13 (C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory,  
14 Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

15 (D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and  
16 Whiteson.

17 (d) In addition to that land described in subsection (a) of this section, high-value farmland, if  
18 west of the summit of the Coast Range and used in conjunction with a dairy operation on January  
19 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or  
20 composed predominantly of a combination of the soils described in subsection (a) of this section  
21 and the following soils:

22 (A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and  
23 Winema;

24 (B) Subclassification IIIw, specifically, Brenner and Chitwood;

25 (C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and  
26 Winema; and

27 (D) Subclassification IVw, specifically, Coquille.

28 (e) In addition to that land described in subsection (a) of this section, high-value farmland  
29 includes tracts located west of U.S. Highway 101 composed predominantly of the following soils  
30 in Class III or IV or composed predominantly of a combination of the soils described in  
31 subsection (a) of this section and the following soils:

32 (A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Crofland Silty Clay Loam;

33 (B) Subclassification IIIe, specifically, Klooqueh Silty Clay Loam and Winchuck Silt Loam; and

- 1 (C) Subclassification IVw, specifically, Huffling Silty Clay Loam.
- 2 (f) Lands designated as "marginal lands" according to the marginal lands provisions adopted  
3 before January 1, 1993, and according to the criteria in former ORS 215.247 (1991), are  
4 excepted from this definition of "high-value farmlands";
- 5 (9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows,  
6 ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has  
7 established rights to use water for irrigation, including such tracts that receive water for irrigation  
8 from a water or irrigation district or other provider. For the purposes of this division, an area or  
9 tract within a water or irrigation district that was once irrigated shall continue to be considered  
10 "irrigated" even if the irrigation water was removed or transferred to another tract.
- 11 (10) "Lot" shall have the meaning set forth in ORS 92.010.
- 12 (11) "Manufactured dwelling" and "manufactured home" shall have the meaning set forth in  
13 ORS 446.003(26).
- 14 (12) "Parcel" shall have the meaning set forth in ORS 215.010.
- 15 (13) "Tract" means one or more contiguous lots or parcels under the same ownership.
- 16 (14) "Western Oregon" means that portion of the state lying west of a line beginning at the  
17 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
18 County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes  
19 and Klamath to the southern boundary of the State of Oregon.
- 20 (15) "Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and  
21 Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the  
22 Coast Range.

23 [Publications: Publications referenced are available from the agency.]

24 Stat. Auth.: ORS 197.040

25 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283 &  
26 215.700 - 215.710

27 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-  
28 1994, f. & cert. ef. 6-3-94; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-  
29 1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004,  
30 f. & cert. ef. 4-30-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11

31 **660-033-0030**

32 **Identifying Agricultural Land**

- 1 (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as  
2 agricultural land.
- 3 (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel  
4 it need only look to the land within the lot or parcel being inventoried. However, whether land is  
5 "suitable for farm use" requires an inquiry into factors beyond the mere identification of  
6 scientific soil classifications. The factors are listed in the definition of agricultural land set forth  
7 at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing  
8 outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV  
9 soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes  
10 which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A  
11 determination that a lot or parcel is not agricultural land requires findings supported by  
12 substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).
- 13 (3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether  
14 it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the  
15 extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices  
16 to be undertaken on adjacent or nearby lands" outside the lot or parcel.
- 17 (4) When inventoried land satisfies the definition requirements of both agricultural land and  
18 forest land, an exception is not required to show why one resource designation is chosen over  
19 another. The plan need only document the factors that were used to select an agricultural, forest,  
20 agricultural/forest, or other appropriate designation.
- 21 (5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources  
22 Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land.  
23 However, the more detailed soils data shall be related to the NRCS land capability classification  
24 system.  
25
- 26 (b) If a person concludes that more detailed soils information than that contained in the Internet  
27 soil survey of soil data and information produced by the National Cooperative Soil Survey  
28 operated by the NRCS of the USDA as of January 2, 2012, would assist a county to make a  
29 better determination of whether land qualifies as agricultural land, the person must request that  
30 the department arrange for an assessment of the capability of the land by a professional soil  
31 classifier who is chosen by the person, using the process described in **OAR 660-033-**  
32 **0045**~~[section (9) of this rule]~~.
- 33
- 34 (c) This section and **OAR 660-033-0045**~~[section (9) of this rule]~~ apply to:  
35
- 36 (A) A change to the designation of land planned and zoned for exclusive farm use, forest use or  
37 mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is  
38 not agricultural land; and  
39
- 40 (B) Excepting land use decisions under section (7) of this rule, any other proposed land use  
41 decision in which more detailed data is used to demonstrate that land planned and zoned for

1 exclusive farm use does not meet the definition of agricultural land under OAR 660-033-  
2 0020(1)(a)(A).

3  
4 (d) This section and **OAR 660-033-0045**~~[section (9) of this rule]~~ implement Oregon Laws 2010,  
5 chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments  
6 certified by the department under section (9) of this rule may be considered by local  
7 governments in land use proceedings described in subsection (c) of this section. However, a local  
8 government may consider soils assessments that have been completed and submitted prior to  
9 October 1, 2011.

10  
11 (e) This section and **OAR 660-033-0045**~~[section (9) of this rule]~~ authorize a person to obtain  
12 additional information for use in the determination of whether land qualifies as agricultural land,  
13 but do not otherwise affect the process by which a county determines whether land qualifies as  
14 agricultural land as defined by Goal 3 and OAR 660-033-0020.

15  
16 (6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to  
17 designate lands as “marginal lands” according to those provisions and criteria in *former* ORS  
18 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750  
19 to lands zoned for exclusive farm use.

20  
21 (7)(a) For the purposes of approving a land use application on high-value farmland under ORS  
22 215.705, the county may change the soil class, soil rating or other soil designation of a specific  
23 lot or parcel if the property owner:

24  
25 (A) Submits a statement of agreement from the NRCS that the soil class, soil rating or other soil  
26 designation should be adjusted based on new information; or

27  
28 (B) Submits a report from a soils scientist whose credentials are acceptable to the Oregon  
29 Department of Agriculture that the soil class, soil rating or other soil designation should be  
30 changed; and

31  
32 (C) Submits a statement from the Oregon Department of Agriculture that the Director of  
33 Agriculture or the director’s designee has reviewed the report described in subsection (7)(B) of  
34 this section and finds the analysis in the report to be soundly and scientifically based.

35  
36 (b) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are  
37 those of the NRCS Internet soil survey for that class, rating or designation before November 4,  
38 1993, except for changes made pursuant to subsection (a) of this section.

39  
40 (8) For the purposes of approving a land use application on high-value farmland under OAR  
41 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other  
42 soil designations used in or made pursuant to this definition are those of the NRCS Internet  
43 survey as of January 2, 2012 for that class, rating or designation.

44  
45 ~~[(9) Soils Assessments by Professional Soil Classifiers.~~

1 ~~(a) A “professional soil classifier” means any professional in good standing with the Soil Science~~  
2 ~~Society of America (SSSA) who has been certified by the SSSA to have met the requirements~~  
3 ~~that existed as of October 1, 2011 for:~~

4  
5 ~~(A) Certified Professional Soil Classifier; or~~

6  
7 ~~(B) Certified Professional Soil Scientist, and who has been determined by an independent panel~~  
8 ~~of soils professionals as defined in subsection (h) of this section to have:~~

9  
10 ~~(i) Completed five semester hours in soil genesis, morphology and classification;~~

11  
12 ~~(ii) At least five years of field experience in soils classification and mapping that meets National~~  
13 ~~Cooperative Soil Survey standards, as maintained by the NRCS or three years of field~~  
14 ~~experience if the applicant holds an MS or PhD degree; and~~

15  
16 ~~(iii) Demonstrated competence in practicing soils classification and mapping without direct~~  
17 ~~supervision, based on published SSSA standards.~~

18  
19 ~~(b) The department will develop, update quarterly and post a list of professional soil classifiers~~  
20 ~~(henceforth “soils professionals”) who are qualified to perform soils assessments under this rule.~~

21  
22 ~~(A) Qualified soils professionals shall include those individuals who have either met the~~  
23 ~~requirements of paragraph (a)(A) of this section or the requirements of paragraph (a)(B) of this~~  
24 ~~section as determined by a majority vote of an independent panel of soils professionals.~~

25  
26 ~~(i) A person must apply to the department for initial inclusion on the list described in subsection~~  
27 ~~(b) of this section.~~

28  
29 ~~(ii) Qualified soils professionals must reapply to the department for listing on a biennial basis.~~

30  
31 ~~(B) A soils assessment auditing committee as defined in subsection (i) of this section will~~  
32 ~~periodically reevaluate qualifications of soils professionals by auditing soils assessments;~~  
33 ~~considering sample department reviews and field checks as described in subsection (f) of this~~  
34 ~~section and verifying continued good standing of soils professionals with the SSSA.~~

35  
36 ~~(i) When reviewing applications for relisting, the department will consider the recommendations~~  
37 ~~of the auditing committee and make final determinations as to the continued qualifications of~~  
38 ~~soils professionals to perform soils assessments under this rule.~~

39  
40 ~~(ii) The department will re-approve soils professionals for listing when audits, sample reviews~~  
41 ~~and field checks reveal a pattern of demonstrated competence in practicing soils classification~~  
42 ~~and mapping consistent with subparagraph (9)(a)(B)(iii) of this rule, and when the SSSA verifies~~  
43 ~~that the soils professional is in good standing with the SSSA.~~

44  
45 ~~(c) A person requesting a soils assessment shall:~~  
46

- 1 ~~(A) Choose a soils professional from the posted list described in subsection (b) of this section:~~  
2  
3 ~~(B) Privately contract for a soils assessment to be prepared; and~~  
4  
5 ~~(C) On completion of the soils assessment, submit to the department payment of a non-~~  
6 ~~refundable administrative fee to be established by the department as provided in statute to meet~~  
7 ~~department costs to administer this rule.~~  
8  
9 ~~(d) On completion of the soils assessment, the selected soils professional shall submit to the~~  
10 ~~department:~~  
11  
12 ~~(A) A Soils Assessment Submittal Form that includes the property owner's and soils~~  
13 ~~professional's authorized signatures and a liability waiver for the department; and~~  
14  
15 ~~(B) A soils assessment that is soundly and scientifically based and that meets reporting~~  
16 ~~requirements as established by the department.~~  
17  
18 ~~(e) The department shall deposit fees collected under this rule in the Soils Assessment Fund~~  
19 ~~established under Oregon Laws 2010, chapter 44, section 2.~~  
20  
21 ~~(f) The department shall review the soils assessment by:~~  
22  
23 ~~(A) Performing completeness checks for consistency with reporting requirements for all~~  
24 ~~submitted soils assessments; and~~  
25  
26 ~~(B) Performing sample reviews and field checks for some submitted soils assessments, as~~  
27 ~~follows:~~  
28  
29 ~~(i) The department shall arrange for a person who meets the qualifications of 'professional soil~~  
30 ~~classifier' in subsection (a) of this section to conduct systematic sample reviews and field checks~~  
31 ~~of soils assessments and make recommendations to the department as to whether they are~~  
32 ~~soundly and scientifically based.~~  
33  
34 ~~(ii) Within 30 days of the receipt of a soils assessment subject to review under this paragraph, the~~  
35 ~~department shall determine whether the soils assessment is soundly and scientifically based.~~  
36 ~~Where soils assessments are determined not to be soundly and scientifically based, the~~  
37 ~~department will provide an opportunity to the soils professional to correct any noted deficiencies.~~  
38 ~~Where noted deficiencies are not corrected to the satisfaction of the department, written~~  
39 ~~notification of the noted deficiencies will be provided to the soils professional, property owner~~  
40 ~~and person who requested the soils assessment.~~  
41  
42 ~~(g) A soils assessment produced under this rule is not a public record, as defined in ORS~~  
43 ~~192.410, unless the person requesting the assessment utilizes the assessment in a land use~~  
44 ~~proceeding. If the person decides to utilize a soils assessment produced under this section in a~~  
45 ~~land use proceeding, the person shall inform the department and consent to the release by the~~  
46 ~~department of certified copies of all assessments produced under this section regarding the land~~

1 to the local government conducting the land use proceeding. The department may not disclose a  
2 soils assessment prior to its utilization in a land use proceeding as described in this rule without  
3 written consent of the person paying the fee for the assessment and the property owner.  
4

5 (A) On receipt of written consent, the department shall release to the local government all soils  
6 assessments produced under this rule as well as any department notifications provided under  
7 subsection (f) of this section regarding land to which the land use proceeding applies.  
8

9 (h) As used in this rule, "Independent panel of soils professionals" means a committee of three  
10 professionals appointed by the department that, quarterly or as needed, reviews and makes  
11 determinations regarding the qualifications of individuals seeking to be listed as soils  
12 professionals to perform soils analyses.  
13

14 (A) Such panel shall consist of:

15 (i) A member of the SSSA;

16 (ii) The Oregon State Soil Scientist; and  
17

18 (iii) An Oregon college or university soils professional.  
19

20 (B) Panel members shall meet the qualifications of professional soil classifiers as defined in this  
21 rule or shall have experience mapping and teaching soil genesis, morphology and classification  
22 in a college or university setting.  
23

24 (C) The department's farm and forest lands specialist shall serve as staff to the panel.  
25

26 (D) In reviewing qualifications of applicants with respect to required semester hours of academic  
27 study under subparagraph (9)(a)(A)(i) of this rule, panel members may adjust for differences in  
28 academic calendars.  
29

30 (i) As used in this rule, "Soils assessment auditing committee" means a group of three  
31 professionals that, annually or as needed, reviews and makes recommendations to the department  
32 regarding the continuing qualifications of soils professionals to perform soils analyses under this  
33 rule.  
34

35 (A) Committee members shall be appointed by the independent panel of soils professionals and  
36 shall meet the qualifications of professional soil classifier as defined in subsection (9)(a) of this  
37 rule.  
38

39 (B) The department's farm and forest lands specialist shall serve as staff to the committee.  
40

41 (j) As used in this rule, "person" shall have the meaning set forth in ORS 197.015(18).]  
42  
43  
44

1 Stat. Auth.: ORS 197.040  
2 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 -  
3 215.710  
4 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD  
5 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11

6 **660-033-0045**

7 **Soils Assessments by Professional Soil Classifiers.**

8  
9 **(1) A “professional soil classifier” means any professional in good standing with the Soil**  
10 **Science Society of America (SSSA) who the SSSA has certified to have met its requirements**  
11 **that existed as of October 1, 2011 for:**

12  
13 **(a) Certified Professional Soil Classifier; or**

14  
15 **(b) Certified Professional Soil Scientist, and who has been determined by an independent**  
16 **panel of soils professionals as defined in section (8) of this rule to have:**

17  
18 **(A) Completed five semester hours in soil genesis, morphology and classification;**

19  
20 **(B) At least five years of field experience in soils classification and mapping that meets**  
21 **National Cooperative Soil Survey standards, as maintained by the NRCS, or three years of**  
22 **field experience if the applicant holds an MS or PhD degree; and**

23  
24 **(C) Demonstrated competence in practicing soils classification and mapping without direct**  
25 **supervision, based on published SSSA standards.**

26  
27 **(2) The department will develop, update quarterly and post a list of professional soil**  
28 **classifiers (henceforth ‘soils professionals’) who are qualified to perform soils assessments**  
29 **under this rule.**

30  
31 **(a) Qualified soils professionals shall include those individuals who have either met the**  
32 **requirements of subsection (1)(a) of this section or the requirements of subsection (1)(b) of**  
33 **this section as determined by a majority vote of an independent panel of soils professionals.**

34  
35 **(A) A person must apply to the department for initial inclusion on the list described in**  
36 **section (2) of this rule.**

37  
38 **(B) Qualified soils professionals must reapply to the department for listing on a biennial**  
39 **basis.**

40  
41 **(b) A soils assessment auditing committee as defined in section (9) of this rule will**  
42 **periodically reevaluate qualifications of soils professionals by auditing soils assessments,**  
43 **considering sample department reviews and field checks as described in section (6) of this**  
44 **rule and verifying continued good standing of soils professionals with the SSSA.**

1  
2 **(A) When reviewing applications for relisting, the department will consider the**  
3 **recommendations of the auditing committee and make final determinations as to the**  
4 **continued qualifications of soils professionals to perform soils assessments under this rule.**  
5

6 **(B) The department will re-approve soils professionals for listing when audits, sample**  
7 **reviews and field checks reveal a pattern of demonstrated competence in practicing soils**  
8 **classification and mapping consistent with paragraph (1)(b)(C) of this rule, and when the**  
9 **SSSA verifies that the soils professional is in good standing with the SSSA.**

10  
11 **(3) A person requesting a soils assessment shall:**  
12

13 **(a) Choose a soils professional from the posted list described in section (2) of this rule:**  
14

15 **(b) Privately contract for a soils assessment to be prepared; and**  
16

17 **(c) On completion of the soils assessment, submit to the department payment of the non-**  
18 **refundable administrative fee established by the department as provided in statute to meet**  
19 **department costs to administer this rule.**  
20

21 **(4) On completion of the soils assessment, the selected soils professional shall submit to the**  
22 **department:**  
23

24 **(a) A Soils Assessment Submittal Form that includes the property owner's and soils**  
25 **professional's authorized signatures and a liability waiver for the department; and**  
26

27 **(b) A soils assessment that is soundly and scientifically based and that meets reporting**  
28 **requirements as established by the department.**  
29

30 **(5) The department shall deposit fees collected under this rule in the Soils Assessment Fund**  
31 **established under Oregon Laws 2010, chapter 44, section 2.**  
32

33 **(6) The department shall review the soils assessment by:**  
34

35 **(a) Performing completeness checks for consistency with reporting requirements for all**  
36 **submitted soils assessments; and**  
37

38 **(b) Performing sample reviews and field checks for some submitted soils assessments, as**  
39 **follows:**  
40

41 **(A) The department shall arrange for a person who meets the qualifications of**  
42 **'professional soil classifier' in section (1) of this rule to conduct systematic sample reviews**  
43 **and field checks of soils assessments and make recommendations to the department as to**  
44 **whether they are soundly and scientifically based.**  
45

1 **(B) Within 30 days of the receipt of a soils assessment subject to review under this**  
2 **subsection, the department shall determine whether the soils assessment is soundly and**  
3 **scientifically based. Where soils assessments are determined not to be soundly and**  
4 **scientifically based, the department will provide an opportunity to the soils professional to**  
5 **correct any noted deficiencies. Where noted deficiencies are not corrected to the**  
6 **satisfaction of the department, the department will provide written notification of the noted**  
7 **deficiencies to the soils professional, property owner and person who requested the soils**  
8 **assessment.**

9  
10 **(7) A soils assessment produced under this rule is not a public record, as defined in ORS**  
11 **192.410, unless the person requesting the assessment utilizes the assessment in a land use**  
12 **proceeding. If the person decides to utilize a soils assessment produced under this section in**  
13 **a land use proceeding, the person shall inform the department and consent to the release by**  
14 **the department of certified copies of all assessments produced under this section regarding**  
15 **the land to the local government conducting the land use proceeding. The department may**  
16 **not disclose a soils assessment prior to its utilization in a land use proceeding as described**  
17 **in this rule without written consent of the person paying the fee for the assessment and the**  
18 **property owner.**

19  
20 **(a) On receipt of written consent, the department shall release to the local government all**  
21 **soils assessments produced under this rule as well as any department notifications provided**  
22 **under section (6) of this rule regarding land to which the land use proceeding applies.**

23  
24 **(8) As used in this rule, “Independent panel of soils professionals” means a committee of**  
25 **three professionals appointed by the department that, quarterly or as needed, reviews and**  
26 **makes determinations regarding the qualifications of individuals seeking to be listed as**  
27 **soils professionals to perform soils analyses.**

28  
29 **(a) Such panel shall consist of:**

30  
31 **(A) A member of the SSSA;**

32  
33 **(B) The Oregon State Soil Scientist; and**

34  
35 **(C) An Oregon college or university soils professional.**

36  
37 **(b) Panel members shall meet the qualifications of professional soil classifiers as defined in**  
38 **this rule or shall have experience mapping and teaching soil genesis, morphology and**  
39 **classification in a college or university setting.**

40  
41 **(c) The department’s farm and forest lands specialist shall serve as staff to the panel.**

42  
43 **(d) In reviewing qualifications of applicants with respect to required semester hours of**  
44 **academic study under paragraph (1)(b)(A) of this rule, panel members may adjust for**  
45 **differences in academic calendars.**

46

1 **(9) As used in this rule, “Soils assessment auditing committee” means a group of three**  
2 **professionals that, annually or as needed, reviews and makes recommendations to the**  
3 **department regarding the continuing qualifications of soils professionals to perform soils**  
4 **analyses under this rule.**

5  
6 **(a) Committee members shall be appointed by the independent panel of soils professionals**  
7 **and shall meet the qualifications of professional soil classifier as defined in section (1) of**  
8 **this rule.**

9  
10 **(b) The department’s farm and forest lands specialist shall serve as staff to the committee.**

11  
12 **(10) As used in this rule, “person” shall have the meaning set forth in ORS 197.015(18).**  
13

14 **660-033-0080**

15 **Designation of High-Value Farmland**

16 (1) The commission may review comprehensive plan and land use regulations related to the  
17 identification and designation of high-value farmland under procedures set forth in ORS 197.251  
18 or 197.628 through 197.644.

19 (2) Counties shall submit maps of high-value farmland described in OAR 660-033-0020(8) and  
20 such amendments of their plans and land use regulations as are necessary to implement the  
21 requirements of this division to the commission for review. Counties shall submit high-value  
22 farmland maps no later than the time of the first periodic review after December 31, 1994. The  
23 submittal shall include the notice required by OAR chapter 660, division 18 or 25, whichever  
24 applies.

25 Stat. Auth.: ORS 197.040, 197.230& 197.245

26 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 -  
27 215.710

28 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

29 **660-033-0090**

30 **Uses on High-Value and Non High-Value Farmland**

31 (1) Uses on land identified as high-value farmland and uses on land not identified as high-value  
32 farmland shall be limited to those specified in OAR 660-033-0120. Except as provided for in  
33 section (2) of this rule, counties shall apply zones that qualify as exclusive farm use zones under  
34 ORS chapter 215 to "agricultural land" as identified under OAR 660-033-0030, which includes  
35 land identified as high-value farmland and land not identified as high-value farmland.

36 (2) "Abandoned mill sites" may be zoned for industrial use as provided for by ORS 197.719.

1 Stat. Auth.: ORS 197.040 & 215  
2 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 197.719, 215.203, 215.243,  
3 215.283 & 215.700 - 215.710  
4 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2004, f. & cert. ef. 4-30-04

5 **660-033-0100**

6 **Minimum Parcel Size Requirements**

7 (1) Counties shall establish minimum sizes for new parcels for land zoned for exclusive farm  
8 use. For land not designated rangeland, the minimum parcel size shall be at least 80 acres. For  
9 land designated rangeland, the minimum parcel size shall be at least 160 acres.

10 (2)(a) A county may adopt a minimum parcel size lower than that described in section (1) of this  
11 rule by demonstrating to the Commission that it can do so while continuing to meet the  
12 requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are  
13 appropriate to maintain the existing commercial agricultural enterprise within an area. This  
14 standard is intended to prevent division of farmland into parcels that are too small to contribute  
15 to commercial agriculture in an area. This standard does not require that every new parcel  
16 created be as large as existing farms or ranches in an area. The minimum parcel size may allow  
17 creation of parcels smaller than the size of existing farms or ranches. However, the minimum  
18 parcel size shall be large enough to keep commercial farms and ranches in the area successful  
19 and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling  
20 facilities shall not be considered appropriate to maintain the existing commercial agricultural  
21 enterprise in any area where other types of agriculture occur.

22 (b)(3) To determine a minimum parcel size under this section~~rule~~, the county shall complete  
23 the following steps:

24 (A)(a) Identify different agricultural areas within the county, if any;

25 (B)(b) Determine the nature of the commercial agricultural enterprise in the county, or within  
26 areas of the county;

27 (C)(c) Identify the type(s) and size(s) of farms or ranches that comprise this commercial  
28 agricultural enterprise; and

29 (D)(d) Determine the minimum size for new parcels that will maintain this commercial  
30 agricultural enterprise.

31 (c)(4) To determine whether there are distinct agricultural areas in a county, the county should  
32 consider soils, topography and land forms, land use patterns, farm sizes, ranch sizes and field  
33 sizes, acreage devoted to principal crops, and grazing areas and accepted farming practices for  
34 the principal crops and types of livestock.

1 **(d)**~~(5)~~ To determine the nature of the existing commercial agricultural enterprise within an  
2 area, a county shall identify the following characteristics of farms and ranches in the area: Type  
3 and size of farms and ranches, size of fields or other parts, acreage devoted to principal crops, the  
4 relative contribution of the different types and sizes of farms and ranches to the county's gross  
5 farm sales, and their contribution to local processors and established farm markets. The  
6 following sources may assist in a county's analysis: The most recent Census of Agriculture and  
7 special tabulations from the census developed by Oregon State University, the Oregon  
8 Department of Agriculture, the United States Department of Agriculture's Agricultural  
9 Stabilization and Conservation Service (AACCS), Soil and Water Conservation Districts, the  
10 Oregon State University Extension Service and the county assessors office.

11 **(e)**~~(6)~~ To determine the minimum parcel size, a county shall evaluate available data and choose  
12 a size that maintains the existing commercial agricultural enterprise within the county or within  
13 each area of the county. In areas where the size of commercial farms and ranches is mixed, and  
14 the size of parcels needed to maintain those commercial farms and ranches varies, the county  
15 shall not choose a minimum parcel size that allows larger farms, lots or parcels to be divided to  
16 the size of the smallest farms, lots or parcels in the area. The activities of the larger as well as  
17 smaller holdings must be maintained.

18 **(3)**~~(7)~~ A minimum size for new parcels for farm use does not mean that dwellings may be  
19 approved automatically on parcels that satisfy the minimum parcel size for the area. New  
20 dwellings in conjunction with farm use shall satisfy the criteria for such dwellings set forth in  
21 OAR 660-033-0130(1).

22 **(4)**~~(8)~~ A minimum size for new parcels may be appropriate to maintain the existing agricultural  
23 enterprise in the area, but it may not be adequate to protect wildlife habitat pursuant to Goal 5.  
24 When farmland is located in areas of wildlife habitat, the provisions of Goal 5 continue to apply.

25 **(5)**~~(9)~~ A county may choose to establish a different minimum parcel size for distinct  
26 commercial agricultural areas of the county. The appropriate minimum lot or parcel size for each  
27 area shall reflect the type of commercial agriculture in the area, consistent with section[s-~~(3)~~-~~(6)~~]  
28 **(2)** of this rule.

29 **(6)**~~(10)~~ Counties may allow the creation of new parcels for nonfarm uses only as authorized by  
30 ORS 215.263. Such new parcels shall be the minimum size needed to accommodate the use in a  
31 manner consistent with other provisions of law except as required for the nonfarm dwellings  
32 authorized by section **(7)**~~(11)~~ of this rule.

33 **(7)**~~(11)~~(a) Counties may allow the creation of new lots or parcels for dwellings not in  
34 conjunction with farm use pursuant to ORS 215.263(4) or (5), whichever is applicable.

35 (b) In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or parcel is  
36 equal to or larger than the applicable minimum lot or parcel size, and:

37 (A) Is not stocked to the requirements under ORS 527.610 to 527.770;

- 1 (B) Is composed of at least 95 percent Class VI through VIII soils; and  
2 (C) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per  
3 year of wood fiber; and  
4 (D) The new lot or parcel will not be smaller than 20 acres.  
5 (c) No new lot or parcel may be created for this purpose until the county finds that the dwelling  
6 to be sited on the new lot or parcel has been approved under the requirements for dwellings not  
7 in conjunction with farm use in ORS 215.284(3) or (4), 215.236 and OAR 660-033-0130(4).

8 Stat. Auth.: ORS 197.040, 197.230 & 197.245  
9 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283,  
10 215.700 - 215.710 & 215.780  
11 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 1994, f. & cert. ef. 1994; LCDC 5-  
12 1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-  
13 24-00; LCDD 1-2002, f. & cert. ef. 5-22-02

14 **660-033-0120**

15 **Uses Authorized on Agricultural Lands**

16 The specific development and uses listed in the following table are allowed or may be allowed in  
17 the areas that qualify for the designation pursuant to this division. All uses are subject to the  
18 general provisions, special conditions, additional restrictions and exceptions set forth in this  
19 division. The abbreviations used within the schedule shall have the following meanings:

20 (1) A — Use is allowed. Authorization of some uses may require notice and the opportunity for a  
21 hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197.  
22 Minimum standards for uses in the table that include a numerical reference are specified in OAR  
23 660-033-0130. Counties may prescribe additional limitations and requirements to meet local  
24 concerns only to the extent authorized by law.

25 (2) R — Use may be allowed, after required review. The use requires notice and the opportunity  
26 for a hearing. Minimum standards for uses in the table that include a numerical reference are  
27 specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements  
28 to meet local concerns.

29 (3) \* — Use not allowed.

30 (4) # — Numerical references for specific uses shown on the chart refer to the corresponding  
31 section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this  
32 rule does not establish criteria for the use.

33 [ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of](#)  
34 [table\(s\).](#)]

1 Stat. Auth.: ORS 197.040 & 197.245  
2 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283,  
3 215.700 - 215.710 & 215.780  
4 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-  
5 1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert.  
6 ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-  
7 2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-  
8 15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD  
9 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 4-2011, f. & cert. ef.  
10 3-16-11

11 **660-033-0130**

12 **Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses**

13 The following standards apply to uses listed in OAR 660-033-0120 where the corresponding  
14 section number is shown on the chart for a specific use under consideration. Where no numerical  
15 reference is indicated on the chart, this division does not specify any minimum review or  
16 approval criteria. Counties may include procedures and conditions in addition to those listed in  
17 the chart as authorized by law:

18 (1) A dwelling on farmland may be considered customarily provided in conjunction with farm  
19 use if it meets the requirements of OAR 660-033-0135.

20 (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of  
21 structures with a total design capacity of greater than 100 people, shall be approved in  
22 connection with the use within three miles of an urban growth boundary, unless an exception is  
23 approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is  
24 described in a master plan adopted under the provisions of OAR chapter 660, division 34.

25 (b) Any enclosed structures or group of enclosed structures described in subsection (a) within a  
26 tract must be separated by at least one-half mile. For purposes of this section, "tract" means a  
27 tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

28 (c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded  
29 on the same tract, subject to other requirements of law, but enclosed existing structures within a  
30 farm use zone within three miles of an urban growth boundary may not be expanded beyond the  
31 requirements of this rule.

32 (3)(a) A dwelling may be approved on a pre-existing lot or parcel if:

33 (A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired  
34 and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

35 (i) Since prior to January 1, 1985; or

- 1 (ii) By devise or by intestate succession from a person who acquired and had owned  
2 continuously the lot or parcel since prior to January 1, 1985.
- 3 (B) The tract on which the dwelling will be sited does not include a dwelling;
- 4 (C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4,  
5 1993, no dwelling exists on another lot or parcel that was part of that tract;
- 6 (D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the  
7 acknowledged comprehensive plan and land use regulations and other provisions of law;
- 8 (E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as  
9 provided in subsections (3)(c) and (d) of this rule; and
- 10 (F) When the lot or parcel on which the dwelling will be sited lies within an area designated in  
11 an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is  
12 consistent with the limitations on density upon which the acknowledged comprehensive plan and  
13 land use regulations intended to protect the habitat are based.
- 14 (b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining  
15 portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;
- 16 (c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling  
17 may be sited on high-value farmland if:
- 18 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
- 19 (B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);
- 20 (C) A hearings officer of a county determines that:
- 21 (i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with  
22 other land, due to extraordinary circumstances inherent in the land or its physical setting that do  
23 not apply generally to other land in the vicinity. For the purposes of this section, this criterion  
24 asks whether the subject lot or parcel can be physically put to farm use without undue hardship  
25 or difficulty because of extraordinary circumstances inherent in the land or its physical setting.  
26 Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel  
27 cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent  
28 in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads,  
29 railroad or utility lines or other similar natural or physical barriers that by themselves or in  
30 combination separate the subject lot or parcel from adjacent agricultural land and prevent it from  
31 being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot  
32 or parcel that has been put to farm use despite the proximity of a natural barrier or since the  
33 placement of a physical barrier shall be presumed manageable for farm use;
- 34 (ii) The dwelling will comply with the provisions of ORS 215.296(1); and

- 1 (iii) The dwelling will not materially alter the stability of the overall land use pattern in the area  
2 by applying the standards set forth in paragraph (4)(a)(D) of this rule; and
- 3 (D) A local government shall provide notice of all applications for dwellings allowed under  
4 subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided  
5 in accordance with the governing body's land use regulations but shall be mailed at least 20  
6 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of  
7 this rule.
- 8 (d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family  
9 dwelling may be sited on high-value farmland if:
- 10 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
- 11 (B) The tract on which the dwelling will be sited is:
- 12 (i) Identified in OAR 660-033-0020(8)(c) or (d);
- 13 (ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and
- 14 (iii) Twenty-one acres or less in size; and
- 15 (C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21  
16 acres, and at least two such tracts had dwellings on January 1, 1993; or
- 17 (D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that  
18 are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-  
19 quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an  
20 urban growth boundary, but only if the subject tract abuts an urban growth boundary; or
- 21 (E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are  
22 smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter  
23 mile of the center of the subject tract and on the same side of the public road that provides access  
24 to the subject tract. The governing body of a county must interpret the center of the subject tract  
25 as the geographic center of the flaglot if the applicant makes a written request for that  
26 interpretation and that interpretation does not cause the center to be located outside the flaglot.  
27 Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject  
28 tract abuts an urban growth boundary:
- 29 (i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from  
30 the public road to the rest of the tract.
- 31 (ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines  
32 of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to  
33 the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

- 1 (e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in  
2 compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS  
3 chapter 215, a county may apply the standards for siting a dwelling under either section (3) of  
4 this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1,  
5 1993;
- 6 (f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling  
7 allowed under section (3) of this rule in any area where the county determines that approval of  
8 the dwelling would:
- 9 (A) Exceed the facilities and service capabilities of the area;
- 10 (B) Materially alter the stability of the overall land use pattern of the area; or
- 11 (C) Create conditions or circumstances that the county determines would be contrary to the  
12 purposes or intent of its acknowledged comprehensive plan or land use regulations.
- 13 (g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son,  
14 daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-  
15 law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent  
16 or grandchild of the owner or a business entity owned by any one or a combination of these  
17 family members;
- 18 (h) The county assessor shall be notified that the governing body intends to allow the dwelling.
- 19 (i) When a local government approves an application for a single-family dwelling under section  
20 (3) of this rule, the application may be transferred by a person who has qualified under section  
21 (3) of this rule to any other person after the effective date of the land use decision.
- 22 (4) A single-family residential dwelling not provided in conjunction with farm use requires  
23 approval of the governing body or its designate in any farmland area zoned for exclusive farm  
24 use:
- 25 (a) In the Willamette Valley, the use may be approved if:
- 26 (A) The dwelling or activities associated with the dwelling will not force a significant change in  
27 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
28 to farm or forest use;
- 29 (B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV  
30 through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II  
31 soils;
- 32 (C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

- 1 (D) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
2 In determining whether a proposed nonfarm dwelling will alter the stability of the land use  
3 pattern in the area, a county shall consider the cumulative impact of possible new nonfarm  
4 dwellings and parcels on other lots or parcels in the area similarly situated. To address this  
5 standard, the county shall:
- 6 (i) Identify a study area for the cumulative impacts analysis. The study area shall include at least  
7 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural  
8 area based on topography, soil types, land use pattern, or the type of farm or ranch operations or  
9 practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the  
10 study area, its boundaries, the location of the subject parcel within this area, why the selected  
11 area is representative of the land use pattern surrounding the subject parcel and is adequate to  
12 conduct the analysis required by this standard. Lands zoned for rural residential or other urban or  
13 nonresource uses shall not be included in the study area;
- 14 (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops,  
15 pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm,  
16 hardship, etc.), and the dwelling development trends since 1993. Determine the potential number  
17 of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a) and section  
18 (4) of this rule, including identification of predominant soil classifications, the parcels created  
19 prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to  
20 create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the  
21 existing land use pattern of the study area including the distribution and arrangement of existing  
22 uses and the land use pattern that could result from approval of the possible nonfarm dwellings  
23 under this subparagraph; and
- 24 (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with  
25 existing nonfarm dwellings will materially alter the stability of the land use pattern in the area.  
26 The stability of the land use pattern will be materially altered if the cumulative effect of existing  
27 and potential nonfarm dwellings will make it more difficult for the existing types of farms in the  
28 area to continue operation due to diminished opportunities to expand, purchase or lease  
29 farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a  
30 manner that will destabilize the overall character of the study area; and
- 31 (E) The dwelling complies with such other conditions as the governing body or its designate  
32 considers necessary.
- 33 (b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11), the use  
34 may be approved if:
- 35 (A) The dwelling or activities associated with the dwelling will not force a significant change in  
36 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
37 to farm or forest use;
- 38 (B) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
39 In determining whether a proposed nonfarm dwelling will alter the stability of the land use

1 pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other  
2 lots or parcels in the area similarly situated and whether creation of the parcel will lead to  
3 creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the  
4 standards set forth in paragraph (4)(a)(D) of this rule; and

5 (C) The dwelling complies with such other conditions as the governing body or its designate  
6 considers necessary.

7 (c) In counties located outside the Willamette Valley require findings that:

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

11 (B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is  
12 generally unsuitable land for the production of farm crops and livestock or merchantable tree  
13 species, considering the terrain, adverse soil or land conditions, drainage and flooding,  
14 vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be  
15 considered unsuitable solely because of size or location if it can reasonably be put to farm or  
16 forest use in conjunction with other land; and

17 (ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is  
18 too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be  
19 sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or  
20 parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a  
21 lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of  
22 Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just  
23 because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it  
24 is not suitable for another farm use; or

25 (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally  
26 unsuitable land for the production of merchantable tree species recognized by the Forest  
27 Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding,  
28 vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is  
29 not "generally unsuitable" simply because it is too small to be managed for forest production  
30 profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or  
31 otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or  
32 parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed  
33 predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in  
34 Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of  
35 wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible  
36 and not seriously interfere with forest uses on surrounding land it must not force a significant  
37 change in forest practices or significantly increase the cost of those practices on the surrounding  
38 land;

1 (C) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
2 In determining whether a proposed nonfarm dwelling will alter the stability of the land use  
3 pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other  
4 lots or parcels in the area similarly situated by applying the standards set forth in paragraph  
5 (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm  
6 dwelling, a county shall consider whether creation of the parcel will lead to creation of other  
7 nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in  
8 paragraph (4)(a)(D) of this rule; and

9 (D) The dwelling complies with such other conditions as the governing body or its designate  
10 considers necessary.

11 (d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this  
12 rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of  
13 section (4) of this rule;

14 (e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the  
15 standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned  
16 exclusive farm use that are not designated marginal or high-value farmland.

17 (5) Approval requires review by the governing body or its designate under ORS 215.296. Uses  
18 may be approved only where such uses:

19 (a) Will not force a significant change in accepted farm or forest practices on surrounding lands  
20 devoted to farm or forest use; and

21 (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding  
22 lands devoted to farm or forest use.

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

30 (7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft  
31 emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests,  
32 and by commercial aviation activities in connection with agricultural operations. No aircraft may  
33 be based on a personal-use airport other than those owned or controlled by the owner of the  
34 airstrip. Exceptions to the activities permitted under this definition may be granted through  
35 waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport  
36 lawfully existing as of September 13, 1975, shall continue to be permitted subject to any  
37 applicable rules of the Oregon Department of Aviation.

- 1 (8)(a) A lawfully established dwelling is a single-family dwelling which:
- 2 (A) Has intact exterior walls and roof structure;
- 3 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a  
4 sanitary waste disposal system;
- 5 (C) Has interior wiring for interior lights; and
- 6 (D) Has a heating system.
- 7 (b) In the case of replacement, the dwelling to be replaced shall be:
- 8 (i) Removed, demolished, or converted to an allowable nonresidential use within three months of  
9 the completion of the replacement dwelling. A replacement dwelling may be sited on any part of  
10 the same lot or parcel. A dwelling established under this section shall comply with all applicable  
11 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
12 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not  
13 zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record  
14 in the deed records for the county where the property is located a deed restriction prohibiting the  
15 siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be  
16 irrevocable unless a statement of release is placed in the deed records for the county. The release  
17 shall be signed by the county or its designee and state that the provisions of this section  
18 regarding replacement dwellings have changed to allow the siting of another dwelling. The  
19 county planning director or the director's designee shall maintain a record of the lots and parcels  
20 that do not qualify for the siting of a new dwelling under the provisions of this section, including  
21 a copy of the deed restrictions and release statements filed under this section; and
- 22 (ii) For which the applicant has requested a deferred replacement permit, is removed or  
23 demolished within three months after the deferred replacement permit is issued. A deferred  
24 replacement permit allows construction of the replacement dwelling at any time. If, however, the  
25 established dwelling is not removed or demolished within three months after the deferred  
26 replacement permit is issued, the permit becomes void. The replacement dwelling must comply  
27 with applicable building codes, plumbing codes, sanitation codes and other requirements relating  
28 to health and safety or to siting at the time of construction. A deferred replacement permit may  
29 not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the  
30 applicant.
- 31 (c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may  
32 only be replaced by a manufactured dwelling.
- 33 (9)(a) To qualify, a dwelling shall be occupied by relatives whose assistance in the management  
34 and farm use of the existing commercial farming operation is required by the farm operator. The  
35 farm operator shall continue to play the predominant role in the management and farm use of the  
36 farm. A farm operator is a person who operates a farm, doing the work and making the day-to-  
37 day decisions about such things as planting, harvesting, feeding and marketing.

1 (b) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under  
2 ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains  
3 construction financing or other financing secured by the dwelling and the secured party  
4 forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in  
5 ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new  
6 parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

7 (c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures  
8 that are exempt from partition under ORS 92.010(9)(a).

9 (10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an  
10 existing building allowed under this provision is a temporary use for the term of the hardship  
11 suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured  
12 dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if  
13 that disposal system is adequate to accommodate the additional dwelling. If the manufactured  
14 home will use a public sanitary sewer system, such condition will not be required. Governing  
15 bodies shall review the permit authorizing such manufactured homes every two years. Within  
16 three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall  
17 be removed or demolished or, in the case of an existing building, the building shall be removed,  
18 demolished or returned to an allowed nonresidential use. A temporary residence approved under  
19 this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p).  
20 Department of Environmental Quality review and removal requirements also apply. As used in  
21 this section "hardship" means a medical hardship or hardship for the care of an aged or infirm  
22 person or persons.

23 (11) Subject to the issuance of a license, permit or other approval by the Department of  
24 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in  
25 compliance with rules adopted under ORS 468B.095, and with the requirements of ORS  
26 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural  
27 process or industrial process water or biosolids for agricultural, horticultural or silvicultural  
28 production, or for irrigation in connection with a use allowed in an exclusive farm use zones  
29 under this division is allowed.

30 (12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed  
31 on the National Register of Historic Places.

32 (13) Roads, highways and other transportation facilities, and improvements not otherwise  
33 allowed under this rule may be established, subject to the adoption of the governing body or its  
34 designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with  
35 which the facility or improvement does not comply. In addition, transportation uses and  
36 improvements may be authorized under conditions and standards as set forth in OAR 660-012-  
37 0035 and 660-012-0065.

38 (14) Home occupations and the parking of vehicles may be authorized. Home occupations shall  
39 be operated substantially in the dwelling or other buildings normally associated with uses  
40 permitted in the zone in which the property is located. A home occupation shall be operated by a

1 resident or employee of a resident of the property on which the business is located, and shall  
2 employ on the site no more than five full-time or part-time persons.

3 (15) New uses that batch and blend mineral and aggregate into asphalt cement may not be  
4 authorized within two miles of a planted vineyard. Planted vineyard means one or more  
5 vineyards totaling 40 acres or more that are planted as of the date the application for batching  
6 and blending is filed.

7 (16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive  
8 farm use zone in order to provide the service. To demonstrate that a utility facility is necessary,  
9 an applicant must show that reasonable alternatives have been considered and that the facility  
10 must be sited in an exclusive farm use zone due to one or more of the following factors:

11 (A) Technical and engineering feasibility;

12 (B) The proposed facility is locationally dependent. A utility facility is locationally dependent if  
13 it must cross land in one or more areas zoned for exclusive farm use in order to achieve a  
14 reasonably direct route or to meet unique geographical needs that cannot be satisfied on other  
15 lands;

16 (C) Lack of available urban and nonresource lands;

17 (D) Availability of existing rights of way;

18 (E) Public health and safety; and

19 (F) Other requirements of state and federal agencies.

20 (b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be  
21 considered, but cost alone may not be the only consideration in determining that a utility facility  
22 is necessary for public service. Land costs shall not be included when considering alternative  
23 locations for substantially similar utility facilities and the siting of utility facilities that are not  
24 substantially similar.

25 (c) The owner of a utility facility approved under this section shall be responsible for restoring,  
26 as nearly as possible, to its former condition any agricultural land and associated improvements  
27 that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of  
28 the facility. Nothing in this subsection shall prevent the owner of the utility facility from  
29 requiring a bond or other security from a contractor or otherwise imposing on a contractor the  
30 responsibility for restoration.

31 (d) The governing body of the county or its designee shall impose clear and objective conditions  
32 on an application for utility facility siting to mitigate and minimize the impacts of the proposed  
33 facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change  
34 in accepted farm practices or a significant increase in the cost of farm practices on surrounding  
35 farmlands.

1 (e) Utility facilities necessary for public service may include on-site and off-site facilities for  
2 temporary workforce housing for workers constructing a utility facility. Such facilities must be  
3 removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule  
4 when project construction is complete. Off-site facilities allowed under this paragraph are subject  
5 to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial  
6 approval may be considered through a minor amendment request. A minor amendment request  
7 shall have no effect on the original approval.

8 (f) In addition to the provisions of subsections (16)(a) to (d) of this rule, the establishment or  
9 extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use  
10 zone shall be subject to the provisions of OAR 660-011-0060.

11 (g) The provisions of subsections (16)(a) to (d) of this rule do not apply to interstate natural gas  
12 pipelines and associated facilities authorized by and subject to regulation by the Federal Energy  
13 Regulatory Commission.

14 (17) A power generation facility may include on-site and off-site facilities for temporary  
15 workforce housing for workers constructing a power generation facility. Such facilities must be  
16 removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule  
17 when project construction is complete. Temporary workforce housing facilities not included in  
18 the initial approval may be considered through a minor amendment request. A minor amendment  
19 request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original  
20 approval. Permanent features of a power generation facility shall not preclude more than 12 acres  
21 from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS  
22 197.732 and OAR chapter 660, division 4.

23 (18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or  
24 expanded on the same tract, subject to other requirements of law. An existing golf course may be  
25 expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be  
26 expanded to contain more than 36 total holes.

27 (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or  
28 replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or  
29 regulation, a use formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect  
30 before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be  
31 expanded subject to:

32 (A) The requirements of subsection (c) of this section; and

33 (B) Conditional approval of the county in the manner provided in ORS 215.296.

34 (c) A nonconforming use described in subsection (b) of this section may be expanded under this  
35 section if:

36 (A) The use was established on or before January 1, 2009; and

1 (B) The expansion occurs on:

2 (i) The tax lot on which the use was established on or before January 1, 2009; or

3 (ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and  
4 that was owned by the applicant on January 1, 2009.

5 (19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not  
6 be allowed within three miles of an urban growth boundary unless an exception is approved  
7 pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to  
8 overnight temporary use for vacation, recreational or emergency purposes, but not for residential  
9 purposes and is established on a site or is contiguous to lands with a park or other outdoor natural  
10 amenity that is accessible for recreational use by the occupants of the campground. A  
11 campground shall be designed and integrated into the rural agricultural and forest environment in  
12 a manner that protects the natural amenities of the site and provides buffers of existing native  
13 trees and vegetation or other natural features between campsites. Campgrounds authorized by  
14 this rule shall not include intensively developed recreational uses such as swimming pools, tennis  
15 courts, retail stores or gas stations. Overnight temporary use in the same campground by a  
16 camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month  
17 period.

18 (b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate  
19 sewer, water or electric service hook-ups shall not be provided to individual camp sites except  
20 that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

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

30 (20) "Golf Course" means an area of land with highly maintained natural turf laid out for the  
31 game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green,  
32 and often one or more natural or artificial hazards. A "golf course" for purposes of ORS  
33 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or  
34 a combination nine and 18 hole regulation golf course consistent with the following:

35 (a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres  
36 of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

37 (b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres  
38 of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

1 (c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf  
2 course" means a golf course or golf course-like development that does not meet the definition of  
3 golf course in this rule, including but not limited to executive golf courses, Par three golf  
4 courses, pitch and putt golf courses, miniature golf courses and driving ranges;

5 (d) Counties shall limit accessory uses provided as part of a golf course consistent with the  
6 following standards:

7 (A) An accessory use to a golf course is a facility or improvement that is incidental to the  
8 operation of the golf course and is either necessary for the operation and maintenance of the golf  
9 course or that provides goods or services customarily provided to golfers at a golf course. An  
10 accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a  
11 golf course may include: Parking; maintenance buildings; cart storage and repair; practice range  
12 or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro  
13 shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf  
14 tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to  
15 golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations  
16 oriented to the non-golfing public; or housing;

17 (B) Accessory uses shall be limited in size and orientation on the site to serve the needs of  
18 persons and their guests who patronize the golf course to golf. An accessory use that provides  
19 commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate  
20 buildings; and

21 (C) Accessory uses may include one or more food and beverage service facilities in addition to  
22 food and beverage service facilities located in a clubhouse. Food and beverage service facilities  
23 must be part of and incidental to the operation of the golf course and must be limited in size and  
24 orientation on the site to serve only the needs of persons who patronize the golf course and their  
25 guests. Accessory food and beverage service facilities shall not be designed for or include  
26 structures for banquets, public gatherings or public entertainment.

27 (21) "Living History Museum" means a facility designed to depict and interpret everyday life  
28 and culture of some specific historic period using authentic buildings, tools, equipment and  
29 people to simulate past activities and events. As used in this rule, a living history museum shall  
30 be related to resource based activities and shall be owned and operated by a governmental  
31 agency or a local historical society. A living history museum may include limited commercial  
32 activities and facilities that are directly related to the use and enjoyment of the museum and  
33 located within authentic buildings of the depicted historic period or the museum administration  
34 building, if areas other than an exclusive farm use zone cannot accommodate the museum and  
35 related activities or if the museum administration buildings and parking lot are located within  
36 one quarter mile of an urban growth boundary. "Local historical society" means the local  
37 historical society, recognized as such by the county governing body and organized under ORS  
38 chapter 65.

39 (22) A power generation facility may include on-site and off-site facilities for temporary  
40 workforce housing for workers constructing a power generation facility. Such facilities must be

1 removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule  
2 when project construction is complete. Temporary workforce housing facilities not included in  
3 the initial approval may be considered through a minor amendment request. A minor amendment  
4 request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original  
5 approval. Permanent features of a power generation facility shall not preclude more than 20 acres  
6 from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS  
7 197.732 and OAR chapter 660, division 4.

8 (23) A farm stand may be approved if:

9 (a) The structures are designed and used for sale of farm crops and livestock grown on the farm  
10 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  
12 farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees  
13 from promotional activity do not make up more than 25 percent of the total annual sales of the  
14 farm stand; and

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

18 (c) As used in this section, "farm crops or livestock" includes both fresh and processed farm  
19 crops and livestock grown on the farm operation, or grown on the farm operation and other farm  
20 operations in the local agricultural area. As used in this subsection, "processed crops and  
21 livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and  
22 livestock that have been processed and converted into another product but not prepared food  
23 items.

24 (d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in  
25 Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand  
26 is located.

27 (24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be  
28 considered customarily provided in conjunction with farm use if:

29 (a) Each accessory farm dwelling meets all the following requirements:

30 (A) The accessory farm dwelling will be occupied by a person or persons who will be principally  
31 engaged in the farm use of the land and whose seasonal or year-round assistance in the  
32 management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or  
33 will be required by the farm operator;

34 (B) The accessory farm dwelling will be located:

35 (i) On the same lot or parcel as the primary farm dwelling; or

- 1 (ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory  
2 farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and  
3 parcels in the tract; or
- 4 (iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory  
5 farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed  
6 restriction shall be filed with the county clerk and require the manufactured dwelling to be  
7 removed when the lot or parcel is conveyed to another party. The manufactured dwelling may  
8 remain if it is reapproved under these rules; or
- 9 (iv) On any lot or parcel [~~on which the primary farm dwelling is not located~~], when the accessory  
10 farm dwelling is limited to only attached multi- unit residential structures allowed by the  
11 applicable state building code or similar types of farm [~~labor~~]worker housing as that existing  
12 [~~farm labor housing~~] on [~~the~~] farm or ranch operations registered with the Department of  
13 Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS  
14 658.750. A county shall require all accessory farm dwellings approved under this subparagraph  
15 to be removed, demolished or converted to a nonresidential use when farmworker housing is no  
16 longer required. **“Farmworker housing” shall have the meaning set forth in ORS 215.278**  
17 **and not the meaning in ORS 315.163**; or
- 18 (v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory  
19 farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size  
20 under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in  
21 OAR 660-033-0135(3) or (4), whichever is applicable; and
- 22 (C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm  
23 operator that is vacant or currently occupied by persons not working on the subject farm or ranch  
24 and that could reasonably be used as an accessory farm dwelling.
- 25 (b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to  
26 which the proposed dwelling would be accessory, meets one of the following:
- 27 (A) On land not identified as high-value farmland, the primary farm dwelling is located on a  
28 farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and  
29 produced in the last two years, **or three of the last five years** or **an average of** three of the last  
30 five years the lower of the following:
- 31 (i) At least \$40,000 in gross annual income from the sale of farm products. In determining the  
32 gross income, the cost of purchased livestock shall be deducted from the total gross income  
33 attributed to the tract; or
- 34 (ii) Gross annual income of at least the midpoint of the median income range of gross annual  
35 sales for farms in the county with the gross annual sales of \$10,000 or more according to the  
36 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased  
37 livestock shall be deducted from the total gross income attributed to the tract; or

- 1 (B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or  
2 ranch operation that is currently employed for farm use, as defined in ORS 215.203, and  
3 produced at least \$80,000 in gross annual income from the sale of farm products in the last two  
4 years, **or three of the last five years** or **an average of** three of the last five years. In determining  
5 the gross income, the cost of purchased livestock shall be deducted from the total gross income  
6 attributed to the tract; or
- 7 (C) On land not identified as high-value farmland in counties that have adopted marginal lands  
8 provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm  
9 dwelling is located on a farm or ranch operation that meets the standards and requirements of  
10 ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or
- 11 (D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and
- 12 (i) The building permits, if required, have been issued and construction has begun or been  
13 completed for the buildings and animal waste facilities required for a commercial dairy farm;
- 14 (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding  
15 operation" under ORS 468B.050 and 468B.200 to 468B.230; and
- 16 (iii) A Producer License for the sale of dairy products under ORS 621.072.
- 17 (c) The governing body of a county shall not approve any proposed division of a lot or parcel for  
18 an accessory farm dwelling approved pursuant to this section. If it is determined that an  
19 accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be  
20 created consistent with the minimum parcel size requirements in OAR 660-033-0100.
- 21 (d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy  
22 the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4)  
23 of this rule.
- 24 (e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of  
25 residential structures allowed by the applicable state building code.
- 26 (25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991  
27 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within  
28 one-half mile of a community college. An "armed forces reserve center" includes an armory or  
29 National Guard support facility.
- 30 (26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a  
31 permanent foundation unless the building or facility preexisted the use approved under this  
32 section. The site shall not include an aggregate surface or hard surface area unless the surface  
33 preexisted the use approved under this section. An owner of property used for the purpose  
34 authorized in this section may charge a person operating the use on the property rent for the  
35 property. An operator may charge users of the property a fee that does not exceed the operator's  
36 cost to maintain the property, buildings and facilities. As used in this section, "model aircraft"

1 means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or  
2 intended to be used for flight and is controlled by radio, lines or design by a person on the  
3 ground.

4 (27) Insect species shall not include any species under quarantine by the Oregon Department of  
5 Agriculture or the United States Department of Agriculture. The county shall provide notice of  
6 all applications under this section to the Oregon Department of Agriculture. Notice shall be  
7 provided in accordance with the county's land use regulations but shall be mailed at least 20  
8 calendar days prior to any administrative decision or initial public hearing on the application.

9 (28) The farm on which the processing facility is located must provide at least one-quarter of the  
10 farm crops processed at the facility. The building established for the processing facility shall not  
11 exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation,  
12 storage or other farm use or devote more than 10,000 square feet to the processing activities  
13 within another building supporting farm use. A processing facility shall comply with all  
14 applicable siting standards but the standards shall not be applied in a manner that prohibits the  
15 siting of the processing facility. A county shall not approve any division of a lot or parcel that  
16 separates a processing facility from the farm operation on which it is located.

17 (29)(a) Composting operations and facilities allowed on high-value farmland are limited to those  
18 that are accepted farming practices in conjunction with and auxiliary to farm use on the subject  
19 tract, and that meet the performance and permitting requirements of the Department of  
20 Environmental Quality [~~DEQ~~] under OAR 340-093-0050 and 340-096-0060. Excess compost  
21 may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of  
22 at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the  
23 composting operation shall only be those required for the operation of the subject facility.

24 (b) Composting operations and facilities allowed on land not defined as high-value farmland  
25 shall meet the performance and permitting requirements of the Department of Environmental  
26 Quality under OAR 340-093-0050 and 340-096-0060. **Composting operations that are**  
27 **accepted farming practices in conjunction with and auxiliary to farm use on the subject**  
28 **tract are allowed uses, while other composting operations are subject to the review**  
29 **standards of ORS 215.296.** Buildings and facilities used in conjunction with the composting  
30 operation shall only be those required for the operation of the subject facility. Onsite sales shall  
31 be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one  
32 vehicle.

33 (30) The County governing body or its designate shall require as a condition of approval of a  
34 single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest  
35 zone, that the landowner for the dwelling sign and record in the deed records for the county a  
36 document binding the landowner, and the landowner's successors in interest, prohibiting them  
37 from pursuing a claim for relief or cause of action alleging injury from farming or forest  
38 practices for which no action or claim is allowed under ORS 30.936 or 30.937.

39 (31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040,  
40 whichever is applicable.

- 1 (32) Utility facility service lines are utility lines and accessory facilities or structures that end at  
2 the point where the utility service is received by the customer and that are located on one or more  
3 of the following:
- 4 (a) A public right of way;
- 5 (b) Land immediately adjacent to a public right of way, provided the written consent of all  
6 adjacent property owners has been obtained; or
- 7 (c) The property to be served by the utility.
- 8 (33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer  
9 persons that is not anticipated to continue for more than 120 hours in any three-month period is  
10 not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.
- 11 (34) Any outdoor [~~mass~~] gathering of more than 3,000 persons that is anticipated to continue for  
12 more than 120 hours in any three-month planning period is subject to review by a county  
13 planning commission under the provisions of ORS 433.763.
- 14 (35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-  
15 0130(5), for the purpose of verifying the existence, continuity and nature of the business  
16 described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to  
17 the county and submit evidence including, but not limited to, sworn affidavits or other  
18 documentary evidence that the business qualifies; and
- 19 (b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or  
20 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).
- 21 (36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under  
22 this section may provide services to veterans, including but not limited to emergency and  
23 transitional shelter, preparation and service of meals, vocational and educational counseling and  
24 referral to local, state or federal agencies providing medical, mental health, disability income  
25 replacement and substance abuse services, only in a facility that is in existence on January 1,  
26 2006. The services may not include direct delivery of medical, mental health, disability income  
27 replacement or substance abuse services.
- 28 (37) For purposes of this rule a wind power generation facility includes, but is not limited to, the  
29 following system components: all wind turbine towers and concrete pads, permanent  
30 meteorological towers and wind measurement devices, electrical cable collection systems  
31 connecting wind turbine towers with the relevant power substation, new or expanded private  
32 roads (whether temporary or permanent) constructed to serve the wind power generation facility,  
33 office and operation and maintenance buildings, temporary lay-down areas and all other  
34 necessary appurtenances, including but not limited to on-site and off-site facilities for temporary  
35 workforce housing for workers constructing a wind power generation facility. Such facilities  
36 must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute  
37 or rule when project construction is complete. Temporary workforce housing facilities not

1 included in the initial approval may be considered through a minor amendment request filed after  
2 a decision to approve a power generation facility. A minor amendment request shall be subject to  
3 OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind  
4 power generation facility shall be subject to the following provisions:

5 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or its  
6 designate must find that all of the following are satisfied:

7 (A) Reasonable alternatives have been considered to show that siting the wind power generation  
8 facility or component thereof on high-value farmland soils is necessary for the facility or  
9 component to function properly or if a road system or turbine string must be placed on such soils  
10 to achieve a reasonably direct route considering the following factors:

11 (i) Technical and engineering feasibility;

12 (ii) Availability of existing rights of way; and

13 (iii) The long term environmental, economic, social and energy consequences of siting the  
14 facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B);

15 (B) The long-term environmental, economic, social and energy consequences resulting from the  
16 wind power generation facility or any components thereof at the proposed site with measures  
17 designed to reduce adverse impacts are not significantly more adverse than would typically result  
18 from the same proposal being located on other agricultural lands that do not include high-value  
19 farmland soils;

20 (C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be  
21 considered, but costs alone may not be the only consideration in determining that siting any  
22 component of a wind power generation facility on high-value farmland soils is necessary;

23 (D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a)  
24 shall be responsible for restoring, as nearly as possible, to its former condition any agricultural  
25 land and associated improvements that are damaged or otherwise disturbed by the siting,  
26 maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the  
27 owner of the facility from requiring a bond or other security from a contractor or otherwise  
28 imposing on a contractor the responsibility for restoration; and

29 (E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

30 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-  
31 value farmland soils described at ORS 195.300(10), the governing body or its designate must  
32 find that:

33 (A) The proposed wind power facility will not create unnecessary negative impacts on  
34 agricultural operations conducted on the subject property. Negative impacts could include, but  
35 are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in

1 such a way that creates small or isolated pieces of property that are more difficult to farm, and  
2 placing wind farm components such as meteorological towers on lands in a manner that could  
3 disrupt common and accepted farming practices;

4 (B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or  
5 loss that could limit agricultural productivity on the subject property. This provision may be  
6 satisfied by the submittal and county approval of a soil and erosion control plan prepared by an  
7 adequately qualified individual, showing how unnecessary soil erosion will be avoided or  
8 remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan  
9 shall be attached to the decision as a condition of approval;

10 (C) Construction or maintenance activities will not result in unnecessary soil compaction that  
11 reduces the productivity of soil for crop production. This provision may be satisfied by the  
12 submittal and county approval of a plan prepared by an adequately qualified individual, showing  
13 how unnecessary soil compaction will be avoided or remedied in a timely manner through deep  
14 soil decompaction or other appropriate practices. The approved plan shall be attached to the  
15 decision as a condition of approval; and

16 (D) Construction or maintenance activities will not result in the unabated introduction or spread  
17 of noxious weeds and other undesirable weeds species. This provision may be satisfied by the  
18 submittal and county approval of a weed control plan prepared by an adequately qualified  
19 individual that includes a long-term maintenance agreement. The approved plan shall be attached  
20 to the decision as a condition of approval.

21 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body  
22 or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

23 (d) In the event that a wind power generation facility is proposed on a combination of arable and  
24 nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR  
25 660-033-0130(37)(b) shall apply to the entire project.

26 **(e) Excavation and other activities associated with wind power generation facilities must**  
27 **comply with the requirements of ORS 358.920 regarding archaeological objects and sites.**

28  
29 (38) A proposal to site a photovoltaic solar power generation facility shall be subject to the  
30 following definitions and provisions:

31  
32 (a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently  
33 cultivated, predominantly comprised of arable soils.

34  
35 (b) "Arable soils" means soils that are suitable for cultivation as determined by the governing  
36 body or its designate based on substantial evidence in the record of a local land use application,  
37 but **"arable soils" does** not include high-value farmland soils described at ORS 195.300(10)  
38 unless otherwise stated.  
39

1 (c) “Nonarable land” means land in a tract that is predominantly not cultivated and  
2 predominantly comprised of nonarable soils.

3  
4 (d) “Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS  
5 agricultural capability class V-VIII and no history of irrigation shall be considered nonarable in  
6 all cases. The governing body or its designate may determine other soils, including soils with a  
7 past history of irrigation, to be nonarable based on substantial evidence in the record of a local  
8 land use application.

9  
10 (e) “Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of  
11 equipment that converts sunlight into electricity and then stores, transfers, or both, that  
12 electricity. This includes photovoltaic modules, mounting and solar tracking equipment,  
13 foundations, inverters, wiring, ~~and~~ storage devices and other components. Photovoltaic solar  
14 power generation facilities also include electrical cable collection systems connecting the  
15 photovoltaic solar generation facility to a transmission line, all necessary grid integration  
16 equipment, new or expanded private roads constructed to serve the photovoltaic solar power  
17 generation facility, office, operation and maintenance buildings, staging areas and all other  
18 necessary appurtenances. For purposes of applying the acreage standards of this section, a  
19 photovoltaic solar power generation facility includes all existing and proposed facilities on a  
20 single tract, as well as any existing and proposed facilities determined to be under common  
21 ownership~~[-]~~ on lands with ~~fewer~~~~[less]~~ than 1320~~[-]~~feet of separation from the tract on which the  
22 new facility is proposed to be sited. Projects connected to the same parent company or  
23 individuals shall be considered to be in common ownership, regardless of the operating business  
24 structure. A photovoltaic solar power generation facility does not include a net metering project  
25 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff  
26 project established consistent with ORS 757.365 and OAR chapter 860, division 84.

27  
28 (f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power  
29 generation facility shall not preclude more than 12 acres from use as a commercial agricultural  
30 enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division  
31 4. The governing body or its designate must find that:

32  
33 (A) The proposed photovoltaic solar power generation facility will not create unnecessary  
34 negative impacts on agricultural operations conducted on any portion of the subject property not  
35 occupied by project components. Negative impacts could include, but are not limited to, the  
36 unnecessary construction of roads~~[-]~~ dividing a field or multiple fields in such a way that creates  
37 small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar  
38 power generation facility project components on lands in a manner that could disrupt common  
39 and accepted farming practices;

40  
41 (B) The presence of a photovoltaic solar power generation facility will not result in unnecessary  
42 soil erosion or loss that could limit agricultural productivity on the subject property. This  
43 provision may be satisfied by the submittal and county approval of a soil and erosion control  
44 plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will  
45 be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The  
46 approved plan shall be attached to the decision as a condition of approval;

1  
2 (C) Construction or maintenance activities will not result in unnecessary soil compaction that  
3 reduces the productivity of soil for crop production. This provision may be satisfied by the  
4 submittal and county approval of a plan prepared by an adequately qualified individual, showing  
5 how unnecessary soil compaction will be avoided or remedied in a timely manner through deep  
6 soil decompaction or other appropriate practices. The approved plan shall be attached to the  
7 decision as a condition of approval;  
8

9 (D) Construction or maintenance activities will not result in the unabated introduction or spread  
10 of noxious weeds and other undesirable weed[s] species. This provision may be satisfied by the  
11 submittal and county approval of a weed control plan prepared by an adequately qualified  
12 individual that includes a long-term maintenance agreement. The approved plan shall be attached  
13 to the decision as a condition of approval;  
14

15 (E) The project is not located on high-value farmland soils unless it can be demonstrated that:  
16

17 (i) Non high-value farmland soils are not available on the subject tract;  
18

19 (ii) Siting the project on non high-value farmland soils present on the subject tract would  
20 significantly reduce the project's ability to operate successfully; or  
21

22 (iii) The proposed site is better suited to allow continuation of an existing commercial farm or  
23 ranching operation on the subject tract than other possible sites also located on the subject tract,  
24 including those comprised of non high-value farmland soils; and  
25

26 (F) A study area consisting of lands zoned for exclusive farm use located within one mile  
27 measured from the center of the proposed project shall be established and:  
28

29 (i) If fewer than 48[-]acres of photovoltaic solar power generation facilities have been  
30 constructed or received land use approvals and obtained building permits within the study area,  
31 no further action is necessary.  
32

33 (ii) When at least 48[-]acres of photovoltaic solar power generation have been constructed or  
34 received land use approvals and obtained building permits, either as a single project or as  
35 multiple facilities[;] within the study area, the local government or its designate must find that  
36 the photovoltaic solar energy generation facility will not materially alter the stability of the  
37 overall land use pattern of the area. The stability of the land use pattern will be materially altered  
38 if the overall effect of existing and potential photovoltaic solar energy generation facilities will  
39 make it more difficult for the existing farms and ranches in the area to continue operation due to  
40 diminished opportunities to expand, purchase or lease farmland[,]or acquire water rights, or will  
41 reduce[diminish] the number of tracts or acreage in farm use in a manner that will destabilize the  
42 overall character of the study area.  
43

44 (g) For arable lands, a photovoltaic solar power generation facility shall not preclude more than  
45 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant

1 to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find  
2 that:

3  
4 (A) The project is not located on high-value farmland soils or arable soils unless it can be  
5 demonstrated that:

6  
7 (i) Nonarable soils are not available on the subject tract;

8  
9 (ii) Siting the project on nonarable soils present on the subject tract would significantly reduce  
10 the project's ability to operate successfully; or

11  
12 (iii) The proposed site is better suited to allow continuation of an existing commercial farm or  
13 ranching operation on the subject tract than other possible sites also located on the subject tract,  
14 including those comprised of nonarable soils;

15  
16 (B) No more than 12[-]acres of the project will be sited on high-value farmland soils described at  
17 ORS 195.300(10) unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660,  
18 division 4;

19  
20 (C) A study area consisting of lands zoned for exclusive farm use located within one mile  
21 measured from the center of the proposed project shall be established and:

22  
23 (i) If fewer than 80[-]acres of photovoltaic solar power generation facilities have been  
24 constructed or received land use approvals and obtained building permits within the study area  
25 no further action is necessary.

26  
27 (ii) When at least 80[-]acres of photovoltaic solar power generation have been constructed or  
28 received land use approvals and obtained building permits, either as a single project or as  
29 multiple facilities, within the study area the local government or its designate must find that the  
30 photovoltaic solar energy generation facility will not materially alter the stability of the overall  
31 land use pattern of the area. The stability of the land use pattern will be materially altered if the  
32 overall effect of existing and potential photovoltaic solar energy generation facilities will make it  
33 more difficult for the existing farms and ranches in the area to continue operation due to  
34 diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish  
35 the number of tracts or acreage in farm use in a manner that will destabilize the overall character  
36 of the study area; and

37  
38 (D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.

39  
40 (h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more  
41 than 100[-]acres from use as a commercial agricultural enterprise unless an exception is taken  
42 pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate  
43 must find that:

44  
45 (A) The project is not located on high-value farmland soils or arable soils unless it can be  
46 demonstrated that:

- 1  
2 (i) Siting the project on nonarable soils present on the subject tract would significantly reduce the  
3 project's ability to operate successfully; or  
4  
5 (ii) The proposed site is better suited to allow continuation of an existing commercial farm or  
6 ranching operation on the subject tract as compared to other possible sites also located on the  
7 subject tract, including sites that are comprised of nonarable soils;  
8  
9 (B) No more than 12[-]acres of the project will be sited on high-value farmland soils described at  
10 ORS 195.300(10);  
11  
12 (C) No more than 20[-]acres of the project will be sited on arable soils unless an exception is  
13 taken pursuant to ORS 197.732 and OAR chapter 660, division 4;  
14  
15 (D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;  
16  
17 (E) If a photovoltaic solar power generation facility is proposed to be developed on lands that  
18 contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does  
19 not address conflicts between energy facility development and the resource, the applicant and the  
20 county, together with any state or federal agency responsible for protecting the resource or  
21 habitat supporting the resource, will cooperatively develop a specific resource management plan  
22 to mitigate potential development conflicts. If there is no program present to protect the listed  
23 Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the  
24 applicant and the appropriate resource management agency(ies) cannot successfully agree on a  
25 cooperative resource management plan, the county is responsible for determining appropriate  
26 mitigation measures; and  
27  
28 (F) If a proposed photovoltaic solar power generation facility is located on lands where the  
29 potential exists for adverse effects to state or federal special status species (threatened,  
30 endangered, candidate, or sensitive), or to wildlife species of concern identified and mapped by  
31 the Oregon Department of Fish and Wildlife (including big game winter range and migration  
32 corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall  
33 conduct a site-specific assessment of the subject property in consultation with all appropriate  
34 state, federal, and tribal wildlife management agencies. A professional biologist shall conduct  
35 the site-specific assessment by using methodologies accepted by the appropriate wildlife  
36 management agency and shall determine whether adverse effects to special status species or  
37 wildlife species of concern are anticipated. Based on the results of the biologist's report, the site  
38 shall be designed to avoid adverse affects to state or federal special status species or to wildlife  
39 species of concern as described above. If the applicant's site-specific assessment shows that  
40 adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency  
41 will cooperatively develop an agreement for project-specific mitigation to offset the potential  
42 adverse effects of the facility. Where the applicant and the resource management agency cannot  
43 agree on what mitigation will be carried out, the county is responsible for determining  
44 appropriate mitigation, if any, required for the facility.  
45  
46 (G) The provisions of paragraph (F) are repealed on January 1, 2022.

1  
2 (i) The county governing body or its designate shall require as a condition of approval for a  
3 photovoltaic solar power generation facility, that the project owner sign and record in the deed  
4 records for the county a document binding the project owner[5] and the project owner's  
5 successors in interest, prohibiting them from pursuing a claim for relief or cause of action  
6 alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

7  
8 (j) Nothing in this section shall prevent a county from requiring a bond or other security from a  
9 developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic  
10 solar power generation facility.

11  
12 (k) The commission may re-evaluate the acreage thresholds identified in subsections (f), (g) and  
13 (h) should ORS 469.300(11)(a)(D) be amended.

14  
15 **(i) Excavation and other activities associated with photovoltaic solar power generation**  
16 **facilities must comply with the requirements of ORS 358.920 regarding archaeological**  
17 **objects and sites.**

18  
19 Stat. Auth.: ORS 197.040

20 Stats. Implemented: ORS 197.040 & 215.213

21 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-  
22 1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-1996, f. & cert. ef. 12-  
23 23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-  
24 2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-  
25 22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-  
26 2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. &  
27 cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-  
28 10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10;  
29 LCDD 4-2011, f. & cert. ef. 3-16-11

30 **660-033-0135**

31 **Dwellings in Conjunction with Farm Use**

32 (1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling  
33 may be considered customarily provided in conjunction with farm use if:

34 (a) The parcel on which the dwelling will be located is at least:

35 (A) 160 acres and not designated rangeland; or

36 (B) 320 acres and designated rangeland; or

37 (C) As large as the minimum parcel size if located in a zoning district with an acknowledged  
38 minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

- 1 (b) The subject tract is currently employed for farm use, as defined in ORS 215.203.
- 2 (c) The dwelling will be occupied by a person or persons who will be principally engaged in the  
3 farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a  
4 commercial scale.
- 5 (d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p)(1999 Edition), there is no other  
6 dwelling on the subject tract.
- 7 (2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this  
8 section, the county may determine that on land not identified as high-value farmland pursuant to  
9 OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with  
10 farm use if:
- 11 (A) The subject tract is at least as large as the median size of those commercial farm or ranch  
12 tracts capable of generating at least \$10,000 in annual gross sales that are located within a study  
13 area that includes all tracts wholly or partially within one mile from the perimeter of the subject  
14 tract;
- 15 (B) The subject tract is capable of producing at least the median level of annual gross sales of  
16 county indicator crops as the same commercial farm or ranch tracts used to calculate the tract  
17 size in paragraph (A) of this subsection;
- 18 (C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level  
19 capable of producing the annual gross sales required in paragraph (B) of this subsection;
- 20 (D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in  
21 western Oregon or 20 acres in eastern Oregon;
- 22 (E) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other  
23 dwelling on the subject tract;
- 24 (F) The dwelling will be occupied by a person or persons who will be principally engaged in the  
25 farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a  
26 commercial scale; and
- 27 (G) If no farm use has been established at the time of application, land use approval shall be  
28 subject to a condition that no building permit may be issued prior to the establishment of the  
29 farm use required by paragraph (C) of this subsection.
- 30 (b) In order to identify the commercial farm or ranch tracts to be used in paragraph (2)(a)(A) of  
31 this rule, the gross sales capability of each tract in the study area, including the subject tract,  
32 must be determined, using the gross sales figures prepared by the county pursuant to subsection  
33 (2)(c) of this section as follows:

1 (A) Identify the study area. This includes all the land in the tracts wholly or partially within one  
2 mile of the perimeter of the subject tract;

3 (B) Determine for each tract in the study area the number of acres in every land classification  
4 from the county assessor's data;

5 (C) Determine the potential earning capability for each tract by multiplying the number of acres  
6 in each land class by the gross sales per acre for each land class provided by the commission  
7 pursuant to subsection (2)(c) of this section. Add these to obtain the potential earning capability  
8 for each tract;

9 (D) Identify those tracts capable of grossing at least \$10,000 based on the data generated in  
10 paragraph (C) of this subsection; and

11 (E) Determine the median size and median gross sales capability for those tracts capable of  
12 generating at least \$10,000 in annual gross sales to use in paragraphs (2)(a)(A) and (B) of this  
13 subsection.

14 (c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may  
15 prepare, subject to review by the director, a table of the estimated potential gross sales per acre  
16 for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this  
17 section. The director shall provide assistance and guidance to a county in the preparation of this  
18 table. The table shall be prepared as follows:

19 (A) Determine up to three indicator crop types with the highest harvested acreage for irrigated  
20 and for nonirrigated lands in the county using the most recent OSU Extension Service  
21 Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or  
22 other USDA/Extension Service documentation;

23 (B) Determine the combined weighted average of the gross sales per acre for the three indicator  
24 crop types for irrigated and for nonirrigated lands, as follows:

25 (i) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e.,  
26 divide each crop type's gross annual sales by the harvested acres for each crop type);

27 (ii) Determine the average gross sales per acre for each crop type for three years, discarding the  
28 highest and lowest sales per acre amounts during the five year period;

29 (iii) Determine the percentage each indicator crop's harvested acreage is of the total combined  
30 harvested acres for the three indicator crop types;

31 (iv) Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of  
32 this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount  
33 for each indicator crop; and

- 1 (v) Add the weighted sales per acre amounts for each indicator crop type identified in  
2 subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per  
3 acre.
- 4 (C) Determine the average land rent value for irrigated and nonirrigated land classes in the  
5 county's exclusive farm use zones according to the annual "income approach" report prepared by  
6 the county assessor pursuant to ORS 308A.092; and
- 7 (D) Determine the percentage of the average land rent value for each specific land rent for each  
8 land classification determined in paragraph (C) of this subsection. Adjust the combined weighted  
9 sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of  
10 average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this  
11 subsection by the percent of average land rent value from paragraph (C) of this subsection). The  
12 result provides the estimated potential gross sales per acre for each assessor land class that will  
13 be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.
- 14 (3) On land not identified as high-value farmland, a dwelling may be considered customarily  
15 provided in conjunction with farm use if:
- 16 (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that  
17 produced in the last two years, or three of the last five years or an average of three of the last  
18 five years the lower of the following:
- 19 (A) At least \$40,000 in gross annual income from the sale of farm products; or
- 20 (B) Gross annual income of at least the midpoint of the median income range of gross annual  
21 sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992  
22 Census of Agriculture, Oregon; and
- 23 (b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other  
24 dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed  
25 farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the  
26 farm or ranch operation;
- 27 (c) The dwelling will be occupied by a person or persons who produced the commodities that  
28 grossed the income in subsection (a) of this section; and
- 29 (d) In determining the gross income required by subsection (a) of this section:
- 30 (A) The cost of purchased livestock shall be deducted from the total gross income attributed to  
31 the farm or ranch operation;
- 32 (B) Only gross income from land owned, not leased or rented, shall be counted; and
- 33 (C) Gross farm income earned from a lot or parcel that has been used previously to qualify  
34 another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

- 1 (4) On land identified as high-value farmland, a dwelling may be considered customarily  
2 provided in conjunction with farm use if:
- 3 (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that  
4 produced at least \$80,000 in gross annual income from the sale of farm products in the last two  
5 years, **or three of the last five years** or **an average of** three of the last five years; and
- 6 (b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other  
7 dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed  
8 farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the  
9 farm or ranch operation; and
- 10 (c) The dwelling will be occupied by a person or persons who produced the commodities that  
11 grossed the income in subsection (a) of this section;
- 12 (d) In determining the gross income required by subsection (a) of this section;
- 13 (A) The cost of purchased livestock shall be deducted from the total gross income attributed to  
14 the farm or ranch operation;
- 15 (B) Only gross income from land owned, not leased or rented, shall be counted; and
- 16 (C) Gross farm income earned from a lot or parcel that has been used previously to qualify  
17 another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
- 18 (5)(a) For the purpose of sections (3) or (4) of this rule, noncontiguous lots or parcels zoned for  
19 farm use in the same county or contiguous counties may be used to meet the gross income  
20 requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties,  
21 when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as  
22 defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a  
23 dwelling in the other part of the state.
- 24 (b) Prior to the final approval for a dwelling authorized by sections (3) and (4) of this rule that  
25 requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to  
26 comply with the gross farm income requirements, the applicant shall provide evidence that the  
27 covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the  
28 county clerk of the county or counties where the property subject to the covenants, conditions  
29 and restrictions is located. The covenants, conditions and restrictions shall be recorded for each  
30 lot or parcel subject to the application for the primary farm dwelling and shall preclude:
- 31 (A) All future rights to construct a dwelling except for accessory farm dwellings, relative farm  
32 assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS  
33 chapter 215; and
- 34 (B) The use of any gross farm income earned on the lots or parcels to qualify another lot or  
35 parcel for a primary farm dwelling.

- 1 (c) The covenants, conditions and restrictions are irrevocable, unless a statement of release is  
2 signed by an authorized representative of the county or counties where the property subject to the  
3 covenants, conditions and restrictions is located;
- 4 (d) Enforcement of the covenants, conditions and restrictions may be undertaken by the  
5 department or by the county or counties where the property subject to the covenants, conditions  
6 and restrictions is located;
- 7 (e) The failure to follow the requirements of this section shall not affect the validity of the  
8 transfer of property or the legal remedies available to the buyers of property that is subject to the  
9 covenants, conditions and restrictions required by this section;
- 10 (f) The county planning director shall maintain a copy of the covenants, conditions and  
11 restrictions filed in the county deed records pursuant to this section and a map or other record  
12 depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the  
13 county deed records pursuant to this section. The map or other record required by this subsection  
14 shall be readily available to the public in the county planning office.
- 15 (6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991  
16 Edition) before January 1, 1993, a dwelling may be considered customarily provided in  
17 conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it  
18 meets the standards and requirements of ORS 215.213(2)(a) or (b).
- 19 (7) A dwelling may be considered customarily provided in conjunction with a commercial dairy  
20 farm as defined by OAR 660-033-0135(8) if:
- 21 (a) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-  
22 0135(8);
- 23 (b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial  
24 dairy;
- 25 (c) Except as permitted by ORS 215.213(r) and 215.283(1)(p) (1999 Edition), there is no other  
26 dwelling on the subject tract;
- 27 (d) The dwelling will be occupied by a person or persons who will be principally engaged in the  
28 operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy  
29 animals or other farm use activities necessary to the operation of the commercial dairy farm;
- 30 (e) The building permits, if required, have been issued for and construction has begun for the  
31 buildings and animal waste facilities required for a commercial dairy farm; and
- 32 (f) The Oregon Department of Agriculture has approved the following:
- 33 (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to  
34 468B.230; and

1 (B) A Producer License for the sale of dairy products under ORS 621.072.

2 (8) As used in this division, the following definitions apply:

3 (a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing  
4 dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a)  
5 or (4)(a), whichever is applicable, from the sale of fluid milk; and

6 (b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are  
7 used by the farm or ranch operator for farm use as defined in ORS 215.203.

8 (9) A dwelling may be considered customarily provided in conjunction with farm use if:

9 (a) Within the previous two years, the applicant owned and operated a **different** farm or ranch  
10 operation that earned the gross farm income in the last five years or four of the last seven years  
11 as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;

12 (b) The subject lot or parcel on which the dwelling will be located is:

13 (A) Currently employed for the farm use, as defined in ORS 215.203, that produced in the last  
14 two years, **or three of the last five years or an average in** three of the last five years **of** the  
15 gross farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is  
16 applicable; and

17 (B) At least the size of the applicable minimum lot size under OAR 215.780; and

18 (c) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other  
19 dwelling on the subject tract;

20 (d) The dwelling will be occupied by a person or persons who produced the commodities that  
21 grossed the income in subsection (a) of this section; and

22 (e) In determining the gross income required by subsections (a) and (b)(A) of this section:

23 (A) The cost of purchased livestock shall be deducted from the total gross income attributed to  
24 the tract; and

25 (B) Only gross income from land owned, not leased or rented, shall be counted.

26 [ED. NOTE: Exhibits referenced are available from the agency.]

27 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

28 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283,  
29 215.700 - 215.710 & 215.780

30 Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f.  
31 & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 4-2011, f. & cert. ef. 3-16-11

1 **660-033-0140**

2 **Permit Expiration Dates**

3 (1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land  
4 division, made after the effective date of this division approving a proposed development on  
5 agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and  
6 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two  
7 years from the date of the final decision if the development action is not initiated in that period.

8 (2) A county may grant one extension period of up to 12 months if:

9 (a) An applicant makes a written request for an extension of the development approval period;

10 (b) The request is submitted to the county prior to the expiration of the approval period;

11 (c) The applicant states reasons that prevented the applicant from beginning or continuing  
12 development within the approval period; and

13 (d) The county determines that the applicant was unable to begin or continue development during  
14 the approval period for reasons for which the applicant was not responsible.

15 (3) Approval of an extension granted under this rule is an administrative decision, is not a land  
16 use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

17 (4) Additional one-year extensions may be authorized where applicable criteria for the decision  
18 have not changed.

19 (5)(a) If a permit is approved for a proposed residential development on agricultural or forest  
20 land outside of an urban growth boundary, the permit shall be valid for four years.

21 (b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two  
22 years.

23 (6) For the purposes of section (5) of this rule, "residential development" only includes the  
24 dwellings provided for under ORS 215.213(1)(q), (3) and (4), 215.283(1)(p), 215.284,  
25 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

26 Stat. Auth.: ORS 197.040 & 215

27 Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245

28 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD  
29 4-2011, f. & cert. ef. 3-16-11

30 **660-033-0145**

31 **Agriculture/Forest Zones**

1 (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-  
2 0050;

3 (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-  
4 006-0055; and

5 (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-  
6 0057.

7 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

8 Stats. Implemented: ORS 197.040, 197.213, 197.215, 197.230, 197.245, 197.283, 197.700,

9 197.705, 197.720, 197.740, 197.750 & 197.780

10 Hist.: LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 4-2011, f. & cert. ef. 3-16-11

### 11 **660-033-0150**

#### 12 **Notice of Decisions in Agriculture Zones**

13 (1) Counties shall notify the department of all applications for dwellings and land divisions in  
14 exclusive farm use zones. Such notice shall be in accordance with the county's acknowledged  
15 comprehensive plan and land use regulations, and shall be mailed to the department's Salem  
16 office at least 10 calendar days before any hearing or decision on such application.

17 (2) Notice of proposed actions described in section (1) of this rule shall be provided as required  
18 by procedures for notice contained in ORS 197.763 and 215.402 to 215.438.

19 (3) The provisions of sections (1) and (2) of this rule are repealed on September 6, 1995.

20 Stat. Auth.: ORS 197.040, 197.230& 197.245

21 Stats. Implemented: ORS 197.015, 197.040, 197.230& 197.245

22 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. e.f 3-1-94

### 23 **660-033-0160**

#### 24 **Effective Date**

25 The provisions of this division shall become effective upon filing.

26 Stat. Auth.: ORS 197.040, 197.230& 197.245

27 Stats. Implemented: 215

28 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 5-  
29 1996, 12-23-96

30



1			
2	R4,30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
3			
4	R5,30	R5,30	Residential home or facility as defined in ORS 197.660, in existing dwellings.
5			
6	R5, 0	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
7			
8	R12,30	R12,30	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
9			
10			
11	A8,30	A8,30	Alteration, restoration, or replacement of a lawfully established dwelling.
12			
13	R5[7]	R5	A wildlife habitat conservation and management plan pursuant to <i>former</i> ORS 215.800 to 215.808.
14			<b>Commercial Uses</b>
15	R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(u) and 215.283(1)(r).
16			
17	R5,14	R5,14	Home occupations as provided in ORS 215.448.
18			
19	*18(a)	R5	Dog kennels.
20			
21	R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
22			
23	*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
24			
25			
26	A	A	A winery as described in ORS 215.452.
27			
28			
29	<b><u>R5</u></b>	<b><u>R5</u></b>	<b><u>A restaurant in conjunction with a winery as described in ORS 215.452 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.452 that occur on more than 25 days in a calendar year.</u></b>
30			
31			
32			
33	<b><u>R or R5</u></b>	<b><u>R or R5</u></b>	<b><u>Agri-tourism and other commercial events or activities that are related to and supportive of Agriculture, as described in ORS 215.213(11) and 215.283(4).</u></b>
34			
35			
36	A23	A23	Farm stands.
37			
38	R5	R5	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
39			
40			
41			
42			<b>Mineral, Aggregate, Oil, and Gas Uses</b>
43			
44	A	A	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
45			
46			
47			
48	A	A	Operations for the exploration for minerals as defined by ORS 517.750.
49			
50	R5	R5	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this rule.
51			
52			
53	R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
54			
55			
56	R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
57			
58	R5	R5	Processing of other mineral resources and other subsurface resources.
59			
60			<b>Transportation</b>
61			
62	R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
63			

1	A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.
2			
3	R5	R5	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the
4			creation of new land parcels.
5			
6	A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead
7			and in the subsurface of public roads and highways along the public right of way, but not including the addition of
8			travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
9			
10	R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but
11			not resulting in the creation of new land parcels.
12			
13	A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such
14			time as no longer needed.
15			
16	A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and
17			rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support
18			the operation and maintenance of public roads and highways.
19			
20	R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas,
21			where additional property or right of way is required but not resulting in the creation of new land parcels.
22			
23	R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
24			
25	R	R	Transportation improvements on rural lands allowed by OAR 660-012-0065.
26			
27			<b>Utility/Solid Waste Disposal Facilities</b>
28			
29	R16	R16	Utility facilities necessary for public service, including wetland waste treatment systems but not including
30			commercial facilities for the purpose of generating electrical power for public use by sale or transmission
31			towers over 200 feet in height.
32			
33	R5	R5	Transmission towers over 200 feet in height.
34			
35	<del>A</del>	<del>A</del>	<del>Fire service facilities providing rural fire protection services.]</del>
36			
37	A	A	Irrigation <b>reservoirs</b> , canals, delivery lines and those structures and accessory operational facilities, <b>not including</b>
38			<b>parks or other recreational structures and facilities</b> , associated with a district as defined in ORS 540.505.
39			
40	A32	A32	Utility facility service lines.
41			
42	R5, 17	R5, 22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power
43			generation <b>facilities</b> [projects] or photovoltaic solar power generation <b>facilities</b> [facility].
44			
45	R5, 37	R5, 37	Wind power generation <b>facilities</b> [projects] as commercial utility facilities for the purpose of generating power for
46			public use by sale.
47			
48	R5, 38	R5, 38	Photovoltaic solar power generation <b>facilities</b> [facility] as commercial utility facilities for the purpose of generating
49			power for public use by sale.
50			
51	*18(a)	R5	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a
52			permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment,
53			facilities or buildings necessary for its operation.
54			
55	18(a), <b>A or</b>		Composting facilities on farms or for which a permit has been granted by the Department of Environmental
56	29(a)	R5,29(b)	Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.
57			<b>Parks/Public/Quasi-Public</b>
58			
59	2,*18(a)		
60	or R2	R2,5,	Public or private schools for kindergarten through grade 12, including all buildings essential to the
61	18(b-c)	18(b-c)	operation of a school, primarily for residents of the rural area in which the school is located.
62			
63	2,*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
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2,\*18(a) R2,5,19 Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

R2,5,31 R2,5,31 Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

**A A Fire service facilities providing rural fire protection services.**

R2,5,36 R2,5,36 Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.

R2, 18(a) R2,5, 20 Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

R2,5,21 R2,5,21 Living history museum

R2 R2 Firearms training facility as provided in ORS 197.770.

R2, 25 R2, 25 Armed forces reserve center as provided for in ORS 215.213(1).

A A Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.

R5 R5 Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.

A26 A26 A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.

R5 R5 Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

R5 R5 Operations for the extraction and bottling of water.

A11 A11 Land application of reclaimed water, agricultural or industrial process water or biosolids.

R5 R5 A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).

**Outdoor Gatherings**

A33 A33 An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).

R34 R34 Any outdoor [~~mass~~] gathering subject to review of a county planning commission under ORS 433.763.

(The numbers in the table above refer to the section numbers in OAR 660-033-0130)

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

## Enrolled House Bill 2131

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

CHAPTER .....

AN ACT

Relating to land use planning for needed housing; amending ORS 197.178, 197.303, 197.307, 197.312, 197.314, 197.732, 197.831 and 307.651.

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

**SECTION 1.** ORS 197.178 is amended to read:

197.178. (1) *[A local government with a comprehensive plan or functional plan]* **Local governments with comprehensive plans or functional plans that are** identified in ORS 197.296 (1) shall compile and report annually to the Department of Land Conservation and Development the following information for all *[permit]* applications received under ORS 227.175 **for residential permits and residential zone changes:**

*[(1)]* (a) The number of applications received for residential development, including the **net** residential density proposed in the application and the maximum allowed **net** residential density for the subject zone;

*[(2)]* (b) The number of applications approved, including the approved **net** density; and

*[(3)]* (c) The date each application was received and the date it was approved or denied.

**(2) The report required by this section may be submitted electronically.**

**SECTION 2.** ORS 197.303 is amended to read:

197.303. (1) As used in ORS 197.307, *[until the beginning of the first periodic review of a local government's acknowledged comprehensive plan,]* "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. *On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means,* **including at least the following housing types:**

(a) *[Housing that includes, but is not limited to,]* Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; *[and]*

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions[.]; **and**

**(e) Housing for farmworkers.**

(2) Subsection (1)(a) and (d) of this section shall not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception **under ORS 197.732 to the definition of “needed housing”** in subsection (1) of this section in the same manner that an exception may be taken under the goals.

**SECTION 3.** ORS 197.307 is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of state-wide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

~~[(3)(a)]~~ (3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing~~[, including housing for farmworkers,]~~ shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

~~[(b)]~~ *A local government shall attach only clear and objective approval standards or special conditions regulating, in whole or in part, appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402 or 227.160, for residential development. The standards or conditions may not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.*

**(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.**

~~[(c)]~~ (5) The provisions of ~~[paragraph (b) of this]~~ subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

~~[(d)]~~ *In addition to an approval process based on clear and objective standards as provided in paragraph (b) of this subsection, a local government may adopt an alternative approval process for residential applications and permits based on approval criteria that are not clear and objective provided the applicant retains the option of proceeding under the clear and objective standards or the alternative process and the approval criteria for the alternative process comply with all applicable land use planning goals and rules.*

~~[(e)]~~ *The provisions of this subsection shall not apply to applications or permits]*

**(b) An application or permit** for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

**(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:**

**(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;**

**(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and**

**(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.**

~~[(4)]~~ (7) ~~[Subsection (3) of this section shall not be construed as an infringement]~~ **Subject to subsection (4) of this section, this section does not infringe** on a local government’s prerogative to:

- (a) Set approval standards under which a particular housing type is permitted outright;
- (b) Impose special conditions upon approval of a specific development proposal; or
- (c) Establish approval procedures.

[5] **(8) In accordance with subsection (4) of this section and ORS 197.314**, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

*[(6) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.]*

**SECTION 4.** ORS 197.312 is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

*[(2) A city or county may not impose any approval standards, special conditions or procedures on farmworker housing that are not clear and objective or have the effect, either in themselves or cumulatively, of discouraging farmworker housing through unreasonable cost or delay or by discriminating against such housing.]*

[3(a)] **(2)(a)** A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

[4(a)] **(3)(a)** Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

[5] (4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

**SECTION 5.** ORS 197.314 is amended to read:

197.314. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 [5] (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.650.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(7) This section shall not be construed as abrogating a recorded restrictive covenant.

**SECTION 6.** ORS 197.732 is amended to read:

197.732. (1) As used in this section:

(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

- (c) The following standards are met:
- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
  - (B) Areas that do not require a new exception cannot reasonably accommodate the use;
  - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
  - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.
- (3) The commission shall adopt rules establishing:
- (a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;
  - (b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section; and
  - (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.
- (4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.
- (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.
- (6) Upon review of a decision approving or denying an exception:
- (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;
  - (b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (2) of this section have or have not been met; and
  - (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis for the determination that the standards of subsection (2) of this section have or have not been met.
- (7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 [(3)].
- (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

**SECTION 7.** ORS 197.831 is amended to read:

197.831. In a proceeding before the Land Use Board of Appeals or [on judicial review from an order of the board] **an appellate court** that involves an ordinance required to contain clear and objective approval standards, **conditions and procedures** for [a permit under ORS 197.307 and 227.175] **needed housing**, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, **conditions and procedures** are capable of being imposed only in a clear and objective manner.

**SECTION 8.** ORS 307.651 is amended to read:

307.651. As used in ORS 307.651 to 307.687, unless the context requires otherwise:

(1) "Distressed area" means a primarily residential area of a city designated by a city under ORS 307.657 which, by reason of deterioration, inadequate or improper facilities, the existence of unsafe or abandoned structures, including but not limited to a significant number of vacant or abandoned single or multifamily residential units, or any combination of these or similar factors, is detrimental to the safety, health and welfare of the community.

(2) "Governing body" means the city legislative body having jurisdiction over the property for which an exemption may be applied for under ORS 307.651 to 307.687.

(3) "Qualified dwelling unit" means a dwelling unit that, upon completion, has a market value (land and improvements) of no more than 120 percent, or a lesser percentage as adopted by the governing body by resolution, of the median sales price of dwelling units located within the city.

(4) "Single-unit housing" means a newly constructed structure having one or more dwelling units that:

(a) Is, or will be, at the time that construction is completed, in conformance with all local plans and planning regulations, including special or district-wide plans developed and adopted pursuant to ORS chapters 195, 196, 197 and 227.

(b) Is constructed on or after January 1, 1990, and is completed within two years after application for exemption is approved under ORS 307.674 or before July 1, 2015, whichever is earlier.

(c) Upon completion, is designed for each dwelling unit within the structure to be purchased by and lived in by one person or one family.

(d) Upon completion, has one or more qualified dwelling units within the single-unit housing.

(e) Is not a floating home, as defined in ORS 830.700, or a manufactured structure, as defined in ORS 446.561, other than a manufactured home described in ORS 197.307 [(5)(a)] (8)(a) to (f).

(5) "Structure" does not include the land, nor any site development to the land, as both are defined under ORS 307.010.

**Passed by House April 27, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate May 31, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

**Enrolled**  
**House Bill 2132**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

CHAPTER .....

AN ACT

Relating to transfer of development pilot program; amending sections 6 and 7, chapter 636, Oregon Laws 2009; and declaring an emergency.

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

**SECTION 1.** Section 6, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 5, Oregon Laws 2010, is amended to read:

**Sec. 6.** (1) There is established the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development. Working with the State Forestry Department, the State Department of Agriculture and local governments and with other state agencies, as appropriate, the Department of Land Conservation and Development shall implement the pilot program.

(2) The Land Conservation and Development Commission shall adopt rules to implement the pilot program. The commission, by rule, may:

(a) Establish a maximum ratio of transferable development rights to severed development interests in a sending area for each pilot project. The maximum ratio:

(A) Must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending area to participate in the pilot project; *[and]*

(B) May not exceed one transferable development right to one severed development interest if the receiving area is outside of *[an]* urban growth *[boundary]* **boundaries and outside unincorporated communities;**

**(C) May not exceed two transferable development rights to one severed development interest if the receiving area is in an unincorporated community; and**

**(D) Must be consistent with plans for public facilities and services in the receiving area.**

(b) Require participating owners of land in a sending area to grant conservation easements pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional residential development of their property does not occur.

*[(c) Require participating owners of land in a sending area to allow reasonable public access to the property.]*

(3) The commission, by rule, shall establish a process for selecting pilot projects from among potential projects nominated by local governments. The process must require local governments to nominate potential projects by submitting a concept plan for each proposed pilot project, including proposed amendments, if any, to the comprehensive plan and land use regulations implementing the plan that are necessary to implement the pilot project.

(4) When selecting a pilot project, the commission must find that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state;

(b) Designed to avoid or minimize adverse effects on transportation, natural resources, public facilities and services, nearby urban areas and nearby farm and forest uses; and

(c) Designed so that new development authorized in a receiving area does not conflict with a resource or area inventoried under a statewide land use planning goal relating to natural resources, scenic and historic areas and open spaces, or with an area identified as a Conservation Opportunity Area in the "Oregon Conservation Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department of Fish and Wildlife in September of 2006.

(5) The commission may select up to three pilot projects for the transfer of development rights under sections 6 to 8, chapter 636, Oregon Laws 2009.

(6) A sending area for a pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009:

(a) Must be planned and zoned for forest use;

(b) May not exceed 10,000 acres; and

(c) Must contain four or fewer dwelling units per square mile.

(7) The commission may establish additional requirements for sending areas.

(8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government participating in a pilot project shall select a receiving area for the pilot project based on the following priorities:

(A) First priority is lands within an urban growth boundary[;].

(B) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception from a statewide land use planning goal relating to agricultural lands or forestlands[;].

(C) Third priority is lands that are:

(i) Within an urban unincorporated community or a rural community [*in an acknowledged comprehensive plan.*]; **or**

**(ii) In a resort community, or a rural service center, that contains at least 100 dwelling units at the time the pilot project is approved.**

**(D) Fourth priority is exception areas approved under ORS 197.732 that are adjacent to urban unincorporated communities or rural communities, if the county agrees to bring the receiving area within the boundaries of the community and to provide the community with water and sewer service.**

(b) The commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a pilot project only if the local government has established, to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(c) [*If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving area in a pilot project,*] The minimum residential density of development allowed [*under sections 6 to 8, chapter 636, Oregon Laws 2009, must be at least 10 dwelling units per net acre.*] **in receiving areas intended for residential development is:**

**(A) For second priority lands described in paragraph (a)(B) of this subsection, at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.**

**(B) For third priority and fourth priority lands described in paragraph (a)(C) and (D) of this subsection, at least 125 percent of the average residential density allowed on land planned for residential use within the unincorporated community when the pilot project is approved by the commission.**

**(d) For third and fourth priority lands described in paragraph (a)(C) and (D) of this subsection that are within one jurisdiction but adjacent to another jurisdiction, the written consent of the adjacent jurisdiction is required for designation of the receiving area.**

[(d)] (e) A receiving area may not be located within 10 miles of the Portland metropolitan area urban growth boundary.

(9) The commission may establish additional requirements for receiving areas.

(10) The commission, by rule, may provide a bonus in the form of a higher **transfer** ratio if a substantial portion of the new development in the receiving area of the pilot project is affordable housing within an urban growth boundary.

**SECTION 2.** Section 7, chapter 636, Oregon Laws 2009, is amended to read:

**Sec. 7.** (1) Notwithstanding contrary provisions of statewide land use planning goals relating to public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use regulations implementing the plan to allow residential development in a receiving area consistent with sections 6 to 8 [of this 2009 Act], **chapter 636, Oregon Laws 2009**, if the Land Conservation and Development Commission has approved a concept plan for the pilot project.

(2) The local governments having land use jurisdiction over lands included in the sending area and the receiving area for the pilot project shall adopt amendments to their respective comprehensive plans and land use regulations implementing the plans that are consistent with subsection (3) of this section.

(3) When the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations implementing the plan that identify the additional [residential] development allowed through participation in the pilot project. The Department of Land Conservation and Development shall review the overlay zones and corresponding comprehensive plan amendments in the manner of periodic review under ORS 197.628 to 197.650.

(4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relating to urbanization, a local government may amend its urban growth boundary to include adjacent lands in a receiving area, consistent with an approved concept plan, if the net residential density of development authorized in the receiving area is at least [10 dwelling units per acre] **five dwelling units per net acre or 125 percent of the average residential density allowed on land planned for residential use within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.**

(5) Local governments or other entities may establish a development rights bank or other system to facilitate the transfer of development rights.

(6) A county shall review an application for a pilot project under sections 6 to 8 [of this 2009 Act], **chapter 636, Oregon Laws 2009**, as a comprehensive plan amendment. A county may apply other procedures, including master plan approval, site plan review or conditional use review as the county finds appropriate to subsequent phases of review of the pilot project.

**(7) When development rights transfers authorized by the pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights from the jurisdiction of one local government to another local government and cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving area.**

**SECTION 3.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**Passed by House March 15, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate May 12, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

## Enrolled House Bill 2154

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Housing and Community Services Department)

CHAPTER .....

AN ACT

Relating to tax credits for farmworker housing; creating new provisions; amending ORS 215.277, 215.278, 315.163, 315.164, 315.167 and 315.169; and prescribing an effective date.

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

**SECTION 1.** ORS 315.163 is amended to read:

315.163. As used in ORS 315.163 to 315.172:

(1) "Acquisition costs" means the cost of acquiring buildings, structures and improvements that constitute or will constitute farmworker housing. "Acquisition costs" does not include the cost of acquiring land on which farmworker housing is or will be located.

(2) "Condition of habitability" means a condition that is in compliance with:

(a) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(b) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws 1989.

(3) "Contributor" means a person:

(a) That acquired, constructed, manufactured or installed farmworker housing or contributed money to finance a farmworker housing project; or

**(b) That has purchased or otherwise received via transfer a credit as provided in ORS 315.169 (2).**

(4) "Eligible costs" includes acquisition costs, finance costs, construction costs, excavation costs, installation costs and permit costs and excludes land costs.

(5) "Farmworker" means any person who, for an agreed remuneration or rate of pay, performs temporary or permanent labor for another in the:

(a) Production of [*farm*] **agricultural or aquacultural crops or products** [*or in the*];

**(b) Handling of agricultural or aquacultural crops or products in an unprocessed stage;**

**(c) Processing of agricultural or aquacultural crops or products;**

**(d) Planting, cultivating or harvesting of seasonal agricultural crops** [*or in the*]; or

**(e) Forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.**

(6) "Farmworker housing" means housing:

(a) Limited to occupancy by farmworkers, **including farmworkers who are retired or disabled**, and their immediate families; and

(b) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing, **except in the case of a manufactured dwelling in a manufactured dwelling park nonprofit cooperative as that term is defined in ORS 62.803.**

(7) "Farmworker housing project" means the acquisition, construction, installation or rehabilitation of farmworker housing.

(8) "Owner" means a person that owns farmworker housing. "Owner" does not include a person that only has an interest in the housing as a holder of a security interest.

(9) "Rehabilitation" means to make repairs or improvements to a building that improve its livability and are consistent with applicable building codes.

(10) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, ancestor (whether by law or by blood), or lineal descendant of an individual.

(11) "Taxpayer" includes a nonprofit corporation, **a tax-exempt entity** or **any** other person not subject to tax under ORS chapter 316, 317 or 318.

**SECTION 2.** ORS 315.164 is amended to read:

315.164. (1) A taxpayer who is the owner or operator of farmworker housing is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation. The total amount of the credit shall be equal to 50 percent of the eligible costs actually paid or incurred by the taxpayer to complete a farmworker housing project, to the extent the eligible costs actually paid or incurred by the taxpayer do not exceed the estimate of eligible costs approved by the Housing and Community Services Department under ORS 315.167.

(2) A taxpayer who is otherwise eligible to claim a credit under this section may elect to transfer all or a portion of the credit to a contributor in the manner provided in ORS 315.169.

(3)(a) The credit allowed under this section may be taken for the tax year in which the farmworker housing project is completed or in any of the nine tax years succeeding the tax year in which the project is completed.

(b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined under subsection (1) of this section.

(4)(a) To claim a credit under this section, a taxpayer must show in each year following the completion of a farmworker housing project that the housing continues to be operated as farmworker housing.

(b) A taxpayer need not make the showing required in paragraph (a) of this subsection if the Housing and Community Services Department waives the requirement after the taxpayer has successfully met the requirement for the first five years after completion of the housing project.

(c) The Housing and Community Services Department shall determine by rule the factors necessary to grant a waiver. Such factors may include a documented decline in a particular area for farmworker housing.

(5) The credit shall apply only to a farmworker housing project that is located within this state and physically begun on or after January 1, 1990.

(6)(a) A credit may not be allowed under this section unless the taxpayer claiming credit under this section:

(A) Obtains a letter of credit approval from the Housing and Community Services Department pursuant to ORS 315.167; and

(B) Files with the Department of Revenue an annual certification providing that all occupied units for which credit is being claimed are occupied by farmworkers, **including farmworkers who are retired or disabled**, and their immediate families.

(b) The certification described under this subsection shall be made on the form and in the time and manner prescribed by the Department of Revenue.

(7) Except as provided under subsection (8) of this section, the credit allowed in any one year may not exceed the tax liability of the taxpayer.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the

next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may be carried forward and used in the ninth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9)(a) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the project to which the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for the year.

(b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(10) For a taxpayer to receive a credit under this section, the farmworker housing must:

(a) Comply with all occupational safety or health laws, rules, regulations and standards;

(b) If registration is required, be registered as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; and

(d) Continue to be operated as farmworker housing for a period of at least 10 years after the completion of the farmworker housing project, unless a waiver has been granted under subsection (4) of this section.

(11)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department of Revenue may order the disallowance of the credit allowed under this section if it finds, by order, that:

(A) The credit was obtained by fraud or misrepresentation; or

(B) In the event that an owner or operator claims or claimed the credit:

(i) The taxpayer has failed to continue to substantially comply with the occupational safety or health laws, rules, regulations or standards;

(ii) After occupancy and if registration is required, the farmworker housing is not registered as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(iii) After occupancy and if an indorsement is required, the farmworker housing is not operated by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; or

(iv) The taxpayer has failed to make a showing that the housing continues to be operated as farmworker housing as required under subsection (4)(a) of this section and the taxpayer has not been granted a waiver by the Housing and Community Services Department under subsection (4)(b) of this section.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section, in connection with the farmworker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(12) In the event that the farmworker housing is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the

taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the Department of Revenue. Upon conviction of arson, the Department of Revenue shall disallow the credit in accordance with subsection (11) of this section.

(13)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(14) The Department of Revenue may adopt rules for carrying out the provisions of this section.

**SECTION 3.** ORS 315.167 is amended to read:

315.167. [(1)(a) Prior to six months after beginning a farmworker housing project:]

[*(A) For which credit under ORS 315.164 will be claimed, an owner or operator of farmworker housing shall apply to the Housing and Community Services Department for a letter of credit approval.*]

[*(B) For which credit under ORS 315.169 will be claimed, a contributor shall apply to the Housing and Community Services Department for a letter of credit approval.*]

[*(b) If a portion of credit for a farmworker housing project is to be claimed by the owner or operator of farmworker housing under ORS 315.164 and the remainder is to be claimed by a contributor under ORS 315.169, the application described in this section shall be filed jointly by the owner or operator of farmworker housing and the contributor.*]

**(1) Prior to the completion of a farmworker housing project for which credit under ORS 315.164 will be claimed, an owner or operator of farmworker housing shall apply to the Housing and Community Services Department for a letter of credit approval.**

(2) The application shall be on such form as is prescribed by the Housing and Community Services Department and shall provide:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) The location of the proposed farmworker housing;

(c) A description of the project identifying the type of housing that is the subject of the project;

(d) An estimate of the eligible costs of the project;

**(e) The number of units in the project dedicated to farmworker housing and the eligible costs associated with the units;**

**(f) The amount of credit to be claimed by the owner or operator of farmworker housing, and the amount of credit, if any, to be claimed by a contributor under ORS 315.169; and**

[*(e)*] **(g)** Any other information as the Housing and Community Services Department may require.

(3) The Housing and Community Services Department may review applications using any reasonable system of prioritizing review established by department rule.

(4) Applications filed in compliance with this section shall be approved by the Housing and Community Services Department to the extent that the total of estimated eligible costs for all approved projects for the calendar year is equal to or less than \$7.25 million. No application shall be approved if the addition of the estimated eligible costs of the project to the estimated eligible costs for all approved projects for the calendar year would exceed \$7.25 million.

(5) Upon approval of an application, the Housing and Community Services Department shall prepare a letter of credit approval. The letter shall state the approved amount of estimated eligible costs for the project and, if applicable, the portion of credit to be claimed by an owner or operator of farmworker housing under ORS 315.164 and the portion of credit to be claimed by a contributor under ORS 315.169. The letter shall be sent:

(a) To the owner or operator of farmworker housing, if any credit is to be claimed under ORS 315.164; and

(b) To the contributor, if any credit is to be claimed under ORS 315.169 **and if the contributor has been identified at the time of approval.**

(6) At the conclusion of each calendar year, the Housing and Community Services Department shall send a list of the names, addresses and taxpayer identification numbers of taxpayers to whom a letter of credit approval has been issued under this section during the calendar year, along with approved amounts of estimated eligible costs for each project, to the Department of Revenue.

(7) Notwithstanding that a letter of credit approval has been issued to a taxpayer under this section, the Department of Revenue may disallow, in whole or in part, a claim for credit under ORS 315.164 upon the Department of Revenue's determination that under the provisions of ORS 315.164 the taxpayer is not entitled to the credit or is only entitled to a portion of the amount claimed.

**SECTION 4.** ORS 315.169 is amended to read:

315.169. (1) A taxpayer that is a contributor is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or ORS chapter 317, if the taxpayer is a corporation, to the extent the owner or operator of farmworker housing transferred all or a portion of the credit allowed to the owner or operator under ORS 315.164.

(2) An owner or operator of farmworker housing may transfer all or a portion of the credit allowed to the owner or operator under ORS 315.164 to one or more contributors but the amount transferred may not total more than the total credit the owner or operator may claim.

(3) To receive a credit under this section:

(a) The contributor must obtain a letter of credit approval from the Housing and Community Services Department under ORS 315.167; or

(b) If the owner or operator of farmworker housing elects to transfer all or a portion of the credit allowed under ORS 315.164 after the date that a letter of credit approval has been issued to the owner or operator, the owner or operator and the contributor must jointly file a statement with the Department of Revenue stating the portion of the credit the contributor is allowed to claim and any other information the department may require by rule.

(4) A contributor remains eligible to receive a credit under this section even if the owner or operator of the farmworker housing becomes ineligible for the credit as a result of:

(a) Failure to file the annual certification under ORS 315.164 (6);

(b) Failure to continue to substantially comply with occupational safety or health laws, rules, regulations or standards under ORS 315.164 (10);

(c) Failure to register as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(d) Failure of the operator to hold a valid indorsement as a farmworker camp operator under ORS 658.730; or

(e) Failure to comply with any other rules or provisions relating to the operation or maintenance of the farmworker housing after [*the contributor has completed*] work on the project **has been completed.**

(5)(a) A contributor does not remain eligible to receive a credit under this section if the Department of Revenue finds, by order of a disallowance of credit and pursuant to the procedures for a contested case under ORS chapter 183, that the contributor obtained the credit by fraud or misrepresentation, including a finding that the housing did not comply with all occupational safety or health laws, rules, regulations and standards applicable for farmworker housing at the time the housing was completed.

(b) If the credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section, in connection with the farmworker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(6)(a) The credit allowed under this section may be taken for the tax year in which the farmworker housing project is completed or in any of the nine tax years succeeding the tax year in which the project is completed.

(b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined under subsection (2) of this section that was transferred to the contributor claiming the credit.

(7) Except as provided under subsection (8) of this section, the credit allowed in any one year may not exceed the tax liability of the taxpayer.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may be carried forward and used in the ninth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(10) The department may adopt rules for carrying out the provisions of this section.

**SECTION 5.** ORS 215.277 is amended to read:

215.277. It is the intent of the Legislative Assembly that the provision of farmworker housing, as defined in ORS [315.163] **215.278**, not allow other types of dwellings not otherwise permitted in exclusive farm use zones and that [such] farmworker housing be consistent with the intent and purposes set forth in ORS 215.243.

**SECTION 6.** ORS 215.278 is amended to read:

215.278. (1) The Land Conservation and Development Commission shall revise administrative rules regarding dwellings customarily provided in conjunction with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings needed to provide opportunities for farmworker housing for individuals primarily engaged in farm use whose assistance in the management of the farm is or will be required by the farm operator on the farm unit.

(2) As used in this section[,]:

(a) "Farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

(b) "**Farmworker**" means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the:

(A) **Production of farm products;**

(B) **Planting, cultivating or harvesting of seasonal agricultural crops; or**

(C) **Forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.**

- (c) "Farmworker housing" means housing:
  - (A) Limited to occupancy by farmworkers and their immediate families; and
  - (B) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

(d) "Owner" means a person that owns farmworker housing. "Owner" does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

- (e) "Relative" means:
  - (A) A spouse of the owner or operator; and
  - (B) An ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator.

**SECTION 7.** (1) The amendments to ORS 315.163 and 315.164 by sections 1 and 2 of this 2011 Act apply to tax years beginning on or after January 1, 2008.

(2) The amendments to ORS 315.167 and 315.169 by sections 3 and 4 of this 2011 Act apply to applications for a letter of credit approval filed under ORS 315.167 on or after the effective date of this 2011 Act.

(3) The amendments to ORS 215.277 and 215.278 by sections 5 and 6 of this 2011 Act apply, on and after the effective date of this 2011 Act, to farmworker housing in areas zoned for exclusive farm use.

**SECTION 8.** This 2011 Act takes effect on the 91st day after the date on which the 2011 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

Passed by House June 7, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 10, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

**Enrolled**  
**House Bill 3225**

Sponsored by Representative PARRISH; Representative WINGARD, Senators DEVLIN, GEORGE (at the request of South Metro Business Alliance)

CHAPTER .....

AN ACT

Relating to development in urban reserves; amending ORS 195.145; and declaring an emergency.

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

**SECTION 1.** ORS 195.145 is amended to read:

195.145. (1) To ensure that the supply of land available for urbanization is maintained:

(a) Local governments may cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.625.

(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

(2)(a) The Land Conservation and Development Commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic review if:

(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

(B) The local government has been required to designate an urban reserve by rule prior to November 4, 1993.

(3) In carrying out subsections (1) and (2) of this section:

(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve.

(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.

(4) Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.

(5) A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

- (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (b) Includes sufficient development capacity to support a healthy urban economy;
- (c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (e) Can be designed to preserve and enhance natural ecological systems; and
- (f) Includes sufficient land suitable for a range of housing types.

**(6) A county may take an exception under ORS 197.732 to a statewide land use planning goal to allow the establishment of a transportation facility in an area designated as urban reserve under subsection (1)(b) of this section.**

[6] (7) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection (1)(b) of this section.

**SECTION 2. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

Passed by House May 2, 2011

Received by Governor:

Repassed by House June 15, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate May 26, 2011

.....M.,....., 2011

Repassed by Senate June 16, 2011

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Peter Courtney, President of Senate

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

**Enrolled**  
**House Bill 3280**

Sponsored by Representative HOLVEY, Senator PROZANSKI; Representative BARNHART

CHAPTER .....

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *[Wines produced in conjunction with the winery; and]* **Market and sell wine produced in conjunction with the winery, including the following activities:**

(A) **Wine tours;**

(B) **Wine tastings in a tasting room or other location at the winery;**

(C) **Wine clubs; and**

(D) **Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;**

(b) **Market and sell** items directly related to the sale *[and]* **or** promotion of wine produced in conjunction with the winery, the **marketing and** sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010[.]; **and**

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

(4) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

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

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

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

(b) Provision of direct road access[,] and internal circulation [*and parking*].

[(5)] (7) A local government shall [*also*] apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access[,] and airport safety [*or other*];

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(8)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(9) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 3.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, and section 2 of this 2011 Act, is amended to read:

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

(a) Less than 50,000 gallons and:

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

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

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

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

(b) At least 50,000 gallons and the winery:

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

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

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

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

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

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

**(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.**

(4) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

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

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

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

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

(7) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(8)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local

government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(9) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 3a.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, and sections 2 and 3 of this 2011 Act, is amended to read:

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

(a) Less than 50,000 gallons and:

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

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

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

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

(b) At least 50,000 gallons and the winery:

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

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

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

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

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

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery; **and**

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010.]; and]

*[(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:]*

*[(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;]*

*[(B) Are incidental to the retail sale of wine on-site; and]*

*[(C) Are limited to 25 days or fewer in a calendar year.]*

*[(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.]*

*[(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.]*

*[(4)] (3) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.*

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

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

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

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

[(7)] **(6)** A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

[(8)(a)] **(7)(a)** A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

[(9) *As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.*]

**SECTION 4. Section 5 of this 2011 Act is added to and made a part of ORS chapter 215.**

**SECTION 5. (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) or 215.283 (1)(n) in an area zoned for exclusive farm use if:**

**(a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;**

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

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

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

**(a) Market and sell wine produced in conjunction with the winery, including the following activities:**

**(A) Wine tours;**

**(B) Wine tastings in a tasting room or other location at the winery;**

**(C) Wine clubs; and**

**(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;**

**(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and**

**(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:**

**(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;**

**(B) Are incidental to the retail sale of wine on-site; and**

**(C) Are limited to 25 days or fewer in a calendar year.**

(3) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

(4) A winery operating under this section:

(a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year.

(b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:

(A) Complies with the standards described in ORS 215.296;

(B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

(C) Does not materially alter the stability of the land use pattern in the area.

(c) If the local government issues a permit under this subsection for private events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

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

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

(8) A local government shall require a winery operating under this section to provide for:

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

(b) Direct road access and internal circulation.

(9) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(b) or (c) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).

(11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(12) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 5a.** Section 5 of this 2011 Act is amended to read:

**Sec. 5.** (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) or 215.283 (1)(n) in an area zoned for exclusive farm use if:

(a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;

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

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

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

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

**(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.**

(4) A winery operating under this section:

(a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year.

(b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:

(A) Complies with the standards described in ORS 215.296;

(B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

(C) Does not materially alter the stability of the land use pattern in the area.

(c) If the local government issues a permit under this subsection for private events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

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

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

(8) A local government shall require a winery operating under this section to provide for:

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

(b) Direct road access and internal circulation.

(9) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(b) or (c) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).

(11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(12) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 6. (1) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on the effective date of this 2011 Act, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.**

**(2) Subsection (1) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.**

**SECTION 7.** ORS 215.213 is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

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

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

(f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

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

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

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

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 **or section 5 of this 2011 Act.**

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

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

(r) Farm stands if:

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

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

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

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

(A) Consists of 20 or more acres; and

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

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

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

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

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

(d) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

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

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

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

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip re-

stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

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

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

(k) Dog kennels.

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

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

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

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

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

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

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

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

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

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

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

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

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

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

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

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

(c) Complies with such other conditions as the governing body or its designee considers necessary.

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

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

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

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

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

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

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

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

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

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

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

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

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

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

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

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

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

**SECTION 8.** ORS 215.283 is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

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

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

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

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

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

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

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

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

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

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 **or section 5 of this 2011 Act.**

(o) Farm stands if:

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to

siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

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

(b) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for

overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

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

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

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

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

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

(i) Home occupations as provided in ORS 215.448.

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

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

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

(m) Transmission towers over 200 feet in height.

(n) Dog kennels.

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

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

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

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

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

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

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

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

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

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

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

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

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

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

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

**SECTION 9.** ORS 215.455 is amended to read:

215.455. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 **and section 5 of this 2011 Act** is not a basis for an exception under ORS 197.732 (2)(a) or (b).

**SECTION 10.** ORS 308A.053 is amended to read:  
308A.053. As used in ORS 308A.050 to 308A.128:

(1) "Exclusive farm use zone" means a zoning district established by a county or a city under the authority granted by ORS chapter 215 or 227 that is consistent with the farm use zone provisions set forth in ORS 215.203 to 215.311, 215.438, 215.448, 215.452, 215.455 or 215.700 to 215.780 **or section 5 of this 2011 Act.**

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

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

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

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

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

**SECTION 11. (1) The amendments to ORS 215.452 by section 3 of this 2011 Act become operative January 1, 2013.**

**(2) The amendments to section 5 of this 2011 Act by section 5a of this 2011 Act become operative January 1, 2013.**

**(3) The amendments to ORS 215.452 by section 3a of this 2011 Act become operative January 1, 2014.**

**SECTION 12. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

Passed by House April 29, 2011

Received by Governor:

Repassed by House June 27, 2011

.....M,....., 2011

Approved:

.....  
Ramona Kenady Line, Chief Clerk of House

.....M,....., 2011

.....  
Bruce Hanna, Speaker of House

.....  
John Kitzhaber, Governor

.....  
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 8, 2011

.....M,....., 2011

Repassed by Senate June 27, 2011

.....  
Peter Courtney, President of Senate

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

**Enrolled**  
**House Bill 3290**

Sponsored by Representative THOMPSON; Representatives BOONE, ESQUIVEL, GILLIAM, Senator JOHNSON

CHAPTER .....

AN ACT

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

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

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

- (1) In at least three of the last five years;
- (2) In each of the last two years; or
- (3) Based on the average farm income earned on the tract in the best three of the last five years.

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

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

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

- (a) Churches and cemeteries in conjunction with churches.
- (b) The propagation or harvesting of a forest product.
- (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.
- (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.
- (e) Nonresidential buildings customarily provided in conjunction with farm use.

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

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

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

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

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

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

(r) Farm stands if:

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

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

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

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

(A) Consists of 20 or more acres; and

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

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

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

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

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

(d) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

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

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

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

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip re-

stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

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

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

(k) Dog kennels.

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

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

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

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

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

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

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

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

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

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

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

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

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

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

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

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

(c) Complies with such other conditions as the governing body or its designee considers necessary.

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

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

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

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

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

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

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

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

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

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

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

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

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

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

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

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

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

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

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

(a) Churches and cemeteries in conjunction with churches.

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

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

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

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

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

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

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

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

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

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

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

(m) Creation, restoration or enhancement of wetlands.

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

(o) Farm stands if:

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to

siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

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

(b) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for

overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

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

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

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

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

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

(i) Home occupations as provided in ORS 215.448.

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

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

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

(m) Transmission towers over 200 feet in height.

(n) Dog kennels.

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

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

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

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

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

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

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

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

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

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

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

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

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

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

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

**Passed by House April 26, 2011**

**Repassed by House June 9, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 7, 2011**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

.....  
Kate Brown, Secretary of State

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

## Enrolled Senate Bill 960

Sponsored by Senator THOMSEN (at the request of Association of Oregon Counties, Oregon Farm Bureau)

CHAPTER .....

AN ACT

Relating to uses on lands zoned for exclusive farm use; creating new provisions; amending ORS 197.015, 215.213, 215.246, 215.283 and 215.296; and declaring an emergency.

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

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

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

(a) Churches and cemeteries in conjunction with churches.

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

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

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

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

(f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

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

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

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

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building

codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(r) Farm stands if:

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

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

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

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

(A) Consists of 20 or more acres; and

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

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

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

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

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

(d) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

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

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

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

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

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

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

(k) Dog kennels.

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

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

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

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

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

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

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

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

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

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

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

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

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

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

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

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

(c) Complies with such other conditions as the governing body or its designee considers necessary.

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

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

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

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

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

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

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

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

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

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

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

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

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

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

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

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

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

**(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:**

**(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:**

**(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;**

**(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;**

**(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;**

**(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;**

**(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;**

**(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and**

**(G) The agri-tourism or other commercial event or activity complies with conditions established for:**

**(i) Planned hours of operation;**

**(ii) Access, egress and parking;**

**(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and**

**(iv) Sanitation and solid waste.**

**(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:**

**(A) Must be incidental and subordinate to existing farm use on the tract;**

**(B) May not begin before 6 a.m. or end after 10 p.m.;**

**(C) May not involve more than 100 attendees or 50 vehicles;**

**(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;**

**(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;**

**(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and**

**(G) Must comply with applicable health and fire and life safety requirements.**

**(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:**

**(A) Must be incidental and subordinate to existing farm use on the tract;**

**(B) May not, individually, exceed a duration of 72 consecutive hours;**

**(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;**

**(D) Must comply with ORS 215.296;**

**(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and**

**(F) Must comply with conditions established for:**

**(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;**

**(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;**

**(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;**

**(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and**

**(v) Sanitation and solid waste.**

**(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:**

**(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;**

**(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;**

**(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and**

**(D) Do not exceed 18 events or activities in a calendar year.**

**(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:**

**(a) Provide public notice and an opportunity for public comment as part of the review process; and**

**(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.**

**(13) For the purposes of subsection (11) of this section:**

**(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.**

**(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.**

**(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that “outdoor mass gathering” and “other gathering,” as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.**

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

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

(a) Churches and cemeteries in conjunction with churches.

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

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

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

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

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

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

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

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

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

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

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

(m) Creation, restoration or enhancement of wetlands.

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

(o) Farm stands if:

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

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

(b) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the

standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

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

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

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

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

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

(i) Home occupations as provided in ORS 215.448.

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

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

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

(m) Transmission towers over 200 feet in height.

(n) Dog kennels.

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

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the

county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

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

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

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

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

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

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

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

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

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

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

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

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

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

**(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:**

**(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:**

**(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;**

**(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;**

**(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;**

**(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;**

**(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;**

**(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and**

**(G) The agri-tourism or other commercial event or activity complies with conditions established for:**

**(i) Planned hours of operation;**

**(ii) Access, egress and parking;**

**(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and**

**(iv) Sanitation and solid waste.**

**(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:**

**(A) Must be incidental and subordinate to existing farm use on the tract;**

**(B) May not begin before 6 a.m. or end after 10 p.m.;**

**(C) May not involve more than 100 attendees or 50 vehicles;**

**(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;**

**(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;**

**(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and**

**(G) Must comply with applicable health and fire and life safety requirements.**

**(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:**

**(A) Must be incidental and subordinate to existing farm use on the tract;**

**(B) May not, individually, exceed a duration of 72 consecutive hours;**

**(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;**

**(D) Must comply with ORS 215.296;**

**(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and**

**(F) Must comply with conditions established for:**

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

**SECTION 3.** If a winery sited on land zoned for exclusive farm use under ORS 215.452 conducts events or activities authorized by ORS 215.213 (11) or 215.283 (4), the winery may not conduct events or activities, if any, that are:

(1) Authorized by ORS 215.452; and

(2) Subject to the conditional approval of a county.

**SECTION 4. Notwithstanding ORS 30.938, in an action or claim for relief alleging nuisance or trespass and arising from a practice that is alleged by either party to be a farming or forest practice, the prevailing party is not entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal if:**

(1) The party owns, operates or attends an agri-tourism or other commercial event or activity authorized under ORS 215.213 (11) or 215.283 (4); and

(2) The action or claim arises from the event or activity.

**SECTION 5. The uses authorized by ORS 215.213 (11) or 215.283 (4) may be allowed on lands that are planned and zoned for exclusive farm use and designated as rural reserves under ORS 195.141 or as urban reserves under ORS 195.145.**

**SECTION 6. (1)(a) A use or structure in an area zoned for exclusive farm use that exists on the effective date of this 2011 Act may be lawfully continued, altered, restored or replaced pursuant to ORS 215.130 if the use or structure is located on the same tract, as defined in ORS 215.010, as a winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 250,000 gallons of wine in calendar year 2010.**

(b) This subsection does not affect the lawful continuation, alteration, restoration or expansion of the winery sited on the same tract.

(2) A winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 150,000 gallons and not more than 250,000 gallons of wine in calendar year 2010 does not require a permit under ORS 215.213 (2)(c) or 215.283 (2)(a). However, the winery must comply with all provisions of ORS 215.452 except the annual production requirements.

**SECTION 7. ORS 197.015 is amended to read:**

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

- (10) "Land use decision":
- (a) Includes:
- (A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
- (i) The goals;
  - (ii) A comprehensive plan provision;
  - (iii) A land use regulation; or
  - (iv) A new land use regulation;
- (B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or
- (C) A decision of a county planning commission made under ORS 433.763;
- (b) Does not include a decision of a local government:
- (A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
- (B) That approves or denies a building permit issued under clear and objective land use standards;
- (C) That is a limited land use decision;
- (D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
- (E) That is an expedited land division as described in ORS 197.360;
- (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;
- (G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or
- (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:
- (i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;
  - (ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or
  - (iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;
- (c) Does not include a decision by a school district to close a school;
- (d) Does not include, **except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c)**, authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and
- (e) Does not include:
- (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
  - (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or
  - (C) A state agency action subject to ORS 197.180 (1), if:
    - (i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or
    - (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision":

(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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

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

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process

water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

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

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

- (a) The tract is included within an acknowledged urban growth boundary;
- (b) The tract is rezoned to a zone other than an exclusive farm use zone;
- (c) The different use of the tract is a farm use as defined in ORS 215.203; or
- (d) The different use of the tract is a use allowed under:
  - (A) ORS 215.213 (1)(b), (d) to (f), (i) to (n), (p) to (r), (u), (w) or (x);
  - (B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);
  - (C) ORS 215.213 (11);**
  - [(C)] (D) ORS 215.283 (1)(b), (d), (e), (h) to (L), (n) to (p), (r), (t) or (u); [or]**
  - [(D)] (E) ORS 215.283 (2)(a), (j), (L) or (p) to (s)].;** **or**
  - (F) ORS 215.283 (4).**

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

(4) The uses allowed under this section include:

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

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

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

(A) A public right of way; or

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

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

(5) Uses not allowed under this section include:

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

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

**SECTION 9.** ORS 215.296 is amended to read:

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

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

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

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

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

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

(b) That the violation has:

(A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

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

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

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

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

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

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

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

(6) If the conditions that led to a violation are not corrected within the time period specified pursuant to subsection (5) of this section, or if there is a determination pursuant to subsection (4) of this section following the receipt of a second complaint that a further violation has occurred, the local governing body or its designee at a minimum shall assess a fine against the violator.

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

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

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

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

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

(C) An acknowledged urban growth boundary.

(b) A person residing in a single-family residential dwelling which was approved under ORS 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705, which is within an exception area approved

under ORS 197.732 or which is within an acknowledged urban growth boundary may not file a complaint under subsection (3) of this section.

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

**SECTION 10. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

**Passed by Senate June 2, 2011**

.....  
Robert Taylor, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 17, 2011**

.....  
Bruce Hanna, Speaker of House

.....  
Arnie Roblan, Speaker of House

**Received by Governor:**

.....M.,....., 2011

**Approved:**

.....M.,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2011

.....  
Kate Brown, Secretary of State

Secretary of State

# NOTICE OF PROPOSED RULEMAKING HEARING\*

A Statement of Need and Fiscal Impact accompanies this form

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Casaria Tuttle

(503) 373-0050, ext. 322

Rules Coordinator

Telephone

Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

Address

## RULE CAPTION

### Amendments to conform agency rules to new laws

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
1-26-12	08:30 AM	DLCD, 635 Capitol Street, Basement Hearing Room, Salem, OR 97301	Land Conservation and Development Commission

Auxiliary aids for persons with disabilities are available upon request.

## RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

### **ADOPT:**

660-033-0040

### **AMEND:**

660-007

660-008

660-027-0070

660-028

660-033-0030

660-033-0100

660-033-0130

660-033-0135

### **REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

### **Statutory Authority:**

ORS 197.140; 195.145; 195; 197.215; 227

### **Other Authority:**

Statewide Planning Goals (OAR 660, div 15)

### **Statutes Implemented:**

ORS195; 197; 215; 227; 2010 legislation: HB3647; 2011 legislation: HB 2131; 2132; 2154; 3225; 3290

## RULE SUMMARY

The proposed rule amendments are necessary to implement laws enacted by the 2010 and 2011 legislatures. The proposed amendments will revise existing rules as necessary to conform rule wording to new and revised state laws, and to ensure consistency between rules and statute. The proposed new rule at OAR 660-033-0040, regarding Soils Assessments by Professional Soil Classifiers, will renumber portions of an existing rule as a new rule without amending current content of the rule.

The Commission may consider other minor or technical corrections to these divisions. The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the economic impact of the rule on business.

Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed
01-26-2012 8:30 a.m.	Casaria Tuttle	casaria.r.tuttle@state.or.us	12-15-11 10:44a.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Amendments to conform agency rules to new laws

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to conform agency rules to new laws

Statutory Authority:

ORS 197.140; 195.145; 195; 197.215; 227

Other Authority:

Statewide Planning Goals (OAR 660, div 15)

Stats. Implemented:

ORS195; 197; 215; 227; 2010 legislation: HB3647; 2011 legislation: HB 2131; 2132; 2154; 3225; 3290

Need for the Rule(s):

The proposed rule amendments are necessary to implement laws enacted by the 2010 and 2011 legislatures. The proposed amendments will revise existing rules as necessary to conform rule wording to new and revised state laws, and to ensure consistency between rules and statute.

The Commission may consider other minor or technical corrections to these rule divisions.

The proposed new rule at OAR 660-033-0040, regarding Soils Assessments by Professional Soil Classifiers, is a proposal to, in effect, renumber certain portions of the existing rule in OAR 660-033-0030 as a separate rule, without amending current content of that rule. Those rules were adopted by LCDC in December 2011 to implement 2010 legislation (HB 3647).

Documents Relied Upon, and where they are available:

Statewide planning goals (available from the agency). New legislation cited above (Available from the Oregon Legislature).

Fiscal and Economic Impact:

The proposed rule amendments (and new rule) will not have economic effects on business because the proposed amendments are not new provisions. Rather, they are necessary to conform agency rules to current statutes in effect, or that will take effect by the time the rule amendments are effective. The department cannot propose alternative rules that would achieve the underlying lawful governmental objective because the proposal is necessary to implement new laws. The proposed rule amendments are not substantially different than existing statutory requirements. As such, economic and property interests will not be adversely affected by the rule amendments.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534). Amendments to OAR chapter 660, divisions 7 and 8 affect approval standards for dwellings. However, these rules implement statutes that will be effective regardless of whether these conforming rule amendments are adopted. As such, the proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling. To the extent that agency rules accurately reflect statutory requirements and therefore increase compliance with state law, some benefits will accrue to housing construction costs. However, those effects, which are expected to reduce housing costs, cannot be calculated.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (See ORS 183.534).

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments carry out new statutory provisions that will be in effect regardless of whether conforming rule amendments are made. Having rules that accurately reflect statutory requirements could affect local governments by increasing compliance, but this effect cannot be verified or calculated.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

The rules subject to this rulemaking will not affect small businesses and industries with small businesses because these amended rules would implement statutes that will be effective regardless of whether these conforming rule amendments are adopted. To the extent that agency rules accurately reflect statutory requirements and therefore increase compliance with state law, some benefits will accrue to housing construction costs. However, those effects, which are expected to reduce housing costs, cannot be calculated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

These rule amendments will clarify but will not change current compliance procedures and no professional service costs for small business are anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.

How were small businesses involved in the development of this rule?

If not, why?:

Economic interests and property owners will not be affected by the amended rules for the same reasons described above for small businesses.

Administrative Rule Advisory Committee consulted?: No

Because these amendments are intended to simply reflect and conform to state law, and because small businesses were consulted in the process to enact the new state law, the department did not consult with small businesses in this housekeeping rulemaking.

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01-26-2012 8:30 a.m.	Casaria Tuttle	casaria.r.tuttle@state.or.us	12-15-11 10:44 AM
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150  
Salem, OR 97301-2540  
(503) 373-0050  
Fax (503) 378-5518  
[www.lcd.state.or.us](http://www.lcd.state.or.us)

December 23, 2011

TO: The Honorable Peter Courtney, President of the Senate  
The Honorable Bruce Hanna and Arnie Roblan, Co-Speakers of the House

FROM: Jim Rue, Acting Director  
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Proposed Amendments to DLCD Rules

Enclosed are notices indicating the Land Conservation and Development Commission (LCDC) is considering amendments to the following administrative rules to implement legislation enacted by the 2011 Oregon Legislature: OAR 660, div 7 (Metropolitan Housing); OAR 660, div 8 (Interpretation of Goal 10 Housing); OAR 660-027-0070 (Planning of Urban and Rural Reserves); OAR 660, div 28 (Oregon Transfer of Development Rights Pilot Program); OAR 660-033-0030 (Identifying Agricultural Land, including renumbering that creates a new rule at OAR 660-033-0045); OAR 660-033-0100 (Minimum Parcel Size Requirements); OAR 660-033-0130 (Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses); and OAR 660-033-0135 (Dwellings in Conjunction with Farm Use).

LCDC will hold a public hearing **January 26, 2012**, to receive public comments regarding the proposed amendments. The meeting, which includes other agenda items, will begin at 8:30 a.m. at the Agriculture Building, 635 Capitol Street NE, Salem. Interested persons may address LCDC concerning the rule proposals at that time, or may provide written comments. Written comments are encouraged, and will be accepted until the close of the hearing. After completion of public testimony, LCDC may adopt the proposal, and if so, the amendments would become effective upon filing with the Secretary of State. A draft and other information about the proposed rules will be posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

Address written comments to the Chair of the Land Conservation and Development Commission care of Casaria Tuttle at the department's address above, or email comments to [casaria.r.tuttle@state.or.us](mailto:casaria.r.tuttle@state.or.us). Fax comments to 503-378-5518. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

This notice is also being provided to the chairs of interim or session committees with authority over the subject matter of these rules, as required by ORS 183.335(15)(b).

Copies:

Sen. Dingfelder  
Rep. Read  
Sen. Atkinson  
Rep. Sheehan  
Sen. Olsen

Rep. Clem  
Rep. Bentz  
Rep. Hunt  
Rep. Esquivel

December 30, 2011

### **Notice of Proposed Rule Amendments to Conform to Statute**

The Land Conservation and Development Commission (LCDC) is considering amendments to the following administrative rules to implement legislation enacted by the 2011 Oregon Legislature: OAR 660, div 7 (Metropolitan Housing); OAR 660, div 8 (Interpretation of Goal 10 Housing); OAR 660-027-0070 (Planning of Urban and Rural Reserves); OAR 660, div 28 (Oregon Transfer of Development Rights Pilot Program); OAR 660-033-0030 (Identifying Agricultural Land, including adoption of a new rule at OAR 660-033-0045); OAR 660-033-0100 (Minimum Parcel Size Requirements); OAR 660-033-0130 (Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses); OAR 660-033-0135 (Dwellings in Conjunction with Farm Use).

LCDC will hold a public hearing **January 26, 2012**, to receive public comments regarding the proposal. That meeting, which will include other agenda items preceding the administrative rule hearing, is scheduled to begin at 9:00 AM at DLCD, Basement Hearing Room, 635 Capitol St. After completion of public comments, LCDC will consider testimony and other information provided and may adopt the proposed rule amendments and new rule. If adopted, the rule amendments and proposed new rule will be affective upon filing with the Secretary of State approximately February 15, 2012.

A draft of the proposed rules and other notices and fiscal statements are available on DLCD's website at <http://www.lcd.state.or.us/LCD/rulemaking.shtml>. To obtain copies of the proposed rule amendments, proposed new rule and related information by mail, email or fax, please contact Casaria Tuttle at 503-373-0050 Ext. 322; email [casaria.r.tuttle@state.or.us](mailto:casaria.r.tuttle@state.or.us). The agenda for LCDC's January 26 meeting will be available on DLCD's website, <http://www.lcd.state.or.us/>, at least ten days prior to the meeting.

Interested persons may provide oral testimony to LCDC regarding the proposed rule and rule amendments at the public hearing. The public is strongly encouraged to send written comments in advance of the hearing. Testimony will be accepted until the close of the hearing. Address written comments to the Chair of the Land Conservation and Development Commission, care of Casaria Tuttle at the department's address above, or email comments to [casaria.r.tuttle@state.or.us](mailto:casaria.r.tuttle@state.or.us). Fax comments to 503-378-6033. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

The proposed rule amendments are needed in order to implement new laws. The Commission may consider other minor amendments based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections, and may make other related amendments proposed during the public comment period. As per ORS 183.335(2)(b)(G), the agency requests public comment on whether other options should be considered for achieving the proposed substantive goals while reducing the negative economic impact of the rule on business.

Land Conservation and Development Commission

Public Comment  
Received as of  
January 13, 2012

January 26-27, 2012