

2007 ORS § 215.213¹

Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993

• rules

- (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) Public or private schools, including all buildings essential to the operation of a school.
 - (b) Churches and cemeteries in conjunction with churches.
 - (c) The propagation or harvesting of a forest product.
 - (d) 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 (Utility facilities necessary for public service).
 - (e) 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 (Definitions for ORS 92.010 to 92.190) to 92.190 (Effect of replat) or the minimum lot or parcel size requirements under ORS 215.780 (Minimum lot or parcel sizes), 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 (Definitions for ORS 308A.250 to 308A.259), and the foreclosure shall operate as a partition of the homesite to create a new parcel.

- (f) Nonresidential buildings customarily provided in conjunction with farm use.
- (g) 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 (Compliance acknowledgment).
- (h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 (Definitions) and oil and gas as defined by ORS 520.005 (Definitions), 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 (Goal exceptions) (2)(a) or (b).
- (i) Operations for the exploration for minerals as defined by ORS 517.750 (Definitions for ORS 517.702 to 517.989). Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (Goal exceptions) (2)(a) or (b).
- (j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049 (Mandated landfills in certain counties), together with equipment, facilities or buildings necessary for its operation.
- (k) 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 (t) of this subsection.
 - (L) The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county.
- (m) Climbing and passing lanes within the right of way existing as of July 1, 1987.
- (n) 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.

- (o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- (p) 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.
- (q) 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 (Definitions for ORS 358.480 to 358.545).
- (r) Creation of, restoration of or enhancement of wetlands.
- (s) A winery, as described in ORS 215.452 (Winery).
- (t) 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.
- (u) 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.
- (v) 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.
- (w) 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. 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.

- (x) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141 (Biomass production or collection), 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.
 - (y) Fire service facilities providing rural fire protection services.
 - (z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505 (Definitions).
 - (aa) 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.
 - (bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses), 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 (Standards for approval of certain uses in exclusive farm use zones):

- (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 (Zoning ordinances establishing exclusive farm use zones) (2)(b)(L) or subsection (1)(x) of this section.
- (d) Operations conducted for:
 - (A) Mining and processing of geothermal resources as defined by ORS 522.005 (Definitions) and oil and gas as defined by ORS 520.005 (Definitions), not otherwise permitted under subsection (1)(h) of this section;
 - (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298 (Mining in exclusive farm use zone);
 - (C) Processing, as defined by ORS 517.750 (Definitions for ORS 517.702 to 517.989), 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 (Standards for approval of certain uses in exclusive farm use zones) (1). A public park or campground may be established as provided under ORS 195.120 (Rules and planning goal amendments for parks required). 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.
- (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 (Zoning ordinances establishing exclusive farm use zones) (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 (Issuance of permits) by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
- (k) Dog kennels not described in subsection (1)(L) of this section.
 - (L) Residential homes as defined in ORS 197.660 (Definitions), 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 (Home occupations).
- (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 (Definitions for ORS 671.510 to 671.760), or a business providing landscape architecture services, as described in ORS 671.318 (Businesses providing landscape architecture services), if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(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 (Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780) to 215.438 (Transmission towers). 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 (Standards for approval of certain uses in exclusive farm use zones) for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993. [1963 c.577 §3; 1963 c.619 §1a; 1969 c.258 §1; 1973 c.503 §4; 1975 c.551 §1; 1975 c.552 §32; 1977 c.766 §8; 1977 c.788 §2; 1979 c.480 §6; 1979 c.773 §10; 1981 c.748 §44; 1983 c.743 §3; 1983 c.826 §6; 1983 c.827 §27b; 1985 c.544 §2; 1985 c.583 §1; 1985 c.604 §3; 1985 c.717 §5; 1985 c.811 §12; 1987 c.227 §1; 1987 c.729 §5; 1987 c.886 §9; 1989 c.224 §25; 1989 c.525 §1; 1989 c.564 §7; 1989 c.648 §59; 1989 c.739 §1; 1989 c.837 §26; 1989 c.861 §1; 1989 c.964 §10; 1991 c.459 §345; 1991 c.866 §1; 1991 c.950 §2; 1993 c.466 §1; 1993 c.469 §5; 1993 c.704 §2; 1993 c.792 §29a; 1995 c.435 §1; 1995 c.528 §1; 1997 c.249 §59; 1997 c.250 §1; 1997 c.276 §1; 1997 c.312 §1; 1997 c.318 §1; 1997 c.363 §1; 1997 c.862 §2; 1999 c.608 §1; 1999 c.640 §1; 1999 c.758 §1; 1999 c.816 §1; 1999 c.935 §20; 2001 c.149 §1; 2001 c.260 §§1,2; 2001 c.488 §1; 2001 c.613 §7; 2001 c.676 §1; 2001 c.757 §1; 2001 c.941 §1; 2003 c.247 §§1,2; 2005 c.22 §§161,162; 2005 c.150 §§1,2; 2005 c.354 §§2,3; 2005 c.609 §§24,25; 2005 c.693 §§1,2; 2007 c.71 §71; 2007 c.541 §1; 2007 c.739 §35]