

2007 ORS § 215.275¹

Utility facilities necessary for public service

- criteria
- rules
- mitigating impact of facility

- (1) A utility facility established under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(d) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(d) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.
- (2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(d) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
 - (a) Technical and engineering feasibility;
 - (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
 - (c) Lack of available urban and nonresource lands;
 - (d) Availability of existing rights of way;
 - (e) Public health and safety; **and**
 - (f) Other requirements of state or federal agencies.
- (3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially

similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

- (4) The owner of a utility facility approved under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(d) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(d) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
- (5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(d) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(d) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.
- (6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. [1999 c.816 §3]

Note: 215.275 (Utility facilities necessary for public service) was added to and made a part of 215.203 (Zoning ordinances establishing exclusive farm use zones) to 215.311 (Parking log trucks in exclusive farm use zones) by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

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Notes of Decisions

"Reasonable alternatives" to be considered in assessing necessity of utility facility are limited to reasonable site alternatives to exclusive farm use land. *Sprint PCS v. Washington County*, 186 Or App 470, 63 P3d 1261 (2003)

Consideration of reasonable site alternatives for utility facility may include consideration of different designs to adapt utility's chosen methodology to land that is not zoned for exclusive farm use. *Sprint PCS v. Washington County*, 186 Or App 470, 63 P3d 1261 (2003)

"Reasonable" alternatives to exclusive farm use zone locations refers to alternatives that are fair, proper, just, moderate and suitable under circumstances, not merely alternatives that have some likelihood of success. *Friends of Parrett Mountain v. Northwest Natural Gas Co.*, 336 Or 93, 79 P3d 869 (2003)

Evaluation of need to site facility within exclusive farm use zone may be based on zone as whole rather than on property-by-property analysis. *Friends of Parrett Mountain v. Northwest Natural Gas Co.*, 336 Or 93, 79 P3d 869 (2003)

Road and highway rights-of-way within exclusive farm use zone are treated as exclusive farm use land for purposes of determining existence of alternative to siting facility within zone. *Friends of Parrett Mountain v. Northwest Natural Gas Co.*, 336 Or 93, 79 P3d 869 (2003)

§§ 215.203 (Zoning ordinances establishing exclusive farm use zones) to 215.311 (Parking log trucks in exclusive farm use zones)