

Chapter 215

2005 EDITION

County Planning; Zoning; Housing Codes

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COUNTY PLANNING

215.010 Definitions. As used in this chapter:

(1) The terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":

(a) Includes a unit of land created:

(A) By partitioning land as defined in ORS 92.010;

(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(b) Does not include a unit of land created solely to establish a separate tax account.

(2) "Tract" means one or more contiguous lots or parcels under the same ownership.

(3) The terms defined in ORS chapter 197 shall have the meanings given therein.

(4) "Farm use" has the meaning given that term in ORS 215.203.

(5) "The Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast Range. [Amended by 1955 c.756 §25; 1963 c.619 §1 (1); 1985 c.717 §4; 1993 c.792 §8; 1999 c.327 §1]

215.020 Authority to establish county planning commissions. (1) The governing body of any county may create and provide for the organization and operations of one or more county planning commissions.

(2) This section shall be liberally construed and shall include the authority to create more than one planning commission, or subcommittee of a commission, for a county or the use of a joint planning commission or other intergovernmental agency for planning as authorized by ORS 190.003 to 190.130. [Amended by 1973 c.552 §1; 1975 c.767 §15]

215.030 Membership of planning commission. (1) The county planning commission shall consist of five, seven or nine members appointed by the governing body for four-year terms, or until their respective successors are appointed and qualified; provided that in the first instance the terms of the initial members shall be staggered for one, two, three and four years.

(2) A commission member may be removed by the governing body, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy on the commission shall be filled by the governing body for the unexpired term.

(4) Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses.

(5) Members of a commission shall be residents of the various geographic areas of the county. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employees of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession.

(6) The governing body may designate one or more officers of the county to be nonvoting members of the commission.

(7) Except for subsection (5) of this section, the governing body may provide by ordinance for alternative rules to those specified in this section. [Amended by 1963 c.619 §2; 1973 c.552 §2; 1977 c.766 §1]

215.035 [1973 c.552 §10; renumbered 244.135 in 1993]

215.040 [Amended by 1973 c.552 §3; repealed by 1977 c.766 §16]

215.042 Planning director. (1) The governing body of each county shall designate an individual to serve as planning director for the county responsible for administration of planning. The governing body shall provide employees as necessary to assist the director in carrying out responsibilities. The director shall be the chief administrative officer in charge of the planning department of the county, if one is created.

(2) The director shall provide assistance, as requested, to the planning commission and shall coordinate the functions of the commission with other departments, agencies and officers of the county that are engaged in functions related to planning for the use of lands within the county.

(3) The director shall serve at the pleasure of the governing body of the county. [1973 c.552 §9]

215.044 Solar access ordinances; purpose; standards. (1) County governing bodies may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The county governing body shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The State Department of Energy shall actively encourage and assist county governing bodies' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c.722 §2]

215.046 [1973 c.552 §11; repealed by 1977 c.766 §16]

215.047 Effect of comprehensive plan and land use regulations on solar access ordinances. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §3]

215.050 Comprehensive planning, zoning and subdivision ordinances; copies available. (1) Except as provided in ORS 527.722, the county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.

(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.

(3) A county shall maintain copies of its comprehensive plan and land use regulations, as defined in ORS 197.015, for sale to the public at a charge not to exceed the cost of copying and assembling the material. [Amended by 1955 c.439 §2; 1963 c.619 §3; 1973 c.552 §4; 1977 c.766 §2; 1981 c.748 §41; 1987 c.919 §5; 1991 c.363 §1]

215.055 [1955 c.439 §3; 1963 c.619 §4; 1971 c.13 §2; 1971 c.739 §1; 1973 c.80 §43; 1975 c.153 §1; repealed by 1977 c.766 §16]

215.060 Procedure for action on plan; notice; hearing. Action by the governing body of a county regarding the plan shall have no legal effect unless the governing body first conducts one or more public hearings on the plan and unless 10 days' advance public notice of each of the hearings is published in a newspaper of general circulation in the county or, in case the plan as it is to be heard concerns only part of the county, is so published in the territory so concerned and unless a majority of the members of the governing body approves the action. The no-

tice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television. [Amended by 1963 c.619 §5; 1967 c.589 §1; 1973 c.552 §6]

215.070 [Repealed by 1963 c.619 §16]

215.080 Power to enter upon land. The commission, and any of its members, officers and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

215.090 Information made available to commission. Public officials, departments and agencies, having information, maps or other data deemed by the planning commission pertinent to county planning shall make such information available for the use of the commission. [Amended by 1977 c.766 §3]

215.100 Cooperation with other agencies. The county planning commission shall advise and cooperate with other planning commissions within the state, and shall upon request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in county planning.

215.104 [1955 c.439 §4; 1963 c.619 §6; 1967 c.589 §2; 1973 c.552 §7; repealed by 1977 c.766 §16]

215.108 [1955 c.439 §5; 1961 c.607 §1; repealed by 1963 c.619 §16]

215.110 Recommendations for implementation of comprehensive plan; enactment of ordinances; referral; retroactivity. (1) A planning commission may recommend to the governing body ordinances intended to implement part or all of the comprehensive plan. The ordinances may provide, among other things, for:

(a) Zoning;

(b) Official maps showing the location and dimensions of, and the degree of permitted access to, existing and proposed thoroughfares, easements and property needed for public purposes;

(c) Preservation of the integrity of the maps by controls over construction, by making official maps parts of county deed records, and by other action not violative of private property rights;

(d) Conservation of the natural resources of the county;

(e) Controlling subdivision and partitioning of land;

(f) Renaming public thoroughfares;

(g) Protecting and assuring access to incident solar energy;

(h) Protecting and assuring access to wind for potential electrical generation or mechanical application; and

(i) Numbering property.

(2) The governing body may enact, amend or repeal ordinances to assist in carrying out a comprehensive plan. If an ordinance is recommended by a planning commission, the governing body may make any amendments to the recommendation required in the public interest. If an ordinance is initiated by the governing body, it shall, prior to enactment, request a report and recommendation regarding the ordinance from the planning commission, if one exists, and allow a reasonable time for submission of the report and recommendation.

(3) The governing body may refer to the electors of the county for their approval or rejection an ordinance or amendments thereto for which this section provides. If only a part of the county is affected, the ordinance or amendment may be referred to that part only.

(4) An ordinance enacted by authority of this section may prescribe fees and appeal procedures necessary or convenient for carrying out the purposes of the ordinance.

(5) An ordinance enacted by authority of this section may prescribe limitations designed to encourage and protect the installation and use of solar and wind energy systems.

(6) No retroactive ordinance shall be enacted under the provisions of this section. [Amended by 1963 c.619 §7; 1973 c.696 §22; 1975 c.153 §2; 1977 c.766 §4; 1979 c.671 §2; 1981 c.590 §7]

215.120 [Amended by 1957 c.568 §2; repealed by 1963 c.619 §16]

215.124 [1955 c.683 §§2, 4; 1957 c.568 §3; repealed by 1959 c.387 §1]

215.126 [1955 c.683 §3; 1957 c.568 §1; 1959 c.387 §2; repealed by 1963 c.619 §16]

215.130 Application of ordinances and comprehensive plan; alteration of non-conforming use. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law within the meaning of, and subject to, ORS 250.155 to 250.235.

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city unless, or until the city has by ordinance or other provision provided otherwise; and

(b) The area within the county also within the boundaries of a city if the governing body of such city adopts an ordinance declaring the area within its boundaries subject to the county's land use planning and regulatory ordinances, officers and proce-

dures and the county governing body consents to the conferral of jurisdiction.

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until the county provides otherwise.

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with ORS 195.260 (1)(c).

(7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

(b) Notwithstanding any local ordinance, a surface mining use continued under subsection (5) of this section shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

(A) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and

(B) The surface mining use was not inactive for a period of 12 consecutive years or more.

(c) For purposes of this subsection, "inactive" means no aggregate materials were

excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

(8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).

(9) As used in this section, "alteration" of a nonconforming use includes:

(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:

(a) For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application;

(b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section; or

(c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.

(11) For purposes of verifying a use under subsection (5) of this section, a county may not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. [Amended by 1961 c.607 §2; 1963 c.577 §4; 1963 c.619 §9; 1969 c.460 §1; 1973 c.503 §2; 1977 c.766 §5; 1979 c.190 §406; 1979 c.610 §1; 1993 c.792 §52; 1997 c.394 §1; 1999 c.353 §1; 1999 c.458 §1; 1999 c.1103 §10]

215.140 [Repealed by 1963 c.619 §16]

215.150 [Amended by 1955 c.439 §8; repealed by 1963 c.619 §16]

215.160 [Repealed by 1963 c.619 §16]

215.170 Authority of cities in unincorporated area. The powers of an incorporated city to control subdivision and other partitioning of land and to rename thoroughfares in adjacent unincorporated areas shall continue unimpaired by ORS 215.010 to 215.190 and 215.402 to 215.438 until the county governing body that has jurisdiction over the area adopts regulations for controlling subdivision there. Any part of the area subject to the county regulations shall cease to be subject to the two powers of the city, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251. [Amended by 1963 c.619 §10; 1983 c.570 §4]

215.180 [1955 c.439 §6; 1963 c.619 §11; repealed by 1977 c.766 §16]

215.185 Remedies for unlawful structures or land use. (1) In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. When a temporary restraining order is granted in a suit instituted by a person who is not exempt from furnishing bonds or undertakings under ORS 22.010, the person shall furnish undertaking as provided in ORCP 82 A(1).

(2) The court may allow the prevailing party reasonable attorney fees and expenses in a judicial proceeding authorized by this section that involves a dwelling approved to relieve a temporary hardship. However, if the court allows the plaintiff reasonable attorney fees or expenses, such fees or expenses shall not be charged to the county if the county did not actively defend itself or the landowner in the proceeding.

(3) Nothing in this section requires the governing body of a county or a person whose interest in real property in the county is or may be affected to avail itself of a remedy allowed by this section or by any other law. [1955 c.439 §7; 1963 c.619 §12; 1977 c.766 §6; 1981 c.898 §48; 1983 c.826 §5; 2001 c.225 §1]

215.190 Violation of ordinances or regulations. No person shall locate, construct, maintain, repair, alter, or use a building or other structure or use or transfer land in violation of an ordinance or regulation authorized by ORS 215.010 to 215.190 and 215.402 to 215.438. [1955 c.439 §9; 1963 c.619 §13]

215.200 [1957 s.s. c.11 §1; renumbered 215.285]

AGRICULTURAL LAND USE (Exclusive Farm Use Zones)

215.203 Zoning ordinances establishing exclusive farm use zones; definitions. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) "Current employment" of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3); and

(K) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a marketable species;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. [1963 c.577 §2; 1963 c.619 §1(2), (3); 1967 c.386 §1; 1973 c.503 §3; 1975 c.210 §1; 1977 c.766 §7; 1977 c.893 §17a; 1979 c.480 §1; 1981 c.804 §73; 1983 c.826 §18; 1985 c.604 §2; 1987 c.305 §4; 1989 c.653 §1; 1989 c.887 §7; 1991 c.459 §344; 1991 c.714 §4; 1993 c.704 §1; 1995 c.79 §75; 1995 c.211 §1; 1997 c.862 §1; 2001 c.613 §18; 2003 c.454 §117; 2003 c.621 §67a; 2005 c.354 §1]

215.205 [1957 s.s. c.11 §2; renumbered 215.295]

215.207 [1989 c.653 §2; repealed by 1999 c.314 §94]

215.209 Department of Land Conservation and Development database; rural land maps; contents. The Department of Land Conservation and Development shall develop, in conjunction with local governments and other state agencies, a computerized database that is capable of producing county-wide maps that show the diversity of Oregon's rural lands. The database shall include, at a minimum, information on soil classifications, forest capabilities, irrigated lands, croplands, actual farm use, and plan and zone designations. To create the database, the department shall use the most current soils information from the United States Natural Resources Conservation Service, or its successor agency, and may use any other related information that is readily available. [1999 c.1014 §3]

Note: 215.209 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

215.210 [Amended by 1955 c.652 §6; renumbered 215.305]

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

(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 to 92.190 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.

(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.

(h) 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 (1)(a) or (b).

(i) 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 (1)(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, 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.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(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 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.

(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, 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 but not including the processing of farm crops as described in subsection (1)(x) 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)(h) 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.

(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 not described in subsection (1)(L) of this section.

(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 landscaping 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.

(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. [1963 c.577 §3; 1963 c.619 §1a; 1969 c.258 §1; 1973 c.503 §4; 1975 c.551 §1; 1975 c.552 §3; 1977 c.766 §8; 1977 c.788 §2; 1979 c.480 §6; 1979 c.773 §10; 1981 c.748 §4; 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]

215.214 [1979 c.773 §11; 1983 c.743 §4; 1983 c.826 §10; 1985 c.565 §29; 1987 c.729 §5; repealed by 1993 c.792 §55]

215.215 Reestablishment of nonfarm use. (1) Notwithstanding ORS 215.130 (6), if a nonfarm use exists in an exclusive farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county may allow by its zoning regulations such use to be reestablished to its previous nature and extent, but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordinances and permit requirements.

(2) Consistent with ORS 215.243, the county governing body may zone for the appropriate nonfarm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone. [1977 c.664 §41; 1991 c.67 §49]

215.218 Certain private hunting preserves not subject to land use approval; complaint procedures. (1) A person who owns a private hunting preserve that was licensed under ORS 497.248 on or before July 28, 2003, and that has not been submitted to the appropriate local governing body or its designee for land use approval may continue to operate the hunting preserve without local land use approval. The hunting preserve may include one sport clay station that existed on July 28, 2003, is used during the hunting season only for shooting practice in conjunction with hunting and is subordinate to the use of the land as a hunting preserve.

(2) 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 that the operation of the hunting preserve has:

(a)(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

(b) Adversely affected the complainant.

(3) The local governing body or its designee shall process a complaint filed under this section in the manner described in ORS 215.296 (4) to (7). [2003 c.616 §2]

Note: 215.218 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.220 [Repealed by 1963 c.619 §16]

215.223 Procedure for adopting zoning ordinances; notice. (1) No zoning ordinance enacted by the county governing body may have legal effect unless prior to its enactment the governing body or the planning commission conducts one or more public hearings on the ordinance and unless 10 days' advance public notice of each hearing is published in a newspaper of general circulation in the county or, in case the ordinance applies to only a part of the county, is so published in that part of the county.

(2) The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television.

(3) In effecting a zone change the proceedings for which are commenced at the request of a property owner, the governing body shall in addition to other notice give individual notice of the request by mail to the record owners of property within 250 feet of the property for which a zone change has been requested. The failure of the property owner to receive the notice described shall not invalidate any zone change.

(4) Notice of a public hearing on a zone change pursuant to the application of a property owner shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the zone change application is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(5) Notwithstanding the provisions of subsection (4) of this section, notice of a zone change hearing need not be provided as set forth in subsection (4) of this section if the zone change would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Oregon Department of Aviation.

(6) The failure of an airport owner to receive notice that was mailed shall not invalidate any zone change.

(7) Before enacting at the request of a property owner an ordinance that would change the zone of property that includes all

or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the ordinance. The governing body may require an applicant for such a zone change to pay the costs of such notice. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change. [1963 c.619 §8; 1967 c.589 §3; 1985 c.473 §14; 1987 c.106 §1; 1989 c.648 §60; 1999 c.935 §21]

215.230 [Repealed by 1963 c.619 §16]

215.233 Validity of ordinances and development patterns adopted before September 2, 1963. Nothing in ORS 215.010, 215.030, 215.050, 215.060, 215.110, 215.130, 215.170, 215.185, 215.190, 215.203, 215.213 and 215.223 and this section shall impair the validity of ordinances enacted prior to September 2, 1963. All development patterns made and adopted prior to that time shall be deemed to meet the requirements of ORS 215.010, 215.030, 215.050, 215.060, 215.110, 215.130, 215.170, 215.185, 215.190, 215.203, 215.213 and 215.223 and this section concerning comprehensive plans. [1963 c.619 §14; 1971 c.13 §3; 1985 c.565 §30; 2001 c.672 §17]

215.236 Establishing nonfarm dwelling in exclusive farm use zone; procedures; disqualification for farm use valuation; additional tax or penalty; requalification.

(1) As used in this section, "dwelling" means a single-family residential dwelling not provided in conjunction with farm use.

(2) The governing body or its designee may not grant final approval of an application made under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is, or has been, receiving special assessment without evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 and any additional tax imposed as the result of disqualification has been paid.

(3) The governing body or its designee may grant tentative approval of an application made under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is specially assessed at value for farm use under ORS 308A.050 to 308A.128 upon making the findings required by ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7). An application for the establishment of a dwelling that has been tentatively ap-

proved shall be given final approval by the governing body or its designee upon receipt of evidence that the lot or parcel upon which establishment of the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 and any additional tax imposed as the result of disqualification has been paid.

(4) The owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved as provided by subsection (3) of this section shall, before final approval, simultaneously:

(a) Notify the county assessor that the lot or parcel is no longer being used as farmland;

(b) Request that the county assessor disqualify the lot or parcel from special assessment under ORS 308A.050 to 308A.128, 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855; and

(c) Pay any additional tax imposed upon disqualification from special assessment.

(5) Except as provided in subsection (6) of this section, a lot or parcel that has been disqualified pursuant to subsection (4) of this section may not requalify for special assessment unless, when combined with another contiguous lot or parcel, it constitutes a qualifying parcel.

(6)(a) A lot or parcel that has been disqualified pursuant to subsection (4) of this section may requalify for wildlife habitat special assessment under ORS 308A.403 to 308A.430 without satisfying the requirements of subsection (5) of this section.

(b) Upon disqualification from wildlife habitat special assessment under ORS 308A.430, the lot or parcel shall be subject to the requirements of subsection (5) of this section.

(7) When the owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved notifies the county assessor that the lot or parcel is no longer being used as farmland and requests disqualification of the lot or parcel for special assessment at value for farm use, the county assessor shall:

(a) Disqualify the lot or parcel for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment by removing the special assessment;

(b) Provide the owner of the lot or parcel with written notice of the disqualification; and

(c) Impose the additional tax, if any, provided by statute upon disqualification.

(8) The Department of Consumer and Business Services, a building official, as defined in ORS 455.715 (1), or any other agency

or official responsible for the administration and enforcement of the state building code, as defined in ORS 455.010, may not issue a building permit for the construction of a dwelling on a lot or parcel in an exclusive farm use zone without evidence that the owner of the lot or parcel upon which the dwelling is proposed to be constructed has paid the additional tax, if any, imposed by the county assessor under subsection (7)(c) of this section. [1981 c.748 §46; 1983 c.462 §14; 1983 c.570 §6; 1983 c.826 §23; 1985 c.717 §6; 1985 c.811 §6; 1987 c.305 §5; 1987 c.414 §147; 1991 c.459 §346; 1993 c.792 §27; 1993 c.801 §36a; 1999 c.314 §58; 2001 c.704 §7; 2003 c.454 §85; 2003 c.539 §19; 2003 c.621 §68]

215.240 [Repealed by 1963 c.619 §16]

215.243 Agricultural land use policy. The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

215.246 Approval of land application of biosolids; subsequent use of tract of land; consideration of alternatives. (1) The uses allowed under ORS 215.213 (1)(bb) and 215.283 (1)(y):

(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, hor-

gricultural 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)(c), (e) to (g), (k), (m) to (q), (s) to (u), (x), (z) or (aa);

(B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);

(C) ORS 215.283 (1)(c), (e), (f), (k) to (o), (q) to (s), (u), (w) or (x); or

(D) ORS 215.283 (2)(a), (j), (L) or (p) to (s).

(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 ac-

cessory 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)(aa) or 215.283 (1)(x). [2001 c.488 §4]

Note: 215.246 to 215.251 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.247 Transport of biosolids to tract of land for application. If biosolids are transported by vehicle to a tract on which the biosolids will be applied to the land under a license, permit or approval issued 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, the transport and the land application are allowed outright, and a state or local government license, permit or approval in connection with the use is not a land use decision. [2001 c.488 §5]

Note: See note under 215.246.

215.249 Division of land for application of biosolids. Notwithstanding ORS 215.263, the governing body of a county or its designee may not approve a proposed division of land in an exclusive farm use zone for the land application of reclaimed water, agricultural or industrial process water or biosolids described in ORS 215.213 (1)(bb) or 215.283 (1)(y). [2001 c.488 §6]

Note: See note under 215.246.

215.250 [Repealed by 1973 c.619 §16]

215.251 Relationship to other farm uses. Nothing in ORS 215.213 (1)(bb), 215.246 to 215.249 or 215.283 (1)(y) affects whether the land application of a substance not described in ORS 215.213 (1)(bb), 215.246 to 215.249 or 215.283 (1)(y) is a farm use as defined in ORS 215.203. [2001 c.488 §7; 2003 c.14 §100]

Note: See note under 215.246.

215.253 Restrictive local ordinances affecting farm use zones prohibited; exception. (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state. [1973 c.503 §8; 1983 c.826 §12; 1985 c.565 §31; 1995 c.703 §10]

215.260 [Amended by 1955 c.652 §3; repealed by 1957 s.s. c.11 §4 (215.261 enacted in lieu of 215.260)]

215.261 [1957 s.s. c.11 §5 (enacted in lieu of 215.260); repealed by 1963 c.619 §16]

215.262 Legislative findings related to nonfarm dwellings. (1) The Legislative Assembly declares that the creation of small parcels for nonfarm dwellings in exclusive farm use zones introduces potential conflicts into commercial agricultural areas and allows a limited number of nonfarm dwellings in exclusive farm use zones. To protect the state's land base for commercial agriculture from being divided into multiple parcels for nonfarm dwellings while continuing to allow a limited number of nonfarm dwellings on less productive agricultural land not suitable for farm use, it is necessary to:

(a) Limit the incremental division of lots or parcels larger than the minimum size established under ORS 215.780 into smaller lots or parcels for the purpose of creating new nonfarm dwellings; and

(b) Allow a limited number of lots or parcels equal to or less than the minimum size established under ORS 215.780 to be partitioned into not more than two parcels

unsuitable for farm use and eligible for siting nonfarm dwellings under ORS 215.284.

(2) The amendments to ORS 215.263 by section 3, chapter 704, Oregon Laws 2001, address the partition of land within an exclusive farm use zone to create parcels smaller than the minimum size established under ORS 215.780 for the purpose of siting dwellings not provided in conjunction with farm use in eastern Oregon, as defined in ORS 321.805, and in western Oregon, as defined in ORS 321.257. [2001 c.704 §2; 2003 c.621 §69]

Note: 215.262 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

215.263 Land divisions in exclusive farm use zones; criteria for approval. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780.

(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) In western Oregon, as defined in ORS 321.257, but not in the Willamette Valley, as defined in ORS 215.010, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and

(ii) Composed of at least 90 percent Class VI through VIII soils;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and

(ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing live-

stock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(7) This section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(8) The governing body of a county may not approve any proposed division of a lot or parcel described in ORS 215.213 (1)(e) or (k), 215.283 (1)(e) or (2)(L) or 215.284 (1), or a proposed division that separates a processing facility from the farm operation specified in ORS 215.213 (1)(x) or 215.283 (1)(u).

(9) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used:

(a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

(b) For historic property that meets the requirements of ORS 215.213 (1)(q) and 215.283 (1)(o).

(10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may approve a proposed division of land provided:

(A) The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and

(B) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

(b) A parcel created pursuant to this subsection that does not contain a dwelling:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling;

(C) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

(D) May not be smaller than 25 acres unless the purpose of the land division is:

(i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

(11) The governing body of a county or its designee may approve a division of land smaller than the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone provided:

(a) The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;

(b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

(c) The newly created lot or parcel is not larger than five acres; and

(d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or parcel.

(12) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the change in use has been paid.

(13) Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur. [1973 c.503 §9; 1977 c.766 §9; 1979 c.46 §2; 1981 c.748 §48; 1983 c.826 §7; 1985 c.544 §4; 1987 c.729 §5b; 1989 c.224 §26; 1989 c.564 §8; 1989 c.861 §3; 1991 c.459 §347; 1993 c.704 §7; 1993 c.792 §12; 1997 c.318 §2; 1997 c.550 §2; 1997 c.862 §4; 1999 c.321 §1; 1999 c.349 §1; 2001 c.544 §4; 2001 c.613 §19; 2001 c.704 §3; 2003 c.621 §70]

215.265 Land divisions; limiting certain causes of action. In approving a land division under ORS 215.263 (10), the governing body of a county or its designee shall

require as a condition of approval that the owner of any parcel not containing a dwelling sign and record in the deed records for the county where the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937. [1999 c.321 §3; 2001 c.704 §10]

Note: 215.265 was added to and made a part of 215.203 to 215.311 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

215.270 [Repealed by 1963 c.619 §16]

215.273 Applicability to thermal energy power plant siting determinations. Nothing in ORS 215.130, 215.203, 215.213, 215.243, 215.253, 215.263, 215.273, 215.283, 215.284, 308A.050 to 308A.128 and 316.844 is intended to affect the authority of the Energy Facility Siting Council in determining suitable sites for the issuance of site certificates for thermal power plants, as authorized under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930. [1973 c.503 §16; 1983 c.740 §56; 1983 c.826 §19; 1995 c.79 §76; 1997 c.99 §20; 1999 c.314 §56; 2001 c.672 §18]

215.275 Utility facilities necessary for public service; criteria; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (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 (1)(d) or 215.283 (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 (1)(d) or 215.283 (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 (1)(d) or 215.283 (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 was added to and made a part of 215.203 to 215.311 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

215.277 Farmworker housing; compliance with agricultural land use policy required. It is the intent of the Legislative Assembly that the provision of farmworker housing, as defined in ORS 315.163, 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. [1989 c.964 §9; 2001 c.613 §10; 2003 c.588 §14]

215.278 Accessory dwellings for farmworkers; rules. (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, "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. [2001 c.613 §6]

Note: 215.278 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

215.280 [Repealed by 1963 c.619 §16]

215.281 Legislative findings related to dwellings in conjunction with commercial dairy farm. The Legislative Assembly finds that:

(1) Dairies and dairying are an important part of Oregon agriculture and make a significant contribution to the state and local economies;

(2) Dairies require continuous on-site labor to operate the dairy and to protect the significant investment in milking and waste disposal facilities, equipment and livestock necessary to operate a commercial dairy; and

(3) Dairies require more on-site housing than other types of farms because of the year-round labor-intensive nature of a dairy operation and justify different standards for the review of a primary or accessory dwelling customarily provided in conjunction with a commercial dairy farm under ORS 215.213 and 215.283. [2001 c.149 §4]

Note: 215.281 and 215.282 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.282 Dwellings in conjunction with commercial dairy farm; rules. The Land Conservation and Development Commission shall consider the findings of ORS 215.281 and adopt rules that provide standards for the review of a primary or accessory dwelling customarily provided in conjunction with a commercial dairy farm. Notwithstanding any other administrative rule establishing a gross farm income standard, the rules adopted under this section shall allow the siting of a dwelling on a commercial dairy farm prior to the dairy earning any gross farm income. [2001 c.149 §5]

Note: See note under 215.281.

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties. (1) 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.

(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 to 92.190 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.

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

(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 (1)(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 (1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

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

(L) 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.

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

(n) 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.

(o) 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.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(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) 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.

(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. 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 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.

(z) 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 but not including the processing of farm crops as described in subsection (1)(u) 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)(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.

(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.

(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 nonresi-

dential 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)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(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 landscaping 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.

(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. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7; 1987 c.227 §2; 1987 c.729 §5a; 1987 c.886 §10; 1989 c.224 §27; 1989 c.525 §2; 1989 c.564 §9; 1989 c.648 §61; 1989 c.739 §2; 1989 c.837 §27; 1989 c.861 §2; 1989 c.964 §11; 1991 c.459 §348; 1991 c.950 §1; 1993 c.466 §2; 1993 c.704 §3; 1993 c.792 §14; subsections (3) to (8) renumbered 215.284 in 1993; 1995 c.528 §2; 1997 c.250 §2; 1997 c.276 §2; 1997 c.312 §2; 1997 c.318 §3; 1997 c.363 §2; 1997 c.862 §3; 1999 c.320 §1; 1999 c.608 §2; 1999 c.640 §2; 1999 c.756 §§14a,14b; 1999 c.758 §2; 1999 c.816 §2; 1999 c.935 §22; 2001 c.149 §§2,3; 2001 c.488 §§2,3; 2001 c.544 §§1,2; 2001 c.613 §§8,9; 2001 c.676 §§2,3; 2001 c.757 §§2,3; 2001 c.941 §§2,3; 2003 c.247 §3; 2005 c.22 §163; 2005 c.354 §4; 2005 c.609 §26; 2005 c.625 §76; 2005 c.693 §3; 2005 c.737 §1]

215.284 Dwelling not in conjunction with farm use; existing lots or parcels; new lots or parcels. (1) In the Willamette Valley, a single-family residential dwelling

not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

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

(b) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;

(c) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

(e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

(2) In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

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

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

(c) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

(e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

(3) In counties in western Oregon, as defined in ORS 321.257, not described in subsection (4) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its

designee, in any area zoned for exclusive farm use upon a finding that:

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

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

(c) The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under ORS 215.263 (4);

(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

(e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

(4)(a) In the Willamette Valley, a lot or parcel allowed under paragraph (b) of this subsection for a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that the originating lot or parcel is equal to or larger than the applicable minimum lot or parcel size and:

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

(B) Is composed of at least 95 percent Class VI through Class VIII soils; and

(C) Is composed of at least 95 percent soils not capable or producing 50 cubic feet per acre per year of wood fiber.

(b) Any parcel to be created for a dwelling from the originating lot or parcel described in paragraph (a) of this subsection will not be smaller than 20 acres.

(c) The dwelling or activities associated with the dwelling allowed under this subsection will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.

(d) The dwelling allowed under this subsection will not materially alter the stability of the overall land use pattern of the area.

(e) The dwelling allowed under this subsection complies with such other conditions

as the governing body or its designee considers necessary.

(5) 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.

(6) If a single-family dwelling is established on a lot or parcel as set forth in ORS 215.705 to 215.750, no additional dwelling may later be sited under subsection (1), (2), (3), (4) or (7) of this section.

(7) In counties in eastern Oregon, as defined in ORS 321.805, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to the approval of the county governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

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

(b) The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under ORS 215.263 (5);

(c) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

(d) The dwelling complies with such other conditions as the governing body or its designee considers necessary. [Formerly subsections (3) to (8) of 215.283; 2001 c.704 §4; 2003 c.621 §71]

215.285 [Formerly 215.200; repealed by 1971 c.13 §1]

215.288 [1983 c.826 §16; 1985 c.565 §33; 1985 c.811 §8; repealed by 1993 c.792 §55]

215.290 [Repealed by 1963 c.619 §16]

215.293 Dwelling in exclusive farm use or forest zone; condition; declaration; recordation. The county governing body or its designee shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [1983 c.826 §11; 1995 c.703 §11]

Note: 215.293 was added to and made a part of 215.203 to 215.311 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

215.294 Railroad facilities handling materials regulated under ORS chapter 466 allowed. (1) In addition to the nonfarm uses that may be established under ORS 215.283 (2), and subject to the approval of the

governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296, the use of existing railroad loading and unloading facilities authorized to unload materials regulated under ORS chapter 459 and the expansion of such facilities by no greater than 30 percent, for the unloading of materials regulated under ORS chapter 466 for transfer to a facility permitted to dispose of materials regulated under ORS chapter 466, may be allowed.

(2) A permit for a use allowed under subsection (1) of this section must be applied for no later than December 31, 1993.

(3) A county shall allow an application for a permit authorizing the use allowed under this section prior to the adoption of amendments to the comprehensive plan or land use regulations. [1993 c.530 §1]

215.295 [Formerly 215.205; repealed by 1971 c.13 §1]

215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or 215.283 (2) 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 215.283 (2) 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 215.283 (2) 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 prevent a local governing body approving a use allowed under ORS 215.213 (2) or 215.283 (2) from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to insure conformance with such additional standards. [1989 c.861 §6; 1993 c.792 §15; 2001 c.704 §8; 2003 c.616 §3]

215.297 Verifying continuity for approval of certain uses in exclusive farm use zones. (1) As part of the conditional use approval process under ORS 215.296, for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or 215.283 (2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

(2) Alteration, restoration or replacement of a use authorized in ORS 215.213 (2)(w) or 215.283 (2)(y) may be altered, restored or replaced pursuant to ORS 215.130 (5), (6) and (9). [2003 c.247 §4]

Note: 215.297 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.298 Mining in exclusive farm use zone; land use permit. (1) For purposes of ORS 215.213 (2) and 215.283 (2), a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A county may set standards for a lower volume or smaller surface area than that set forth in this subsection.

(2) A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan.

(3) For purposes of ORS 215.213 (2) and 215.283 (2) and this section, "mining" in-

cludes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction or nonsurface impacts of underground mines. [1989 c.861 §7]

215.300 [Repealed by 1963 c.619 §16]

215.301 Blending materials for cement prohibited near vineyards; exception. (1) Notwithstanding the provisions of ORS 215.213, 215.283 and 215.284, no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard.

(2) Nothing in this chapter shall be construed to apply to operations for batching and blending of mineral and aggregate under a local land use approval on October 3, 1989, or a subsequent renewal of an existing approval.

(3) Nothing in ORS 215.213, 215.263, 215.283, 215.284, 215.296 or 215.298 shall be construed to apply to a use allowed under ORS 215.213 (2) or 215.283 (2) and approved by a local governing body on October 3, 1989, or a subsequent renewal of an existing approval. [1989 c.861 §§4,5]

215.303 [1989 c.861 §8; repealed by 1993 c.792 §55]

215.304 Rule adoption; limitations. (1) The Land Conservation and Development Commission shall not adopt or implement any rule to identify or designate small-scale farmland or secondary land.

(2) Amendments required to conform rules to the provisions of subsection (1) of this section and ORS 215.700 to 215.780 shall be adopted by March 1, 1994.

(3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700 to 215.780 on March 1, 1994:

(a) Shall not be implemented or enforced; and

(b) Has no legal effect. [1993 c.792 §28; 2001 c.672 §19]

215.305 [Formerly 215.210; repealed by 1971 c.13 §1]

215.306 Conducting filming activities in exclusive farm use zones. (1) The limitations on uses made of land in exclusive farm use zones described in ORS 215.213, 215.283, 215.284 and 215.700 to 215.780 and limitations imposed by or adopted pursuant to ORS 197.040 do not apply to activities described in this section.

(2) The provisions of this section do not affect the eligibility of a zone for special assessment as provided in ORS 308A.050 to 308A.128.

(3)(a) On-site filming and activities accessory to on-site filming may be conducted in any area zoned for exclusive farm use without prior approval of local government but subject to ORS 30.930 to 30.947.

(b) Notwithstanding paragraph (a) of this subsection, on-site filming and activities accessory to on-site filming that exceed 45 days on any site within a one-year period or involve erection of sets that would remain in place for longer than 45 days may be conducted only upon approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296. In addition to other activities described in subsection (4) of this section, these activities may include office administrative functions such as payroll and scheduling, and the use of campers, truck trailers or similar temporary facilities. Temporary facilities may be used as temporary housing for security personnel.

(4) For purposes of this section, "on-site filming and activities accessory to on-site filming":

(a) Includes:

(A) Filming and site preparation, construction of sets, staging, makeup and support services customarily provided for on-site filming.

(B) Production of advertisements, documentaries, feature film, television services and other film productions that rely on the rural qualities of an exclusive farm use zone in more than an incidental way.

(b) Does not include:

(A) Facilities for marketing, editing and other such activities that are allowed only as a home occupation; or

(B) Construction of new structures that requires a building permit.

(5) A decision of local government issuing any permits necessary for activities under subsection (3)(a) of this section is not a land use decision. [1995 c.722 §1; 1997 c.550 §3; 1999 c.314 §59; 2001 c.672 §20]

215.310 [Repealed by 1971 c.13 §1]

215.311 Parking log trucks in exclusive farm use zones. (1) The limitations on uses of land in exclusive farm use zones described in ORS 215.283, 215.284 and 215.700 to 215.780 and limitations imposed by or adopted pursuant to ORS 197.040 do not apply to log truck parking under this section.

(2) The provisions of this section do not affect the eligibility of a zone for special assessment as provided in ORS 308A.050 to 308A.128.

(3) Notwithstanding any other provision of law except for health and safety provisions, parking no more than seven log trucks shall be allowed in an exclusive farm use zone unless the local government determines that log truck parking on a lot or parcel will:

(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. [1995 c.799 §1; 1999 c.314 §60; 2001 c.672 §21]

(Marginal Lands)

215.316 Termination of adoption of marginal lands. (1) Unless a county applies the provisions of ORS 215.705 to 215.730 to land zoned for exclusive farm use, a county that adopted marginal lands provisions under ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) may continue to apply those provisions. After January 1, 1993, no county may adopt marginal lands provisions.

(2) If a county that had adopted marginal lands provisions before January 1, 1993, subsequently sites a dwelling under ORS 215.705 to 215.750 on land zoned for exclusive farm use, the county shall not later apply marginal lands provisions, including those set forth in ORS 215.213, to lots or parcels other than those to which the county applied the marginal lands provisions before the county sited a dwelling under ORS 215.705 to 215.750. [1993 c.792 §29]

215.317 Permitted uses on marginal land. (1) A county may allow the following uses to be established on land designated as marginal land under ORS 197.247 (1991 Edition):

(a) Intensive farm or forest operations, including but not limited to "farm use" as defined in ORS 215.203.

(b) Part-time farms.

(c) Woodlots.

(d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2).

(e) One single-family dwelling on a lot or parcel of any size if the lot or parcel was created before July 1, 1983, subject to subsection (2) of this section.

(f) The nonresidential uses authorized in exclusive farm use zones under ORS 215.213 (1) and (2).

(g) One manufactured dwelling or recreational vehicle 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.

(2) If a lot or parcel described in subsection (1)(e) of this section is located within the Willamette River Greenway, a floodplain or a geological hazard area, approval of a single-family dwelling shall be subject to local ordinances relating to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable. [1983 c.826 §3; 1989 c.648 §62; 1993 c.792 §24; 1997 c.249 §60; 1999 c.640 §3]

215.320 [Repealed by 1971 c.13 §1]

215.325 [1953 c.662 §6; 1963 c.9 §4; repealed by 1971 c.13 §1]

215.327 Divisions of marginal land. A county may allow the following divisions of marginal land:

(1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land, the land qualifies for designation as marginal land under ORS 197.247 (1991 Edition).

(2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as marginal land under ORS 197.247 (1991 Edition).

(3) Divisions of land to create a parcel or lot necessary for those uses authorized by ORS 215.317 (1)(f). [1983 c.826 §4; 1993 c.792 §25]

215.330 [Repealed by 1971 c.13 §1]

215.337 [1983 c.826 §4a; repealed by 1993 c.792 §55]

215.340 [Repealed by 1971 c.13 §1]

215.350 [Amended by 1953 c.662 §7; repealed by 1971 c.13 §1]

215.360 [Amended by 1953 c.662 §7; subsection (2) enacted as 1953 c.662 §1; repealed by 1971 c.13 §1]

215.370 [Repealed by 1971 c.13 §1]

215.380 [Amended by 1955 c.652 §4; repealed by 1971 c.13 §1]

215.390 [Repealed by 1971 c.13 §1]

215.395 [1953 c.662 §3; 1955 c.652 §5; repealed by 1971 c.13 §1]

215.398 [1955 c.652 §2; repealed by 1971 c.13 §1]

215.400 [Repealed by 1971 c.13 §1]

PLANNING AND ZONING HEARINGS AND REVIEW

215.402 Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780. As used in ORS 215.402 to 215.438 and 215.700 to 215.780 unless the context requires otherwise:

(1) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties under general rules or policies provided under ORS 215.010 to 215.311, 215.317, 215.327, 215.402 to 215.438 and 215.700 to 215.780, or any ordinance, rule or regulation adopted pursuant thereto, are required to be determined only after a hearing at which specific parties are entitled to appear and be heard.

(2) "Hearing" means a quasi-judicial hearing, authorized or required by the ordinances and regulations of a county adopted pursuant to ORS 215.010 to 215.311, 215.317, 215.327, 215.402 to 215.438 and 215.700 to 215.780:

(a) To determine in accordance with such ordinances and regulations if a permit shall be granted or denied; or

(b) To determine a contested case.

(3) "Hearings officer" means a planning and zoning hearings officer appointed or designated by the governing body of a county under ORS 215.406.

(4) "Permit" means discretionary approval of a proposed development of land under ORS 215.010 to 215.311, 215.317, 215.327 and 215.402 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto. "Permit" does not include:

(a) A limited land use decision as defined in ORS 197.015;

(b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;

(c) A decision which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(d) An action under ORS 197.360 (1). [1973 c.552 §12; 1977 c.654 §1; 1981 c.748 §49; 1991 c.817 §8; 1995 c.79 §77; 1995 c.595 §12; 2001 c.672 §15]

215.406 Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings. (1) A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall

conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.

(2) In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [1973 c.552 §13; 1977 c.766 §10]

215.410 [Repealed by 1971 c.13 §1]

215.412 Adoption of hearing procedure and rules. (1) The governing body of a county by ordinance or order shall adopt one or more procedures for the conduct of hearings.

(2) The governing body of a county by ordinance or order shall adopt rules stating that all decisions made by the governing body will be based on factual information, including adopted comprehensive plans and land use regulations. [1973 c.552 §14; 1977 c.766 §11; 1997 c.452 §2]

215.415 [1953 c.662 §5; repealed by 1971 c.13 §1]

215.416 Permit application; fees; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be con-

ducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Oregon Department of Aviation.

(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings

officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.552 §§15, 16; 1977 c.654 §2; 1977 c.766 §12; 1979 c.772 §10a; 1983 c.827 §20;

1987 c.106 §2; 1987 c.729 §17; 1991 c.612 §20; 1991 c.817 §5; 1995 c.595 §27; 1995 c.692 §1; 1997 c.844 §4; 1999 c.357 §2; 1999 c.621 §1; 1999 c.935 §23; 2001 c.397 §1]

215.417 Time to act under certain approved permits; extension. (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.

(2) An extension of a permit described in subsection (1) of this section shall be valid for two years.

(3) For the purposes of this section, “residential development” only includes the dwellings provided for under ORS 215.213 (1)(t), (3) and (4), 215.283 (1)(s), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3). [2001 c.532 §2]

215.418 Approval of development on wetlands; notice. (1) After the Department of State Lands has provided the county with a copy of the applicable portions of the Statewide Wetlands Inventory, the county shall provide notice to the department, the applicant and the owner of record, within five working days of the acceptance of any complete application for the following that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory:

- (a) Subdivisions;
- (b) Building permits for new structures;
- (c) Other development permits and approvals that allow physical alteration of the land involving excavation and grading, including permits for removal or fill, or both, or development in floodplains and floodways;
- (d) Conditional use permits and variances that involve physical alterations to the land or construction of new structures; and
- (e) Planned unit development approvals.

(2) The provisions of subsection (1) of this section do not apply if a permit from the department has been issued for the proposed activity.

(3) Approval of any activity described in subsection (1) of this section shall include one of the following notice statements:

(a) Issuance of a permit under ORS 196.665 and 196.800 to 196.900 by the department required for the project before any physical alteration takes place within the wetlands;

(b) Notice from the department that no permit is required; or

(c) Notice from the department that no permit is required until specific proposals to

remove, fill or alter the wetlands are submitted.

(4) If the department fails to respond to any notice provided under subsection (1) of this section within 30 days of notice, the county approval may be issued with written notice to the applicant and the owner of record that the proposed action may require state or federal permits.

(5) The county may issue local approval for parcels identified as or including wetlands on the Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the affected parcel a written notice of the possible presence of wetlands and the potential need for state and federal permits and providing the department with a copy of the notification of comprehensive plan map or zoning map amendments for specific properties.

(6) Notice of activities authorized within an approved wetland conservation plan shall be provided to the department within five days following local approval.

(7) Failure by the county to provide notice as required in this section will not invalidate county approval. [1989 c.837 §29; 1991 c.763 §24]

215.420 [Amended by 1955 c.439 §10; repealed by 1971 c.13 §1]

215.422 Review of decision of hearings officer or other authority; notice of appeal; fees; appeal of final decision. (1)(a) A party aggrieved by the action of a hearings officer or other decision-making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.

(b) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer or other decision-making authority is the final determination of the county.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee

shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500. In lieu of a transcript prepared by the governing body and the fee therefor, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1). [1973 c.522 §§17,18; 1977 c.766 §13; 1979 c.772 §11; 1981 c.748 §42; 1983 c.656 §1; 1983 c.827 §21; 1991 c.817 §9]

215.425 Review of decision relating to aggregate resources. (1) A decision relating to aggregate resource uses permitted in ORS 215.213 (2)(d) or 215.283 (2)(b) is subject to review solely under the provisions of ORS 197.195 and 197.828 if:

(a) The aggregate resource site is identified as a significant resource site in the acknowledged comprehensive plan;

(b) A program to achieve any statewide goal relating to open spaces, scenic and historic areas, and natural resources has been developed for the aggregate resource site and is included within applicable land use regulations; and

(c) The decision concerns how, but not whether, aggregate resource use occurs.

(2) The provisions of subsection (1) of this section do not apply to mineral and

other uses not related to aggregate resources. [1991 c.817 §11]

215.427 Final action on permit or zone change application required within 120 or 150 days; exceptions; refund of application fees. (1) Except as provided in subsections (3) and (4) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3) and (4) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) The period set in subsection (1) of this section may be extended for a reasonable period of time at the request of the applicant.

(5) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in ORS 197.319 (2)(b).

(6) Notwithstanding subsection (5) of this section, the period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(7) Except when an applicant requests an extension under subsection (4) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(8) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (7) of this section or ORS 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment. [1997 c.414 §2; 1999 c.393 §§3,3a; enacted in lieu of 215.428 in 1999; 2003 c.800 §30]

215.428 [1983 c.827 §23; 1989 c.761 §15; 1991 c.817 §14; 1995 c.812 §2; 1997 c.844 §7; repealed by 1999 c.393 §2 (215.427 enacted in lieu of 215.428)]

215.429 Mandamus proceeding when county fails to take final action on land use application within specified time; jurisdiction; notice; peremptory writ. (1) Except when an applicant requests an extension under ORS 215.427, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as appropriate, after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application

was submitted to compel the governing body or its designee to issue the approval.

(2) The governing body shall retain jurisdiction to make a land use decision on the application until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.

(3) A person who files a petition for a writ of mandamus under this section shall provide written notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any person who participated orally or in writing in any evidentiary hearing on the application held prior to the filing of the petition. The notice shall be mailed or hand delivered on the same day the petition is filed.

(4) If the governing body does not take final action on an application within 120 days or 150 days, as appropriate, of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the county comprehensive plan and land use regulations or to file a petition for a writ of mandamus under this section. If the applicant elects to proceed according to the local plan and regulations, the applicant may not file a petition for a writ of mandamus within 14 days after the governing body makes a preliminary decision, provided a final written decision is issued within 14 days of the preliminary decision.

(5) The court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate a substantive provision of the county comprehensive plan or land use regulations as those terms are defined in ORS 197.015. The writ may specify conditions of approval that would otherwise be allowed by the county comprehensive plan or land use regulations. [1999 c.533 §7; 1999 c.393 §5]

215.430 [1955 c.682 §2; repealed by 1971 c.13 §1]

215.431 Plan amendments; hearings by planning commission or hearings officer; exceptions. (1) A county governing body may authorize, by ordinance or order, the planning commission or hearings officer to conduct hearings on applications for plan amendments and to make decisions on such applications.

(2) A decision of the planning commission or hearings officer on a plan amendment may be appealed to the county governing body.

(3) This section shall apply notwithstanding the provisions of ORS 215.050, 215.060 and 215.110.

(4) A decision of a planning commission, hearings officer or county governing body

under this section shall comply with the post-acknowledgment procedures set forth in ORS 197.610 to 197.625.

(5) The provisions of this section shall not apply to:

(a) Any plan amendment for which an exception is required under ORS 197.732; or

(b) Any lands designated under a statewide planning goal addressing agricultural lands or forestlands. [1987 c.729 §20]

215.433 Supplemental application for remaining permitted uses following denial of initial application. (1) A person whose application for a permit is denied by the governing body of a county or its designee under ORS 215.427 may submit to the county a supplemental application for any or all other uses allowed under the county's comprehensive plan and land use regulations in the zone that was the subject of the denied application.

(2) The governing body of a county or its designee shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within 240 days after the application is deemed complete. Except that 240 days shall substitute for 120 days or 150 days, as appropriate, all other applicable provisions of ORS 215.427 shall apply to a supplemental application submitted under this section.

(3) A supplemental application submitted under this section shall include a request for any rezoning or zoning variance that may be required to issue a permit under the county's comprehensive plan and land use regulations.

(4) The governing body of the county or its designee shall adopt specific findings describing the reasons for approving or denying:

(a) A use for which approval is sought under this section; and

(b) A rezoning or variance requested in the application. [1999 c.648 §2; 1999 c.648 §2a]

215.435 Deadline for final action by county on remand of land use decision; exception. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a county, the governing body of the county or its designee shall take final action on an application for a permit, limited land use decision or zone change within 90 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 90-day period

established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand.

(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.

(3) The 90-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning an amendment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610. [1999 c.545 §2]

215.437 Mandamus proceeding when county fails to take final action within specified time on remand of land use decision. (1) If the governing body of a county or its designee fails to take final action on an application for a permit, limited land use decision or zone change within 90 days as provided in ORS 215.435, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the county or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section. [1999 c.545 §3]

PERMITTED USES IN ZONES

215.438 Transmission towers; location; conditions. The governing body of a county or its designate may allow a transmission tower over 200 feet in height to be established in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §23a]

215.440 [1955 c.682 §3; repealed by 1971 c.13 §1]

215.441 Use of real property for religious activity; county regulation of real property used for religious activity. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(2) A county may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations. [2001 c.886 §2]

215.448 Home occupations; parking; where allowed; conditions. (1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

(a) It shall be operated by a resident or employee of a resident of the property on which the business is located;

(b) It shall employ on the site no more than five full-time or part-time persons;

(c) It shall be operated substantially in:

(A) The dwelling; or

(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and

(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

(3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

(4) The existence of home occupations shall not be used as justification for a zone change. [1983 c.743 §2; 1995 c.465 §1]

215.450 [1955 c.682 §4; repealed by 1971 c.13 §1]

215.452 Winery; conditions; local government findings and criteria. (1) A winery, authorized under ORS 215.213 (1)(s) and 215.283 (1)(q), is a facility that 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:

(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) The winery described in subsection (1)(a) or (b) of this section shall allow only the sale of:

(a) Wines produced in conjunction with the winery; and

(b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.

(3) Prior to the issuance of a permit to establish a winery under this section, the

applicant shall show that vineyards, described in subsection (1)(a) and (b) of this section, have been planted or that the contract has been executed, as applicable.

(4) 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 100 feet, from all property lines for the winery and all public gathering places; and

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

(5) A local government shall also apply local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources. [1989 c.525 §4; 1993 c.704 §6; 1997 c.249 §61; 2001 c.613 §20]

215.455 Effect of approval of winery on land use laws. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 shall not be a basis for an exception under ORS 197.732 (1)(a) or (b). [1989 c.525 §5]

215.457 Youth camps allowed in forest zones and mixed farm and forest zones. A person may establish a youth camp on land zoned for forest use or mixed farm and forest use, consistent with rules adopted by the Land Conservation and Development Commission under section 3, chapter 586, Oregon Laws 1999. [1999 c.586 §2]

215.459 Private campground in forest zones and mixed farm and forest zones; yurts. (1)(a) Subject to the approval of the county governing body or its designee, a private campground may be established in an area zoned for forest use or mixed farm and forest use. Subject to the approval of the county governing body or its designee, the 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.

(b) A public park or campground may be established as provided in ORS 195.120 in an area zoned for forest use or mixed farm and forest use.

(2) 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).

(3) As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance. [1999 c.758 §4]

215.460 [1963 c.619 §15; repealed by 1971 c.13 §1]

NOTICE TO PROPERTY OWNERS

215.503 Legislative act by ordinance; mailed notice to individual property owners required by county for land use actions. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.

(3) Except as provided in subsection (6) of this section and in addition to the notice required by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to adopt a new comprehensive plan, the governing body of a county shall cause a written individual notice of land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the governing body of the county and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (governing body of the county) has proposed a land use regu-

lation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (governing body) will hold a public hearing regarding the adoption of Ordinance Number _____. The (governing body) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ is available for inspection at the _____ County Courthouse located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (governing body) Planning Department at _____.

(6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use regulation by the governing body of a county pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633 and 197.636, the governing body of the county shall cause a written individual notice of the land use change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment may affect the use of the property. The notice also shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (governing body of the county) has proposed a land use that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

As a result of an order of the Land Conservation and Development Commission, (governing body) has proposed Ordinance Number _____. (Governing Body) has de-

termined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ will become effective on (date).

Ordinance Number _____ is available for inspection at the _____ County Courthouse located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (governing body) Planning Department at _____.

(7) Notice provided under this section may be included with the tax statement required under ORS 311.250.

(8) Notwithstanding subsection (7) of this section, the governing body of a county may provide notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is required under subsections (3) and (4) of this section.

(9) For purposes of this section, property is rezoned when the governing body of the county:

(a) Changes the base zoning classification of the property; or

(b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(10) The provisions of this section do not apply to legislative acts of the governing body of the county resulting from action of the Legislative Assembly or the Land Conservation and Development Commission for which notice is provided under ORS 197.047, or resulting from an order of a court of competent jurisdiction.

(11) The governing body of the county is not required to provide more than one notice under this section to a person who owns more than one lot or parcel affected by a change to the local comprehensive plan or land use regulation.

(12) The Department of Land Conservation and Development shall reimburse the governing body of a county for all usual and reasonable costs incurred to provide notice required under subsection (6) of this section. [1977 c.664 §37; 1999 c.1 §1; 1999 c.348 §10; 2003 c.668 §2]

215.505 [1969 c.324 §1; repealed by 1977 c.664 §42]

215.508 [1977 c.664 §38; repealed by 1999 c.1 §8]

215.510 [1969 c.324 §2; 1973 c.80 §47; repealed by 1977 c.664 §42]

215.513 Notice form; forwarding of notice to property purchaser. (1) A mortgagee, lienholder, vendor or seller of real property who receives a mailed notice required by this chapter shall promptly forward the notice to the purchaser of the property. Each mailed notice required by this chapter shall contain the following statement: "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

(2) Mailed notices to owners of real property required by this chapter shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance. [1977 c.664 §39]

215.515 [1969 c.324 §3; 1973 c.80 §48; repealed by 1977 c.766 §16]

215.520 [1969 c.324 §4; repealed by 1977 c.664 §42]

215.525 [1969 c.324 §6; repealed by 1977 c.664 §42]

215.530 [1969 c.324 §7; repealed by 1977 c.664 §42]

215.535 [1969 c.324 §5; 1973 c.80 §49; repealed by 1977 c.664 §42]

COUNTY CONSTRUCTION CODES

215.605 Counties authorized to adopt housing codes. For the protection of the public health, welfare and safety, the governing body of a county may adopt ordinances establishing housing codes for the county, or any portion thereof, except where housing code ordinances are in effect on August 22, 1969, or where such ordinances are enacted by an incorporated city subsequent to August 22, 1969. Such housing code ordinances may adopt by reference published codes, or any portion thereof, and a certified copy of such code or codes shall be filed with the county clerk of said county. [1969 c.418 §1]

215.610 [1969 c.418 §2; 1979 c.190 §407; repealed by 1983 c.327 §16]

215.615 Application and contents of housing ordinances. The provisions of housing code ordinances authorized by ORS 215.605 and this section shall apply to all buildings or portions thereof used, or designed or intended to be used for human habitation, and shall include, but not be limited to:

(1) Standards for space, occupancy, light, ventilation, sanitation, heating, exits and fire protection.

(2) Inspection of such buildings.

(3) Procedures whereby buildings or portions thereof which are determined to be substandard are declared to be public nuisances and are required to be abated by repair, rehabilitation, demolition or removal.

(4) An advisory and appeals board. [1969 c.418 §3]

215.620 [1997 c.552 §30; renumbered 455.422 in 1999]

FARMLAND AND FORESTLAND ZONES

(Lot or Parcel of Record Dwellings)

215.700 Resource land dwelling policy. The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired before the owners could reasonably be expected to know of the regulations. In order to assist these owners while protecting the state's more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:

(1) Provide certain owners of less productive land an opportunity to build a dwelling on their land; and

(2) Limit the future division of and the siting of dwellings upon the state's more productive resource land. [1993 c.792 §10]

215.705 Dwellings in farm or forest zone; criteria; transferability of application. (1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(b) The tract on which the dwelling will be sited does not include a dwelling.

(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in

ORS 215.710 except as provided in subsections (2) and (3) of this section.

(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.

(f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

(2)(a) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(A) It meets the other requirements of ORS 215.705 to 215.750;

(B) The lot or parcel is protected as high-value farmland as described under ORS 215.710 (1); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

(ii) The dwelling will comply with the provisions of ORS 215.296 (1).

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area.

(b) A local government shall provide notice of all applications for dwellings allowed under this subsection to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (a) of this subsection.

(3) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(a) It meets the other requirements of ORS 215.705 to 215.750.

(b) The tract on which the dwelling will be sited is:

(A) Identified in ORS 215.710 (3) or (4);

(B) Not protected under ORS 215.710 (1); and

(C) Twenty-one acres or less in size.

(c)(A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993;

(B) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(C) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary. As used in this subparagraph:

(i) "Flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to that side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(4) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with goals relating to both agriculture and forestry and may qualify as an exclusive farm use zone under this chapter, the county may apply the standards for siting a dwelling under either subsection (1)(d) of this section or ORS 215.720, 215.740 and 215.750 as appropriate for the predominant use of the tract on January 1, 1993.

(5) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:

(a) Exceed the facilities and service capabilities of the area;

(b) Materially alter the stability of the overall land use pattern in the area; or

(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(6) For purposes of subsection (1)(a) of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(7) When a local government approves an application for a single-family dwelling under the provisions of this section, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision. [1993 c.792 §2; 1995 c.812 §7; 2001 c.358 §1]

215.710 High-value farmland description for ORS 215.705. (1) For purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time the siting of a dwelling is approved for the tract, are:

(a) Irrigated and classified prime, unique, Class I or Class II; or

(b) Not irrigated and classified prime, unique, Class I or Class II.

(2) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.

(3) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if in the Willamette Valley, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of soils described in subsection (1) of this section and the following soils:

(a) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell,

Carlton, Cascade, Chehalem, Cornelius, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hullt, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

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

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

(d) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson.

(4) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of soils described in subsection (1) of this section and the following soils:

(a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

(b) Subclassification IIIw, specifically, Brenner and Chitwood;

(c) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalan, Neskowin and Winema; and

(d) Subclassification IVw, specifically, Coquille.

(5) For purposes of approving a land use application under ORS 215.705, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

(a) Submits a statement of agreement from the Natural Resources Conservation Service of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(b)(A) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(B) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the

analysis in the report to be soundly and scientifically based.

(6) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the Soil Conservation Service in its most recent publication for that class, rating or designation before November 4, 1993. [1993 c.792 §3; 1995 c.79 §78; 1995 c.812 §8]

215.720 Criteria for forestland dwelling under ORS 215.705. (1) A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forestland only if:

(a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall be maintained and either paved or surfaced with rock and shall not be:

(A) A United States Bureau of Land Management road; or

(B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(b) The tract on which the dwelling will be sited is in eastern Oregon, as defined in ORS 321.805, and is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall be maintained and either paved or surfaced with rock and shall not be:

(A) A United States Bureau of Land Management road; or

(B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(2) For purposes of this section, "commercial tree species" means trees recognized under rules adopted under ORS 527.715 for commercial production.

(3) No dwelling other than those described in this section and ORS 215.740, 215.750 and 215.755 may be sited on land zoned for forest use under a land use planning goal protecting forestland. [1993 c.792 §4 (1),(4),(9); 1997 c.318 §4; 1997 c.732 §1; 2003 c.621 §102]

215.730 Additional criteria for forestland dwellings under ORS 215.705. (1) A local government shall require as a condition of approval of a single-family dwelling allowed under ORS 215.705 on lands zoned forestland that:

(a)(A) If the lot or parcel is more than 30 acres in eastern Oregon as defined in ORS 321.805, the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met; or

(B) If the lot or parcel is more than 10 acres in western Oregon as defined in ORS 321.257, the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

(b) The dwelling meets the following requirements:

(A) The dwelling has a fire retardant roof.

(B) The dwelling will not be sited on a slope of greater than 40 percent.

(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.

(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.

(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.

(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

(G) The owner provides and maintains primary fuel-free break and secondary break areas on land surrounding the dwelling that is owned or controlled by the owner.

(2)(a) If a governing body determines that meeting the requirement of subsection (1)(b)(D) of this section would be impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions.

(b) If a water supply is required under this subsection, it shall be a swimming pool, pond, lake or similar body of water that at all times contains at least 4,000 gallons or a stream that has a minimum flow of at least

one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment. [1993 c.792 §5; 1995 c.812 §6; 1997 c.293 §1; 2003 c.621 §103]

(Other Forestland Dwellings)

215.740 Large tract forestland dwelling; criteria. (1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:

(a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of this section; or

(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

(3)(a) An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.

(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

215.750 Alternative forestland dwellings; criteria. (1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family

dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

(2) In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

(3) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsection (1) or (2) of this section.

(4) A proposed dwelling under this section is not allowed:

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law.

(b) Unless it complies with the requirements of ORS 215.730.

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740 (3) for the other lots or parcels that make up the tract are met.

(d) If the tract on which the dwelling will be sited includes a dwelling.

(5) Except as described in subsection (6) of this section, if the tract under subsection (1) or (2) of this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(6)(a) If a tract 60 acres or larger described under subsection (1) or (2) of this section abuts a road or perennial stream, the measurement shall be made in accordance with subsection (5) of this section. However, one of the three required dwellings shall be on the same side of the road or stream as the tract and:

(A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

(b) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(7) Notwithstanding subsection (4)(a) of this section, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in subsection (1), (2), (5) or (6) of this section, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle. [1993 c.792 §4(6),(7),(8); 1999 c.59 §58; 2005 c.289 §1]

215.755 Other forestland dwellings; criteria. Subject to the approval of the governing body or its designee, the following dwellings may be established in any area zoned for forest use under a land use planning goal protecting forestland, provided that the requirements of the acknowledged comprehensive plan, land use regulations and other applicable provisions of law are met:

(1) 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, is removed, demolished or converted to an allowable nonresidential use within three months of completion of the replacement dwelling.

(2) One manufactured dwelling or recreational vehicle, or the temporary 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 subsection. A temporary dwelling established under this section shall not qualify for replacement under the provisions of subsection (1) of this section.

(3) Caretaker residences for public parks and public fish hatcheries. [1997 c.318 §6; 1999 c.640 §4]

Note: 215.755 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Lot or Parcel Sizes)

215.780 Minimum lot or parcel sizes; land division to establish a dwelling; recordation. (1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

(a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

(b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

(c) For land designated forestland, at least 80 acres.

(2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

(a) By demonstrating to the Land Conservation and Development Commission that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

(b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed farm and forest use, subject to the following requirements:

(A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

(B) The dwelling existed prior to June 1, 1995;

(C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or

(ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and

(D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.

(c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for mixed farm and forest use the following requirements apply:

(A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

(B) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.

(C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

(A) Shall not be eligible for siting of a new dwelling;

(B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of resource lands;

(D) Shall not result in a parcel of less than 35 acres, except:

(i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

(ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

(E) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone.

(e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(t) or 215.283 (1)(s);

(C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this paragraph; and

(E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record shall be readily available to the public.

(4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

(5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

(6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

(7) A landowner allowed a land division under subsection (2) of this section shall sign

a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use. [1993 c.792 §7; 1995 c.700 §1; 1999 c.348 §14; 2001 c.531 §1]

WILDLIFE HABITAT CONSERVATION PLANNING

215.799 Location of dwellings on wildlife habitat land. (1) New and existing dwellings may be allowed on a lot or parcel subject to wildlife habitat special assessment under ORS 308A.403 to 308A.430 as follows:

(a) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to (11), may remain.

(b) For a lot or parcel without an existing dwelling, dwellings may be allowed if each dwelling for which the landowner seeks approval complies with all applicable requirements under the county's acknowledged zoning ordinance.

(2) The fact that a lot or parcel is subject to wildlife habitat special assessment may not make it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel. [2003 c.539 §14; 2005 c.94 §1]

Note: 215.799 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.800 [1993 c.764 §1; 1997 c.504 §1; 2001 c.708 §8; 2003 c.454 §§86,88; 2003 c.621 §72; repealed by 2003 c.539 §33]

215.801 [2001 c.708 §7; 2003 c.454 §90; 2003 c.621 §73; repealed by 2003 c.539 §33]

215.802 [1993 c.764 §2; 1997 c.504 §2; 2001 c.708 §9; repealed by 2003 c.539 §33]

215.804 [1993 c.764 §3; 1997 c.504 §3; repealed by 2003 c.539 §33]

215.806 [1993 c.764 §4; 1999 c.59 §59; 2001 c.708 §10; repealed by 2003 c.539 §33]

215.808 [1993 c.764 §5; 1997 c.504 §4; 1999 c.314 §61; 1999 c.503 §8; 1999 c.842 §2; 2001 c.708 §11; 2003 c.454 §§92,94; 2003 c.621 §74; repealed by 2003 c.539 §33]

215.990 [Subsections (1) and (2) enacted as 1955 c.439 §11; subsection (5) enacted as 1969 c.324 §8; 1971 c.13 §4; repealed by 1977 c.766 §16]

GUEST RANCHES IN EASTERN OREGON

Note: Sections 1, 2 and 5, chapter 728, Oregon Laws 1997, provide:

Sec. 1. (1) Notwithstanding ORS 215.283, a guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices, that qualifies as a farm use under ORS 215.203 in any area zoned for exclusive farm use in eastern Oregon.

(2) A guest ranch established under this section shall meet the following conditions:

(a) Except as provided in paragraph (c) of this subsection, the guest lodging units cumulatively shall:

(A) Include not less than four nor more than 10 overnight guest lodging units; and

(B) Not exceed a total of 12,000 square feet in floor area, not counting against the limit of 12,000 square feet of floor area of a guest lodging unit in a lodge that is dedicated to kitchen area, rest rooms, storage or other shared indoor space.

(b) The guest ranch shall be located on a lawfully created parcel:

(A) That is at least 160 acres;

(B) That is the parcel containing the dwelling of the person conducting the livestock operation; and

(C) That is not classified as high-value farmland as defined in ORS 215.710.

(c) For each doubling of the initial 160 acres required under paragraph (b) of this subsection, up to five additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be added to the guest ranch for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.

(3) A guest ranch may provide recreational activities that can be provided in conjunction with the livestock operation's natural setting, including but not limited to hunting, fishing, hiking, biking, horseback riding, camping or swimming. Intensively developed recreational facilities, such as golf courses as identified in ORS 215.283, shall not be allowed. A campground as described in ORS 215.283 (2)(c) shall not be allowed in conjunction with a guest ranch, and a guest ranch shall not be allowed in conjunction with an existing golf course under ORS 215.283 (2)(f) or with an existing campground under ORS 215.283 (2)(c).

(4) Food services shall be incidental to the operation of the guest ranch and shall be provided only for the guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch. The cost of meals, if any, provided to guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch may be included in the fee to visit or stay at the guest ranch. A guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.

(5) Approval of a guest ranch shall be subject to the provisions of ORS 215.296 (1) and (2) and other approval or siting standards of the county.

(6) As used in this section:

(a) "Eastern Oregon" has the meaning given that term in ORS 321.805.

(b) "Guest lodging unit" means guest rooms in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for a permanent residence.

(c) "Guest ranch" means a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in subsections (2) to (4) of this section, that are incidental and accessory to an existing livestock operation that qualifies as a farm use under ORS 215.203.

(d) "Livestock" means cattle, sheep, horses and bison. [1997 c.728 §1; 1999 c.216 §1; 2001 c.467 §2; 2001 c.544 §5; 2003 c.147 §1; 2003 c.621 §107; 2005 c.258 §1]

Sec. 2. (1) Notwithstanding ORS 215.263, the governing body of a county or its designee shall not approve a proposed division of land in an exclusive farm use zone for a guest ranch as defined in section 1 of this 1997 Act.

(2) The governing body of a county or its designee shall not approve any proposed division of a lot or parcel that separates a guest ranch described in section 1 of this 1997 Act from the dwelling of the person conducting the livestock operation. [1997 c.728 §2]

Sec. 5. Chapter 728, Oregon Laws 1997, is repealed January 2, 2010. [1997 c.728 §5; 2001 c.467 §3; 2005 c.258 §3]

Note: Section 2, chapter 258, Oregon Laws 2005, provides:

Sec. 2. The Department of Land Conservation and Development, the State Department of Agriculture and the Economic and Community Development Department shall submit jointly a written report on the implementation of sections 1 and 2, chapter 728, Oregon Laws 1997, to the Seventy-fourth Legislative Assembly by February 1, 2007, and to the Seventy-fifth Legislative Assembly by February 1, 2009. [2005 c.258 §2]

CHAPTERS 216 TO 220

[Reserved for expansion]