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LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Titles 18 and 22 to Incorporate Changes to State Law
Related to the Expiration of Approval of Residential
Development in Resource Zones and Allowing the
Expansion of Nonconforming Schools in the
Exclusive Farm Use Zone and Declaring an
Emergency. *

ORDINANCE NO. 2020-022

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-19-000624-TA) to the Deschutes County Code (DCC) Title 18, Chapters 18.120, Exceptions, to allow five additional one-year extensions for residential development in the resource zones and Title 22, Chapter 22.36, Limitations on Approvals, to allow the expansion of nonconforming schools in the Exclusive Farm Use Zone; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on September 26, 2019, and forwarded to the Deschutes County Board of County Commissioners ("Board"), a unanimous recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 30, 2019, and concluded that the public will benefit from the proposed changes to the Deschutes County Code Titles 18 and 22.

NOW, THEREFORE,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.120, Exceptions, is amended to read as described in Exhibit "A" attached and incorporated by reference herein, with new language underlined.

Section 2. AMENDMENT. DCC 22.36, Limitations on Approvals, is amended to read as described in Exhibit "B" attached and incorporated by reference herein, with new language underlined.

Section 3. FINDINGS. The Board adopts as its findings Exhibit "C" attached and incorporated by reference herein.

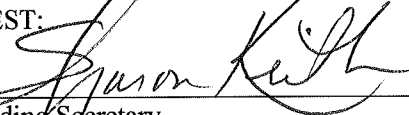
Section 4. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

Dated this 20 of May, 2020

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


PATTI ADAIR, Chair


ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary


PHILIP G. HENDERSON

Date of 1st Reading: 20 day of May, 2020.

Date of 2nd Reading: 20 day of May, 2020.

Record of Adoption Vote:

| Commissioner | Yes | No | Abstained | Excused |
|---------------------|-----|----|-----------|---------|
| Patti Adair | X | — | — | — |
| Anthony DeBone | X | — | — | — |
| Philip G. Henderson | X | — | — | — |

Effective date: 20 day of May, 2020.

Chapter 18.120. EXCEPTIONS

- 18.120.010. Nonconforming Uses.
- 18.120.020. Nonconforming Lot Sizes.
- 18.120.030. Exceptions to Yard Requirements.
- 18.120.040. Building Height Exceptions.
- 18.120.050. Fill and Removal Exceptions.

18.120.010. Nonconforming Uses.

Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.

A. Expansion or Replacement of a Nonconforming Structure.

1. Nonconforming Structure. For the purposes of DCC 18.120.010, a nonconforming structure is one that was lawfully established and violates current setbacks of DCC Title 18 but conforms with respect to use.
2. Replacement or Expansion without Additional Encroachment in Setback Area. A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the required setback area at any point, subject to all other applicable provisions of DCC Title 18.
3. Replacement or Expansion with Additional Encroachment in Setback Area. Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in DCC 18.132.025(A)(1) through (4).

B. Expansion of a Nonconforming School in the Exclusive Farm Use Zone.

1. Notwithstanding ORS 215.130, 215.213, 215.283 or DCC 18.16, 18.116, 18.124, 18.128, a public or private school, including all buildings essential to the operation of the school, formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded provided:
 - a. The expansion complies with ORS 215.286;
 - b. The school was established on or before January 1, 2009;
 - c. The expansion occurs on a tax lot:
 - i. On which the school was established; or
 - ii. Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and
 - d. The school is a public or private school for kindergarten through grade 12.
2. An expansion cannot be denied under DCC 18.120.010(B) upon any rule or condition establishing:
 - a. A maximum capacity of people in the structure or group of structures;
 - b. A minimum distance between structures; or
 - c. A maximum density of structures per acre.

Such replacements or expansions must conform with all other applicable provisions of DCC Title 18.

BC. Verification of Nonconforming Use.

1. Subject to the procedures set forth in DCC 18.120.010 and in DCC Title 22 for processing declaratory rulings, the planning division will verify whether or not a use constitutes a valid nonconforming use in accordance with the provisions of DCC 18.120.010 and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use.
2. Subject to DCC 18.120.010(F)(2), the applicant shall demonstrate all of the following:
 - a. The nonconforming use was lawfully established on or before the effective date of the provisions of the zoning ordinance prohibiting the use or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;
 - b. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, has continued without abandonment or interruption; and
 - c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of non-conforming uses.
3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:
 - a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.
 - b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.
 - c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with DCC 18.120.010(F)(4), result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.
 - d. Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.
 - e. Change of ownership or occupancy shall not constitute an interruption or abandonment, provided that, absent an approved alteration, the continuing use made of the property falls within the allowed scope of use made of the property by previous owners or occupants.
 - f. Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

CD. Maintenance of a nonconforming use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to DCC 18.120.010(E).

DE. Restoration or replacement of a nonconforming use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:

1. Restoration is made necessary by fire, natural disaster or other casualty;
2. The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction; and
3. The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.

EF. Alteration of a nonconforming use.

1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.
2. Any other alteration to a nonconforming use may be permitted subject to all applicable provisions of DCC Title 18, including site plan review and upon a finding that the alteration will have no greater adverse impact on the neighborhood.
3. For the purposes of DCC 18.120.010(E)(2), an “alteration of a nonconforming use” shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.

FG. Procedure.

1. Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the applicable procedures set forth in DC 18.120.010 and the applicable procedures of DCC Title 22, the Deschutes County Uniform Development Procedures Ordinance.
2. Notwithstanding DCC 22.20.010, the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a public hearing. The Planning Director may give prior notice of the pending application pursuant to DCC 22.20.020.
3. Except as allowed by DCC 18.120.010(F)(3)(a), the burden of proof shall be on a verification applicant to prove the existence, continuity, nature and extent of the use.
 - a. Notwithstanding DCC 22.24.050, if an applicant demonstrates by a preponderance of the evidence that the nature and extent of the use sought to be verified is of the same nature and extent as the use of the property for the ten-year period immediately preceding the application, without interruption or abandonment, it shall be presumed that the nonconforming use, as proven, lawfully existed at the time the use became nonconforming and has continued without interruption or abandonment until the date of application.
 - b. The presumption may be rebutted by a preponderance of evidence showing that the use was unlawful prior to the time it became nonconforming, or that the use prior to the ten-year period was of a different nature or different in extent than the use, as proven, or that the use prior to the ten-year period was interrupted or abandoned. If the presumption is so rebutted, the presumption shall disappear and be of no further aid to the applicant.
4. If the proof demonstrates the continued existence of a valid non-conforming use, but of a different nature or extent than that claimed by the applicant, the Hearings Body may declare there to be a valid nonconforming use to the extent proven.
5. An approval of a verification, replacement or restoration of a nonconforming use verification shall not be conditioned; an approval shall be sufficiently detailed to describe the allowed parameters of the verified use. However, an approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.
6. After a decision has been rendered on an application for a verification of a nonconforming use (including any appeals provided for under DCC Title 22 and under state law), the applicant shall not be entitled to reapply under DCC 22.28.040 for another verification determination involving the same use of the property.

(Ord. 2020-022 §1, 2020; Ord. 2004-013 §13, 2004; Ord. 98-037 §1, 1998; Ord. 95-050 §1, 1995; Ord. 93-043 §20, 1993; Ord. 91-038 §1, 1991)

Chapter 22.36. LIMITATIONS ON APPROVALS

22.36.010. Expiration of Approval.

22.36.020. Initiation of Use.

22.36.025. Transition Rules - Applicability.

22.36.030. Extensions to Avoid Environmental or Health Hazards.

22.36.040. Modification of Approval.

22.36.050. Transfer of Permit.

22.36.060. Revocation of Approvals.

22.36.010. Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, DCC 22.36.010 shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.
2. DCC 22.36.010 does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, verifying a lot or parcel meets the "lot of record" definition in 18.04.030, and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits.
 - c. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under DCC 22.36.010 or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two years of completion of the prior phase if no timetable is specified.
4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:
 - a. Nonfarm dwelling
 - b. Lot of record dwelling
 - c. Large tract dwelling
 - d. Template dwelling

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, and two years for those dwellings listed in DCC 22.36.010(B)(4) above, regardless of whether the applicable criteria have changed, if:
 - a. An applicant makes a written request for an extension of the development approval period;

- b. The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;
 - c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and
 - d. The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.
2. ~~Except for those dwellings listed under DCC 22.36.010(B)(4) above, up to two additional one-year extensions, or two-year extensions for those dwellings listed under DCC 22.36.010(B)(4) above, may be granted under the above criteria by the Planning Director or the Planning Director's designees where applicable criteria for the decision have not changed, if:~~
- a. ~~An applicant makes a written request for an extension of the development approval period;~~
 - b. ~~The request, along with the appropriate fee, is submitted to the County prior to the expiration of the approval period;~~
 - c. ~~The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and~~
 - d. ~~The County determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.~~
3. ~~For those dwellings listed under DCC 22.36.010(B)(4), up to five additional one-year extensions may be granted if:~~
- a. ~~The applicant makes a written request for the additional extension prior to the expiration of an extension;~~
 - b. ~~The applicable residential development statute has not been amended following the approval of the permit; and~~
 - c. ~~An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.~~
34. In addition to the extensions granted in DCC 22.36.010(C)(1), one additional two-year extension for a land use approval or a phase of a land use approval may be granted by the Planning Director or the Planning Director's designee under the criteria listed under DCC 22.36.010(C)(1) for approvals issued prior to June 8, 2011. This subsection does not apply for those dwellings listed under DCC 22.36.010(B)(4) above.
- D. Procedures.
- 1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.
 - 2. Approval of an extension granted under DCC 22.36.010 is an administrative decision, is not a land use decision described in ORS 197.015 or Title 22 and is not subject to appeal as a land use decision and shall be processed under DCC Title 22 as a development action, except to the extent it is necessary to determine whether the use has been initiated.
- E. Effect of Appeals. The time period set forth in DCC 22.36.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.
- (Ord. 2020-022 §2, 2020; Ord. 2017-015§5, 2017; Ord. 2015-017 §s5, 2015; Ord. 2011-016, 2011; Ord. 2004-001 §4, 2004; Ord. 95-045 §43A, 1995; Ord. 95-018 §1, 1995; Ord. 90-007 §1, 1990)

22.36.020. Initiation of use.

- A. For the purposes of DCC 22.36.020, development action undertaken under a land use approval described in DCC 22.36.010, has been "initiated" if it is determined that:
 - 1. The proposed use has lawfully occurred;

2. Substantial construction toward completion of the land use approval has taken place; or
 3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.
- B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.
- (Ord. 95-018 §2, 1995; Ord. 90-007 §1, 1990)

22.36.025. Transition Rules - Applicability.

- A. The two-year duration period set forth in DCC 22.36.010(B) shall be applied only to land use approvals issued after the effective date of Ordinance 95-018.
 - B. Notwithstanding any condition to the contrary in an individual approval, a determination may be made for any land use approval described in DCC 22.36.010(B) whether or not issued prior to the effective date of Ordinance 95-018, under DCC 22.36.010(D)(1) as to whether a use was "initiated" within the duration of the land use approval. If it is determined that the use was "initiated" during the life of the permit, the permit will be considered to be a valid existing permit and any land use described in the permit will be deemed to be authorized under the County's ordinances, subject to any applicable revocation provisions.
 - C. For any land use approvals whose initial term had not expired as of the effective date of this ordinance, extensions may be granted under DCC 22.36.010(C) or, except for permits in the farm and forest zones, as a matter of discretion by the Planning Director as set forth under former DCC 22.36.020 otherwise repealed by Ordinance 95-018.
- (Ord. 95-071 §3, 1995; Ord. 95-018 §2(A), 1995)

22.36.030. Extensions to Avoid Environmental or Health Hazards.

- A. In addition to extensions granted pursuant to DCC 22.36.010(C) and notwithstanding any other provision of the Deschutes County Code, a one-time extension may be granted to a tentative plat approval and any associated land use permits regarding the time for final plat approval where conditions of the approval, or extensions thereof, require or can be read to require approvals from other agencies for sewer or water systems and (1) the applicant can show that without such extension or extensions, a health or environmental hazard or risk thereof would continue to exist, be exacerbated or likely would be created and (2) the applicant submits a time frame and plan for meeting the outstanding conditions with the concurrence of a homeowner's association having an ownership interest in project lands and such concurrence is demonstrated in the application.
 - B. Such an extension shall be administrative, in writing, and not subject to appeal and shall, subject to the termination provisions of DCC 22.36.030(C), be granted for a time period not to exceed one year.
 - C. In lieu of submittal of the time frame and plan and concurrence of the homeowner's association with the application, that requirement of DCC 22.36.030(A) may be satisfied by conditioning approval of the extension to require establishment of the agreed-to time frame and plan within the first 60 days of the extension period, which time line and plan shall thereupon be deemed to be a condition of the extension approval.
 - D. An extension under DCC 22.36.030 shall be conditioned upon adherence to the time lines and plan proposed in the extension application or as agreed to pursuant to DCC 22.36.030(C).
 - E. Failure to demonstrate compliance with any extension condition shall, after notice and hearing under DCC Title 22, result in termination of the extension granted under DCC 22.36.030.
- (Ord 94-059 §1, 1994)

22.36.040. Modification of Approval.

- A. An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.
- B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.
- C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.
- D. An application for a modification shall be handled as a land use action.
(Ord. 95-045 §44, 1995)

22.36.050. Transfer of Permit.

- A. A land use action permit shall be deemed to run with the land and be transferable to applicant's successors in interest.
- B. The Planning Division may require that an applicant record a notice of land use permit and conditions of approval agreement in the Deschutes County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval. The Planning Director is authorized to sign the notice and agreement on behalf of the County.
- C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.
(Ord. 95-045 §45, 1995)

22.36.060. Revocation of Approvals.

- A. Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances.
- B. Revocations shall be processed as a declaratory ruling under DCC Title 22. DCC 22.20.010 notwithstanding, a public hearing shall be held in all revocation proceedings.
(Ord. 95-045 §46, 1995)



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners BOCC Wednesday Meeting of May 20, 2020

DATE: May 14, 2020

FROM: Isabella Liu, Community Development,

TITLE OF AGENDA ITEM:

Deliberations and Consideration of First/Second Readings: Ordinance No. 2020-022
Amending Deschutes County Code Titles 18 and 22

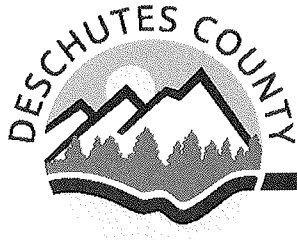
BACKGROUND AND POLICY IMPLICATIONS:

On October 30, 2019, the Board of Commissioners ("Board") held a public hearing to consider a proposed text amendment to the Deschutes County Code to incorporate changes to state law regarding the Expansion of Approval in resource zones, per House Bill 2106, and the expansion of nonconforming schools in the Exclusive Farm Use Zone, per House Bill 3384.

The ordinance is presented for consideration of first and second reading and adoption by emergency.

FISCAL IMPLICATIONS: None.

ATTENDANCE: Izze Liu, Associate Planner



MEMORANDUM

TO: Deschutes Board of County Commissioners

FROM: Izze Liu, Associate Planner

DATE: May 20, 2020

SUBJECT: 2019 Legislative Session Text Amendments
Expiration of Approval in the Resource Zones – HB 2106
Expansion of Nonconforming Schools in the Exclusive Farm Use Zone – HB 3384

Following the 2019 State Legislative session, the County must adopt changes to local code in response to new legislation. The Planning Commission conducted a work session on September 26, 2019 for review of these amendments prior to the Deschutes Board of County Commissioners (“Board”) public hearing. The Board held a public hearing on October 30, 2019.

The proposed amendments to Chapter 18.120 – Exceptions and Chapter 22.36 – Limitations on Approvals would allow the expansion of nonconforming schools in the Exclusive Farm Use Zone and amend the County’s procedures ordinance for filing additional extensions for residential development in the Exclusive Farm Use and Forest Use Zones. Attached to this memorandum are staff’s findings, the proposed amendments, House Bill 2106, and House Bill 3384.

I. OVERVIEW

The following bills are mandatory, meaning Deschutes County is required to adopt the updated requirements for consistency between local and state requirements.

House Bill 2106

In addition to the four-year approval and two-year extension presently allowed, this bill allows five additional one-year extensions for the following dwellings in the Exclusive Farm Use and Forest Use Zones:

- Nonfarm dwelling
- Lot of record dwelling

- Large tract dwelling
- Template dwelling

The county may approve these additional one-year extensions if:

- The applicant makes a written request for the additional extension prior to the expiration of an extension;
- The applicable residential development statute has not been amended following the approval of the permit;
- An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

Staff notes these new extensions are a result of the Legislature responding to a LUBA interpretation of statutory provisions for resource-zoned-dwelling extensions¹. In County Code, the new one-year extensions effectively replace two-year extensions that are no longer allowed under statute and case law.

House Bill 3384

Allows the expansion of nonconforming schools in the Exclusive Farm Use Zone. The Bill states that a nonconforming public or private school in effect before January 1, 2010, including all buildings essential to the operation of the school, may be expanded provided:

- The expansion complies with ORS 215.296;
- The school was established on or before January 1, 2009;
- The expansion occurs on:
 - The tax lot on which the school was established; or
 - Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and
- The school is a public or private school for kindergarten through grade 12.

In addition, the Bill states:

- A county may not deny an expansion under this section upon any rule or condition establishing:
 - A maximum capacity of people in the structure or group of structures;
 - A minimum distance between structures; or
 - A maximum density of structures per acre.

¹ LUBA 2018-093 - <https://www.oregon.gov/LUBA/docs/Opinions/2019/01-19/18093.pdf>

II. ATTACHMENTS

Exhibit A – Staff Findings

Exhibit B – Proposed Text Amendments

Exhibit C – House Bill 2106

Exhibit D – House Bill 3384

FINDINGS

FILE NUMBER: 247-19-000624-TA

APPLICANT: Deschutes County Community Development
117 NW Lafayette Avenue
Bend, Oregon 97703

PROPERTY: N/A
OWNER:

REQUEST: Text Amendments to the Deschutes County Code to incorporate changes to state law regarding the Expiration of Approval in resource zones, per House Bill 2106, and the expansion of nonconforming schools in the Exclusive Farm Use Zone, per House Bill 3384.

STAFF CONTACT: Izzie Liu, Associate Planner

I. **PROPOSAL:**

The proposed text amendments to Deschutes County Code (DCC) Title 18, County Zoning, and DCC Title 22, Deschutes County Development Procedures Ordinance, are detailed in the referenced ordinance attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are summaries of the proposed changes.

DCC CHAPTER 18.120, EXCEPTIONS

DCC 18.120.010(B) – Proposing to amend the nonconforming uses section to include the expansion of nonconforming schools in the Exclusive Farm Use Zone.

DCC CHAPTER 22.36, LIMITATIONS ON APPROVALS

DCC 22.36.010(C) – Proposing to amend the number and duration of additional extensions allowed for residential development in the Exclusive Farm Use and Forest Use Zones. Remove two-year extensions for these approvals that are no longer allowed under statute and case law.

II. **REVIEW CRITERIA:**

Deschutes County lacks specific criteria in DCC Titles 18, 19, 22, or 23 for reviewing a legislative plan amendment. Nonetheless, since Deschutes County is initiating one, the County bears the

responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

A. HOUSE BILL 2106

House Bill 2106 came into effect on June 20, 2019. Deschutes County must amend its procedural code, Deschutes County Code (DCC) 22.36.010, Expiration of Approval, to be consistent with state law. The amendment allows five additional one-year extensions allowed for residential development in the Exclusive Farm Use and Forest Use Zones.

B. HOUSE BILL 3384

House Bill 3384 came into effect on June 17, 2019. Deschutes County must amend its code to allow nonconforming schools in the Exclusive Farm Use Zone, including all buildings essential to the operation of the school, to be expanded.

III. FINDINGS:

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010. Hearing Required.

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

FINDING: A public hearing was held before the Deschutes County Board of County Commissioners on October 30, 2019. This criterion is met.

Section 22.12.020. Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: A notice of public hearing for the proposed text amendment was published in the Bend Bulletin newspaper on October 19, 2019. This criterion is met.

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.**

FINDING: The notice of public hearing was posted on the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend. This criterion is met.

- C. Individual Notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.**

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. Media Notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.**

FINDING: Notice has been provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030. Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
- 1. The Planning Commission.**
 - 2. The Board of County Commissioners.**
- B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

FINDING: These criteria will be met.

Section 22.12.050. Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes included in File no. 247-19-000624-TA will be implemented by ordinances upon approval and adoption by the Board. This criterion will be met.

IV. STATEWIDE PLANNING GOALS

Goal 1: Citizen Involvement

FINDING: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing. A Planning Commission work session was held on September 26, 2019 and a public hearing was held before the Board of County Commissioners on October 30, 2019.

Goal 2: Land Use Planning

FINDING: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). The Oregon Land Conservation and Development Department 35-day notice will be initiated on September 25, 2019. A Planning Commission work session was held on September 26, 2019, and a public hearing with the Board of County Commissioners was held on October 30, 2019. The Findings document provides the adequate factual basis for the amendments. The amendments to the Deschutes County Code will be adopted by ordinance, as required by Goal 2, Part I. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 3: Agricultural Lands and Goal 4: Forest Lands

FINDING: This goal is not applicable since the proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 3 or 4. House Bills 2106 and 3384 are related to existing entitlements or development in resource zones and the Deschutes County Code (DCC) utilizes the Exclusive Farm Use and Forest Use Zones to regulate new development which is consistent with Goal 3 and 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources

FINDING: This goal is not applicable since the proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 5. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 6: Air, Water and Land Resources Quality

FINDING: This goal is not applicable since the proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384, and will be subject to code provisions that are designed to protect air, water, and land resource quality.

Goal 7: Areas Subject to Natural Disasters and Hazards

FINDING: This goal is not applicable because the proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 8: Recreational Needs

FINDING: This goal is not applicable because the proposed text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 9: Economy of the State

FINDING: This goal is not applicable because Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans. The proposed amendments apply only to resource lands and do not propose to amend the Comprehensive Plan.

Goal 10: Housing

FINDING: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 11: Public Facilities and Services

FINDING: This goal is not applicable because the proposed text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services. No development or land use changes are being proposed that impact public facilities.

Goal 12: Transportation

FINDING: Goal 12 is implemented by Oregon Administrative Rules Chapter 660, Division 12. Local governments are required to adopt a Transportation System Plan and land use regulations to implement the TSP. This proposal does not include amendments to the County's TSP or transportation-related land use regulations. No development or land use changes are being proposed at this time that impact local or state transportation facilities. In addition, the text amendments do not propose any changes to the functional classifications, performance standards, or access management standards of any County roads or State highways. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goal 13: Energy Conservation

FINDING: This goal is not applicable because the proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. No development or land use changes are being proposed that raise energy conservation issues.

Goal 14: Urbanization

FINDING: This goal is not applicable because no expansion of an urban area is proposed by these amendments, nor do the amendments propose to change the County's Plan or implementing regulations regarding urbanization. Any future development taking place pursuant to the proposed amendments will be expressly defined and permitted by the provisions of state law in House Bills 2106 and 3384.

Goals 15 through 19

FINDING: These goals are not applicable to the proposed text amendments because the County does not contain these types of lands.

V. DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 1, Comprehensive Planning

Section 1.2, Community Involvement

FINDING: As noted in the findings for Statewide Goal 1, this goal and policy is met because the amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing. A Planning Commission work session was held on September 26, 2019 and a public hearing was held before the Board of County Commissioners on October 30, 2019.

Section 1.3, Land Use Planning

FINDING: As noted in the findings for Statewide Goal 2, this goal and policy is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). The Oregon Land Conservation and Development Department 35-day notice will be initiated on September 25, 2019. A Planning Commission work session was held on September 26, 2019, and a public hearing with the Board of County Commissioners was held on October 30, 2019. The Findings document provides the adequate factual basis for the amendments. The amendments to the Deschutes County Code will be adopted by ordinance, as required by Goal 2, Part I.

VI. CONCLUSION:

Based on the information provided herein, staff recommends approval of the proposed text amendments to incorporate changes to state law regarding the Expiration of Approval, per House Bill 2106 and the expansion of nonconforming schools in the Exclusive Farm Use Zone, per House Bill 3384.

Enrolled
House Bill 2106

Sponsored by Representative CLEM; Representative SMITH DB (Presession filed.)

CHAPTER

AN ACT

Relating to land use; amending ORS 215.213 and 215.417; and declaring an emergency.

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

SECTION 1. ORS 215.213, as amended by section 1, chapter 119, Oregon Laws 2018, is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

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

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

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent

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

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

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Subject to section 2, chapter 462, Oregon Laws 2013, alteration, restoration or replacement of a lawfully established dwelling.

(r) Farm stands if:

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

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

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is

used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and 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, or the onsite treatment of septage prior to the land application of 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. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(z) Dog training classes or testing trials, which may be conducted outdoors or in *[preexisting]* farm buildings **in existence on January 1, 2019**, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(aa) A cider business, as described in ORS 215.451.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(u) of this section.

(d) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

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

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

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447.

(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)(A) Commercial dog boarding kennels; or
(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) 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 landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

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

(z) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

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

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

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

(c) Complies with such other conditions as the governing body or its designee considers necessary.

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

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

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

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

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

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

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

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

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

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

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

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

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

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

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

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

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

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 2. ORS 215.213, as amended by section 7, chapter 462, Oregon Laws 2013, section 2, chapter 148, Oregon Laws 2017, section 4, chapter 253, Oregon Laws 2017, section 4, chapter 504, Oregon Laws 2017, and section 2, chapter 119, Oregon Laws 2018, is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

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

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

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

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

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

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-

view of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-

motional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

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

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and 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, or the onsite treatment of septage prior to the land application of 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. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(z) Dog training classes or testing trials, which may be conducted outdoors or in [preexisting] farm buildings **in existence on January 1, 2019**, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(aa) A cider business, as described in ORS 215.451.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(u) of this section.

(d) Operations conducted for:

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

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

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

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

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

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

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip re-

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

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

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

(k)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) 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 landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

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

(z) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

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

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

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

(c) Complies with such other conditions as the governing body or its designee considers necessary.

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

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

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

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

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

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

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

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

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

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

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

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

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

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

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

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

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

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

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 3. ORS 215.417 is amended to read:

215.417. (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*] is valid for four years.

(2) An extension of a permit described in subsection (1) of this section [*shall be*] is valid for two years. **A county may approve no more than five additional one-year extensions of a permit if:**

(a) **The applicant makes a written request for the additional extension prior to the expiration of an extension;**

(b) **The applicable residential development statute has not been amended following the approval of the permit; and**

(c) **An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.**

(3) **An extension of a permit under subsection (2) of this section is not a land use decision as defined in ORS 197.015.**

[(3)] (4) [*For the purposes of*] **As used in this section, "residential development" [*only includes the*] means dwellings provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).**

SECTION 3a. If House Bill 2225 becomes law, ORS 215.417, as amended by section 3 of this 2019 Act, is amended to read:

215.417. (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 is valid for four years.

(2) An extension of a permit described in subsection (1) of this section is valid for two years. A county may approve no more than five additional one-year extensions of a permit if:

(a) The applicant makes a written request for the additional extension prior to the expiration of an extension;

(b) The applicable residential development statute has not been amended following the approval of the permit, **except the amendments to ORS 215.750 by section 1, chapter _____, Oregon Laws 2019 (Enrolled House Bill 2225)**; and

(c) An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

(3) An extension of a permit under subsection (2) of this section is not a land use decision as defined in ORS 197.015.

(4) As used in this section, "residential development" means dwellings provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

SECTION 4. ORS 215.417, as amended by section 9, chapter 462, Oregon Laws 2013, is amended to read:

215.417. (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]* is valid for four years.

(2) An extension of a permit described in subsection (1) of this section *[shall be]* is valid for two years. **A county may approve no more than five additional one-year extensions of a permit if:**

(a) **The applicant makes a written request for the additional extension prior to the expiration of an extension;**

(b) **The applicable residential development statute has not been amended following the approval of the permit; and**

(c) **An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.**

(3) **An extension of a permit under subsection (2) of this section is not a land use decision as defined in ORS 197.015.**

[(3)] (4) [For the purposes of] As used in this section, "residential development" [only includes the] means dwellings provided for under ORS 215.213 (1)(q), (3) and (4), 215.283 (1)(p), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

SECTION 4a. If House Bill 2225 becomes law, ORS 215.417, as amended by section 9, chapter 462, Oregon Laws 2013, and section 4 of this 2019 Act, is amended to read:

215.417. (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 is valid for four years.

(2) An extension of a permit described in subsection (1) of this section is valid for two years. A county may approve no more than five additional one-year extensions of a permit if:

(a) The applicant makes a written request for the additional extension prior to the expiration of an extension;

(b) The applicable residential development statute has not been amended following the approval of the permit, **except the amendments to ORS 215.750 by section 1, chapter _____, Oregon Laws 2019 (Enrolled House Bill 2225)**; and

(c) An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

(3) An extension of a permit under subsection (2) of this section is not a land use decision as defined in ORS 197.015.

(4) As used in this section, "residential development" means dwellings provided for under ORS 215.213 (1)(q), (3) and (4), 215.283 (1)(p), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

SECTION 5. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House April 18, 2019

Received by Governor:

Repassed by House June 11, 2019

.....M,....., 2019

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M,....., 2019

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Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate June 6, 2019

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M,....., 2019

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Bev Clarno, Secretary of State

Enrolled
House Bill 3384

Sponsored by Representative WILDE, Senator BEYER; Representatives HAYDEN, NEARMAN

CHAPTER

AN ACT

Relating to nonconforming schools in exclusive farm use zones; amending ORS 215.135; and declaring an emergency.

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

SECTION 1. ORS 215.135 is amended to read:

215.135. (1) *[In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use]* **Notwithstanding ORS 215.130, 215.213 or 215.283 or any local zoning ordinance or regulation, a public or private school, including all buildings essential to the operation of the school,** formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before January 1, 2010, may be expanded *[subject to]* **provided:**

[(a) The requirements of subsection (2) of this section; and]

[(b) Conditional approval of the county in the manner provided in ORS 215.296.]

[(2) A nonconforming use described in subsection (1) of this section may be expanded under this section if:]

(a) The expansion complies with ORS 215.296;

[(a)] **(b) The [use] school** was established on or before January 1, 2009; *[and]*

[(b) The expansion occurs on:]

[(A) The tax lot on which the use was established on or before January 1, 2009; or]

[(B) A tax lot that is contiguous to the tax lot described in subparagraph (A) of this paragraph and that was owned by the applicant on January 1, 2009.]

(c) The expansion occurs on a tax lot:

(A) On which the school was established; or

(B) Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and

(d) The school is a public or private school for kindergarten through grade 12.

(2) A county may not deny an expansion under this section upon any rule or condition establishing:

(a) A maximum capacity of people in the structure or group of structures;

(b) A minimum distance between structures; or

(c) A maximum density of structures per acre.

SECTION 2. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House April 18, 2019

Repassed by House June 6, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 23, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State