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SUMMARY

Authorizes conditional approval, in exclusive farm use zones, of industrial uses that are not otherwise authorized in exclusive farm use zones.

A BILL FOR AN ACT

Relating to industrial uses in exclusive farm use zones; creating new provisions; and amending ORS 196.684, 196.692, 215.203, 215.296 and 459.109.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 215.203 to 215.311.

SECTION 2. (1) Notwithstanding statewide land use planning goals relating to agricultural lands or forest lands, industrial uses not specifically allowable under ORS 215.213 or 215.283 or another provision of law may be allowed in an area zoned for exclusive farm use subject to the requirements of this section and the approval of the governing body or its designee under ORS 215.296.

(2) An industrial use allowed under subsection (1) of this section must be established on a tract of land that is adjacent to the boundary of a city or an urban growth boundary. However, a permit for an industrial use must include a buffer zone between the industrial use and the boundary of a city or an urban growth boundary if the industrial use produces industrial waste as defined in ORS 468B.005.

(3) Notwithstanding statewide land use planning goals relating to urbanization or to public facilities and services and subject to approval under ORS 215.296:

1 (a) A county or its designee may authorize on-site sewer facilities
2 to serve the industrial use authorized under this section, including
3 accessory uses subordinate to the industrial use; or

4 (b) A provider of sanitary sewer or water services may connect the
5 tract of land for which an industrial use is approved under subsection
6 (1) of this section to the sewer and water facilities of the provider.

7 (4) When a county or its designee considers action on a proposal to
8 establish an industrial use under subsection (1) of this section:

9 (a) The county shall notify the city whose boundary or urban
10 growth boundary is adjacent to the tract of land for which the indus-
11 trial use is proposed at least 21 days before taking action.

12 (b) If the city objects to the authorization of industrial use, the city
13 and county shall negotiate to establish conditions on the industrial
14 use or changes in the industrial use necessary to mitigate concerns
15 raised in the city's objection.

16 (5) A county or its designee may not authorize under this section
17 an industrial use that may be allowed under ORS 215.213 or 215.283 or
18 another provision of law.

19 **SECTION 3.** ORS 215.203, as amended by section 1, chapter 74, Oregon
20 Laws 2012, is amended to read:

21 215.203. (1) Zoning ordinances may be adopted to zone designated areas
22 of land within the county as exclusive farm use zones. Land within such
23 zones shall be used exclusively for farm use except as otherwise provided in
24 ORS 215.213, 215.283, [*or*] 215.284 **or 215.294 or section 2 of this 2013 Act.**
25 Farm use zones shall be established only when such zoning is consistent with
26 the comprehensive plan.

27 (2)(a) As used in this section, "farm use" means the current employment
28 of land for the primary purpose of obtaining a profit in money by raising,
29 harvesting and selling crops or the feeding, breeding, management and sale
30 of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or
31 for dairying and the sale of dairy products or any other agricultural or

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

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

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

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

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

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

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

(F) Except for land under a single family dwelling, land under buildings

1 supporting accepted farm practices, including the processing facilities al-
2 lowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm
3 crops into biofuel as commercial activities in conjunction with farm use un-
4 der ORS 215.213 (2)(c) and 215.283 (2)(a);

5 (G) Water impoundments lying in or adjacent to and in common owner-
6 ship with farm use land;

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

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

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

15 (K) Land used for the processing of farm crops into biofuel, as defined in
16 ORS 315.141, if:

17 (i) Only the crops of the landowner are being processed;

18 (ii) The biofuel from all of the crops purchased for processing into biofuel
19 is used on the farm of the landowner; or

20 (iii) The landowner is custom processing crops into biofuel from other
21 landowners in the area for their use or sale.

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

26 (3) "Cultured Christmas trees" means trees:

27 (a) Grown on lands used exclusively for that purpose, capable of prepa-
28 ration by intensive cultivation methods such as plowing or turning over the
29 soil;

30 (b) Of a marketable species;

31 (c) Managed to produce trees meeting U.S. No. 2 or better standards for

Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

SECTION 4. ORS 215.296 is amended to read:

215.296. (1) A use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or section 2 of this 2013 Act** may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or section 2 of this 2013 Act** may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the local governing body or its designee alleging:

(a) That a condition imposed pursuant to subsection (2) of this section has been violated;

(b) That the violation has:

(A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(c) That the complainant is adversely affected by the violation.

(4) Upon receipt of a complaint filed under this section or ORS 215.218,

1 the local governing body or its designee shall:

2 (a) Forward the complaint to the operator of the use;

3 (b) Review the complaint in the manner set forth in ORS 215.402 to
4 215.438; and

5 (c) Determine whether the allegations made in a complaint filed under
6 this section or ORS 215.218 are true.

7 (5) Upon a determination that the allegations made in a complaint are
8 true, the local governing body or its designee at a minimum shall notify the
9 violator that a violation has occurred, direct the violator to correct the
10 conditions that led to the violation within a specified time period and warn
11 the violator against the commission of further violations.

12 (6) If the conditions that led to a violation are not corrected within the
13 time period specified pursuant to subsection (5) of this section, or if there
14 is a determination pursuant to subsection (4) of this section following the
15 receipt of a second complaint that a further violation has occurred, the local
16 governing body or its designee at a minimum shall assess a fine against the
17 violator.

18 (7) If the conditions that led to a violation are not corrected within 30
19 days after the imposition of a fine pursuant to subsection (6) of this section,
20 or if there is a determination pursuant to subsection (4) of this section fol-
21 lowing the receipt of a third or subsequent complaint that a further violation
22 has occurred, the local governing body or its designee shall at a minimum
23 order the suspension of the use until the violator corrects the conditions that
24 led to the violation.

25 (8) If a use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4)
26 **or 215.294 or section 2 of this 2013 Act** is initiated without prior approval
27 pursuant to subsection (1) of this section, the local governing body or its
28 designee at a minimum shall notify the user that prior approval is required,
29 direct the user to apply for approval within 21 days and warn the user
30 against the commission of further violations. If the user does not apply for
31 approval within 21 days, the local governing body or its designee shall order

the suspension of the use until the user applies for and receives approval. If there is a determination pursuant to subsection (4) of this section following the receipt of a complaint that a further violation occurred after approval was granted, the violation shall be deemed a second violation and the local governing body or its designee at a minimum shall assess a fine against the violator.

(9)(a) The standards set forth in subsection (1) of this section do not apply to farm or forest uses conducted within:

(A) Lots or parcels with a single-family residential dwelling approved under ORS 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705;

(B) An exception area approved under ORS 197.732; or

(C) An acknowledged urban growth boundary.

(b) A person residing in a single-family residential dwelling which was approved under ORS 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705, which is within an exception area approved under ORS 197.732 or which is within an acknowledged urban growth boundary may not file a complaint under subsection (3) of this section.

(10) This section does not prevent a local governing body approving a use allowed under ORS 215.213 (2) or (11), [or] 215.283 (2) or (4) **or 215.294 or section 2 of this 2013 Act** from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to ensure conformance with the additional standards.

SECTION 5. ORS 196.684 is amended to read:

196.684. (1) Local governments shall provide notice to the Department of State Lands of any proposed amendments to the land use plan and ordinances affecting lands subject to a wetland conservation plan approved under this section.

(2) Amendments to plan policies, maps and implementing ordinances by the local government within an approved wetland conservation plan shall be reviewed by the department against the requirements of this section. These provisions do not exempt local governments from the provisions of ORS

197.610 to 197.625.

(3) The Director of the Department of State Lands shall provide notice and the opportunity for public comment and hearing as defined by rule on the matter of including the amendment in the wetland conservation plan.

(4) If the director finds that the proposed local government amendment to acknowledged comprehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall approve the plan by order, and notify the local government within 10 days of the completion of the public review provided in subsection (3) of this section.

(5) If the amendments to acknowledged comprehensive plan and land use regulations adopted by the local government are determined not to comply with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act**, the director shall revoke the approval order or amend the order to [*insure*] **ensure** compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act**.

(6) The department shall review each approved wetland conservation plan every five years. After such review the director shall either modify, reissue or rescind the order approving the plan.

(7) In conducting the five-year review of an approved wetland conservation plan, the director shall provide notice and the opportunity for public comment and hearing on whether:

(a) There has been a substantial change in circumstances that would affect the wetland resources subject to the plan and would adversely affect the compliance of the plan with the standards in ORS 196.681;

(b) Changes have been made in applicable state law, statewide land use planning goals, federal law or agency rules that require the plan to be changed; and

(c) In the director's evaluation, the plan as implemented over the preceding five years meets the goals established in the plan.

(8) Wetland conservation plans approved by the Director of the Department of State Lands pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any statewide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses and activities which are regulated by the plan.

(9) An order by the director regarding approval, amendment or review of a wetland conservation plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency. For the purpose of such review, the director's order shall not become final until the local government adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall consolidate for review appeals of the director's order and the local government adoption. The Land Use Board of Appeals shall review such order for compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act.**

(10) Nothing in this section shall be construed to require a contested case proceeding regarding approval, amendment or review of a wetland conservation plan.

(11) Nothing in this section shall be construed to affect the evaluation of a permit application in areas that do not have a wetland conservation plan.

(12) Upon a finding by the director, after a public hearing, that an affected local government is not enforcing the comprehensive plan provisions or land use regulations set forth in the conditions of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has resulted or would result in adverse impacts to wetlands, the director shall modify, suspend or revoke approval of the wetland conservation plan.

SECTION 6. ORS 196.692 is amended to read:

1 196.692. (1) The Department of State Lands shall adopt rules to carry out
2 the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825,
3 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283,
4 215.284, **215.294**, 215.418 and 227.350 **and section 2 of this 2013 Act.**

5 (2) Rules adopted pursuant to subsection (1) of this section shall include
6 rules governing the application for and issuance of permits to remove mate-
7 rial from the beds or banks of any waters of this state or to fill any waters
8 of this state including, but not limited to, clear and objective standards and
9 criteria for determining whether to grant or deny a permit.

10 **SECTION 7.** ORS 459.109 is amended to read:

11 459.109. Nothing in ORS 215.203, 215.213, 215.283, **215.294**, 308A.056,
12 315.141, 315.144, 469.320 and 469B.403 **and section 2 of this 2013 Act:**

13 (1) Supersedes any authority under ORS chapter 459 or 459A for cities and
14 counties to regulate the collection of solid waste; or

15 (2) Authorizes the collection of solid waste within a city or county with-
16 out permission of the city or county.