

House Bill 3608

Sponsored by Representatives THOMPSON, SPRENGER, SCHAUFLER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes tax credit for transportation of woody biomass from forest management operations to biofuel producer.

Establishes tax credit for biomass electrical generation based on kilowatt hours of electricity produced.

Establishes tax credit for purchase of equipment to collect or process waste materials or to manufacture product from waste materials.

Applies to tax years beginning on or after January 1, 2010.

Directs State Department of Energy to conduct study of biomass facility sites in state.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax treatment of waste materials; creating new provisions; amending ORS 215.203, 215.213, 215.283, 308A.056, 314.752, 315.141, 318.031 and 469.790; and prescribing an effective date.

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

TAX CREDIT FOR TRANSPORTATION OF WOODY BIOMASS

SECTION 1. ORS 469.790 is amended to read:

469.790. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

(1) For oil seed crops, \$0.05 per pound.

(2) For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.

(3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.

(4) For used cooking oil or waste grease, \$0.10 per gallon.

(5) For wastewater biosolids, \$10.00 per wet ton.

(6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, \$10.00 per green ton.

(7) For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per green ton.

(8) For yard debris and municipally generated food waste, \$5.00 per wet ton.

(9) For animal manure or rendering offal, \$5.00 per wet ton.

(10) For transportation of woody biomass from forest management operations to a biofuel producer, \$10.00 per green ton.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 2.** ORS 315.141 is amended to read:

2 315.141. (1) As used in this section:

3 (a) “Agricultural producer” means a person that produces biomass in Oregon that is used, in
4 Oregon, as biofuel or to produce biofuel.

5 **(b) “Bioenergy” means heat or electricity produced by using woody biomass.**

6 [(b)] (c) “Biofuel” means liquid, gaseous or solid fuels, derived from biomass, that have been
7 converted into a processed fuel ready for use as energy by a biofuel producer’s customers or for
8 direct biomass energy use at the biofuel producer’s site.

9 [(c)] (d) “Biofuel producer” means a person that through activities in Oregon:

10 (A) Alters the physical makeup of biomass to convert it into biofuel;

11 (B) Changes one biofuel into another type of biofuel; or

12 (C) Uses biomass in Oregon to produce energy.

13 [(d)] (e) “Biomass” means organic matter that is available on a renewable or recurring basis and
14 that is derived from:

15 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
16 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

17 (B) Wood material from hardwood timber described in ORS 321.267 (3);

18 (C) Agricultural residues;

19 (D) Offal and tallow from animal rendering;

20 (E) Food wastes collected as provided under ORS chapter 459 or 459A;

21 (F) Yard or wood debris collected as provided under ORS chapter 459 or 459A;

22 (G) Wastewater solids; or

23 (H) Crops grown solely to be used for energy.

24 [(e)] (f) “Biomass” does not mean wood that has been treated with creosote, pentachlorophenol,
25 inorganic arsenic or other inorganic chemical compounds or waste, other than matter described in
26 paragraph [(d)] (e) of this subsection.

27 [(f)] (g) “Biomass collector” means a person that collects biomass in Oregon to be used, in
28 Oregon, as biofuel or to produce **bioenergy or** biofuel.

29 **(h) “Woody biomass” has the meaning given that term in ORS 526.277. “Woody
30 biomass” includes biomass as defined in subsection (1)(e)(A) of this section.**

31 **(i) “Woody biomass transporter” means a person that transports woody biomass from
32 forest management operations to a bioenergy or biofuel producer.**

33 (2) The Director of the State Department of Energy may adopt rules to define criteria, only as
34 the criteria apply to organic biomass, to determine additional characteristics of biomass for purposes
35 of this section.

36 (3)(a) An agricultural producer, [or] biomass collector **or woody biomass transporter** shall be
37 allowed a credit against the taxes that would otherwise be due under ORS chapter 316 or, if the
38 taxpayer is a corporation, under ORS chapter 317 or 318 for:

39 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce
40 biofuel; or

41 (B) The collection of biomass, **or the transportation of woody biomass**, in Oregon that is
42 used, in Oregon, as biofuel or to produce biofuel **or bioenergy**.

43 (b) A credit under this section may be claimed in the tax year in which the credit is certified
44 under subsection (5) of this section.

45 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined

1 in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or
 2 a biomass collector may not claim a credit under this section.

3 (d) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn,
 4 but a tax credit shall be allowed for other corn material.

5 (4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

6 (5)(a) The State Department of Energy may establish by rule procedures and criteria for deter-
 7 mining the amount of the tax credit to be certified under this section, consistent with ORS 469.790.
 8 The department shall provide written certification to taxpayers that are eligible to claim the credit
 9 under this section.

10 (b) The State Department of Energy may charge and collect a fee from taxpayers for certif-
 11 ication of credits under this section. The fee may not exceed the cost to the department of deter-
 12 mining the amount of certified cost.

13 (c) The State Department of Energy shall provide to the Department of Revenue a list, by tax
 14 year, of taxpayers for which a credit is certified under this section, upon request of the Department
 15 of Revenue.

16 (6) The amount of the credit claimed under this section for any tax year may not exceed the tax
 17 liability of the taxpayer.

18 (7) Each agricultural producer, [or] biomass collector **or woody biomass transporter** shall
 19 maintain the written documentation of the amount certified for tax credit under this section in its
 20 records for a period of at least five years after the tax year in which the credit is claimed and
 21 provide the written documentation to the Department of Revenue upon request.

22 (8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains
 23 the information required by the department.

24 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 25 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
 26 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
 27 forward and used in the second succeeding tax year, and likewise any credit not used in that second
 28 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
 29 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 30 succeeding tax year, but may not be carried forward for any tax year thereafter.

31 (10) In the case of a credit allowed under this section:

32 (a) A nonresident shall be allowed the credit under this section in the proportion provided in
 33 ORS 316.117.

34 (b) If a change in the status of the taxpayer from resident to nonresident or from nonresident
 35 to resident occurs, the credit allowed by this section shall be determined in a manner consistent
 36 with ORS 316.117.

37 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the
 38 Department **of Revenue** terminates the taxpayer's taxable year under ORS 314.440, the credit al-
 39 lowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

40 **SECTION 3. The amendments to ORS 315.141 and 469.790 by sections 1 and 2 of this 2010**
 41 **Act apply to tax years beginning on or after January 1, 2010.**

42
 43 **TAX CREDIT FOR BIOMASS ELECTRICAL GENERATION**

44
 45 **SECTION 4. Section 5 of this 2010 Act is added to and made a part of ORS chapter 315.**

1 **facture a product from waste materials during the tax year. The taxpayer must be the owner**
 2 **of the equipment.**

3 **(3) The amount of the tax credit available to a taxpayer under this section shall equal the**
 4 **cost of the equipment.**

5 **(4) The credit allowed under this section may not exceed the tax liability of the taxpayer**
 6 **for the tax year in which the credit is claimed.**

7 **(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer**
 8 **in a particular tax year may be carried forward and offset against the taxpayer's tax liability**
 9 **for the next succeeding tax year. Any credit remaining unused in the next succeeding tax**
 10 **year may be carried forward and used in the second succeeding tax year, and likewise, any**
 11 **credit not used in that second succeeding tax year may be carried forward and used in the**
 12 **third succeeding tax year, and any credit not used in that third succeeding tax year may be**
 13 **carried forward and used in the fourth succeeding tax year, but may not be carried forward**
 14 **for any tax year thereafter.**

15 **SECTION 9. Section 8 of this 2010 Act applies to tax years beginning on or after January**
 16 **1, 2010.**

17
 18 **CONFORMING AMENDMENTS**
 19

20 **SECTION 10. ORS 314.752 is amended to read:**

21 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 22 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 23 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 24 allowable to the shareholders of the S corporation.

25 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
 26 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 27 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 28 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 29 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 30 manner prescribed under section 1377(a) of the Internal Revenue Code.

31 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
 32 of this section shall be determined as if such item were realized directly from the source from which
 33 realized by the corporation, or incurred in the same manner as incurred by the corporation.

34 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 35 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 36 316.117, then that provision shall apply to the nonresident shareholder.

37 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 38 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 39 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 40 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 41 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 42 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 43 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 44 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 45 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS

1 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and 469.207 (energy
 2 conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommuni-
 3 cations facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations
 4 necessary to operate an alternative fuel vehicle), [and] ORS 315.141 (biomass [*production for*
 5 *biofuel*]), **section 5 of this 2010 Act (biomass electrical generation) and section 8 of this 2010**
 6 **Act (use of waste materials).**

7 **SECTION 11.** ORS 318.031 is amended to read:

8 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 9 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 10 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 11 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 12 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and sections 5 and 8 of this 2010**
 13 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

14 **SECTION 12.** ORS 215.203 is amended to read:

15 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the
 16 county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use
 17 except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established
 18 only when such zoning is consistent with the comprehensive plan.

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

35 (b) “Current employment” of land for farm use includes:

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

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

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

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

44 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
 45 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and

1 which is not currently being used for any economic farm use;

2 (F) Except for land under a single family dwelling, land under buildings supporting accepted
3 farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)
4 and the processing of farm crops into **bioenergy or** biofuel as commercial activities in conjunction
5 with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

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

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

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

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

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

16 (L) Land used for the processing of farm crops into **bioenergy or** biofuel, as defined in ORS
17 315.141, if:

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

19 (ii) The **bioenergy and** biofuel from all of the crops purchased for processing into **bioenergy**
20 **or** biofuel *[is] are* used on the farm of the landowner; or

21 (iii) The landowner is custom processing crops **from other landowners in the area** into
22 **bioenergy or** biofuel *[from other landowners in the area]* for *[their]* use or sale **by the landowners**.

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

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

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

29 (b) Of a marketable species;

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

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

35 **SECTION 13.** ORS 215.213 is amended to read:

36 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
37 Edition), the following uses may be established in any area zoned for exclusive farm use:

38 (a) Churches and cemeteries in conjunction with churches.

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

40 (c) Utility facilities necessary for public service, including wetland waste treatment systems but
41 not including commercial facilities for the purpose of generating electrical power for public use by
42 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
43 may be established as provided in ORS 215.275.

44 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
45 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,

1 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 2 operator does or will require the assistance of the relative in the management of the farm use and
 3 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 4 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
 5 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 6 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
 7 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
 8 shall operate as a partition of the homesite to create a new parcel.

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

10 (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
 11 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-
 12 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
 13 edged under ORS 197.251.

14 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
 15 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
 16 compressors, separators and other customary production equipment for an individual well adjacent
 17 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 18 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

43 (o) Creation, restoration or enhancement of wetlands.

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

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

1 (A) Has intact exterior walls and roof structure;

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

4 (C) Has interior wiring for interior lights;

5 (D) Has a heating system; and

6 (E) In the case of replacement:

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

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

29 (r) Farm stands if:

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

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

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

42 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
43 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
44 area or placed on a permanent foundation unless the building or facility preexisted the use approved
45 under this paragraph. The site shall not include an aggregate surface or hard surface area unless

1 the surface preexisted the use approved under this paragraph. An owner of property used for the
 2 purpose authorized in this paragraph may charge a person operating the use on the property rent
 3 for the property. An operator may charge users of the property a fee that does not exceed the
 4 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model
 5 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
 6 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
 7 ground.

8 (u) A facility for the processing of farm crops, or the production of **bioenergy or** biofuel as de-
 9 fined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the
 10 farm crops processed at the facility. The building established for the processing facility shall not
 11 exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage
 12 or other farm use or devote more than 10,000 square feet to the processing activities within another
 13 building supporting farm uses. A processing facility shall comply with all applicable siting standards
 14 but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

16 (w) Irrigation canals, delivery lines and those structures and accessory operational facilities
 17 associated with a district as defined in ORS 540.505.

18 (x) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
 19 cilities or structures that end at the point where the utility service is received by the customer and
 20 that are located on one or more of the following:

21 (A) A public right of way;

22 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
 23 jacent property owners has been obtained; or

24 (C) The property to be served by the utility.

25 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-
 26 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
 27 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
 28 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
 29 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
 30 exclusive farm use zone under this chapter.

31 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 32 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 33 215.296:

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

37 (A) Consists of 20 or more acres; and

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

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

44 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar
 45 years out of the three calendar years before the year in which the application for the dwelling was

1 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000
 2 in annual gross farm income; or

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

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

8 (d) Operations conducted for:

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

11 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
 12 sources subject to ORS 215.298;

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

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

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

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

29 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

30 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
 31 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-
 32 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
 33 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
 34 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
 35 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
 36 granted through waiver action by the Oregon Department of Aviation in specific instances. A
 37 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
 38 ject to any applicable rules of the Oregon Department of Aviation.

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

1 contiguous land where the primary processing facility is located.

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

5 (k) Dog kennels.

6 (L) Residential homes as defined in ORS 197.660, in existing dwellings.

7 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
8 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
9 shall not include any species under quarantine by the State Department of Agriculture or the United
10 States Department of Agriculture. The county shall provide notice of all applications under this
11 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
12 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
13 tive decision or initial public hearing on the application.

14 (n) Home occupations as provided in ORS 215.448.

15 (o) Transmission towers over 200 feet in height.

16 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way
17 but not resulting in the creation of new land parcels.

18 (q) Reconstruction or modification of public roads and highways involving the removal or dis-
19 placement of buildings but not resulting in the creation of new land parcels.

20 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh
21 stations and rest areas, where additional property or right of way is required but not resulting in
22 the creation of new land parcels.

23 (s) A destination resort that is approved consistent with the requirements of any statewide
24 planning goal relating to the siting of a destination resort.

25 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
26 dences.

27 (u) A living history museum related to resource based activities owned and operated by a gov-
28 ernmental agency or a local historical society, together with limited commercial activities and fa-
29 cilities that are directly related to the use and enjoyment of the museum and located within
30 authentic buildings of the depicted historic period or the museum administration building, if areas
31 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
32 the museum administration buildings and parking lot are located within one quarter mile of the
33 metropolitan urban growth boundary. As used in this paragraph:

34 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
35 culture of some specific historic period using authentic buildings, tools, equipment and people to
36 simulate past activities and events; and

37 (B) "Local historical society" means the local historical society, recognized as such by the
38 county governing body and organized under ORS chapter 65.

39 (v) Operations for the extraction and bottling of water.

40 (w) An aerial fireworks display business that has been in continuous operation at its current
41 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
42 permit to sell or provide fireworks.

43 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-
44 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction
45 with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

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

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

16 (c) Complies with such other conditions as the governing body or its designee considers neces-
17 sary.

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

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

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

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

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

32 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-
33 tablished; and

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

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

45 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,

1 1948, and July 1, 1983. For the purposes of this section:

2 (a) Only one lot or parcel exists if:

3 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-
4 scribed in this section; and

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

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

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

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

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

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

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

22 **SECTION 14.** ORS 215.283 is amended to read:

23 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

24 (a) Churches and cemeteries in conjunction with churches.

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

26 (c) Utility facilities necessary for public service, including wetland waste treatment systems but
27 not including commercial facilities for the purpose of generating electrical power for public use by
28 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
29 may be established as provided in ORS 215.275.

30 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
31 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
32 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
33 operator does or will require the assistance of the relative in the management of the farm use and
34 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
35 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
36 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
37 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
38 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
39 shall operate as a partition of the homesite to create a new parcel.

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

42 (f) Operations for the exploration for and production of geothermal resources as defined by ORS
43 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
44 compressors, separators and other customary production equipment for an individual well adjacent
45 to the wellhead. Any activities or construction relating to such operations shall not be a basis for

1 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

18 (m) Creation, restoration or enhancement of wetlands.

19 (n) A winery, as described in ORS 215.452.

20 (o) Farm stands if:

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

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

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

31 (A) Has intact exterior walls and roof structure;

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

34 (C) Has interior wiring for interior lights;

35 (D) Has a heating system; and

36 (E) In the case of replacement:

37 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
 38 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
 39 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
 40 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
 41 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
 42 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
 43 deed records for the county where the property is located a deed restriction prohibiting the siting
 44 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
 45 a statement of release is placed in the deed records for the county. The release shall be signed by

1 the county or its designee and state that the provisions of this paragraph regarding replacement
2 dwellings have changed to allow the siting of another dwelling. The county planning director or the
3 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
4 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
5 and release statements filed under this paragraph; and

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

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

25 (r) A facility for the processing of farm crops, or the production of **bioenergy or** biofuel as de-
26 fined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the
27 farm crops processed at the facility. The building established for the processing facility shall not
28 exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage
29 or other farm use or devote more than 10,000 square feet to the processing activities within another
30 building supporting farm uses. A processing facility shall comply with all applicable siting standards
31 but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

32 (s) Fire service facilities providing rural fire protection services.

33 (t) Irrigation canals, delivery lines and those structures and accessory operational facilities as-
34 sociated with a district as defined in ORS 540.505.

35 (u) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
36 cilities or structures that end at the point where the utility service is received by the customer and
37 that are located on one or more of the following:

38 (A) A public right of way;

39 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
40 jacent property owners has been obtained; or

41 (C) The property to be served by the utility.

42 (v) Subject to the issuance of a license, permit or other approval by the Department of Envi-
43 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
44 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
45 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,

1 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
2 exclusive farm use zone under this chapter.

3 (w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to
4 provide rural law enforcement services primarily in rural areas, including parole and post-prison
5 supervision, but not including a correctional facility as defined under ORS 162.135.

6 (2) The following nonfarm uses may be established, subject to the approval of the governing body
7 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

8 (a) Commercial activities that are in conjunction with farm use, including the processing of farm
9 crops into **bioenergy or** biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(r) of this
10 section.

11 (b) Operations conducted for:

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

14 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
15 sources subject to ORS 215.298;

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

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

18 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the
19 approval of the county governing body or its designee, a private campground may provide yurts for
20 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,
21 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent
22 foundation. Upon request of a county governing body, the Land Conservation and Development
23 Commission may provide by rule for an increase in the number of yurts allowed on all or a portion
24 of the campgrounds in a county if the commission determines that the increase will comply with the
25 standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed
26 shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or
27 internal cooking appliance.

28 (d) Parks and playgrounds. A public park may be established consistent with the provisions of
29 ORS 195.120.

30 (e) Community centers owned by a governmental agency or a nonprofit community organization
31 and operated primarily by and for residents of the local rural community. A community center au-
32 thorized under this paragraph may provide services to veterans, including but not limited to emer-
33 gency and transitional shelter, preparation and service of meals, vocational and educational
34 counseling and referral to local, state or federal agencies providing medical, mental health, disability
35 income replacement and substance abuse services, only in a facility that is in existence on January
36 1, 2006. The services may not include direct delivery of medical, mental health, disability income
37 replacement or substance abuse services.

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

39 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

40 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
41 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-
42 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
43 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
44 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
45 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be

1 granted through waiver action by the Oregon Department of Aviation in specific instances. A
2 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
3 ject to any applicable rules of the Oregon Department of Aviation.

4 (i) Home occupations as provided in ORS 215.448.

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

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

16 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
17 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
18 hardship suffered by the existing resident or a relative of the resident. Within three months of the
19 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
20 ished or, in the case of an existing building, the building shall be removed, demolished or returned
21 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
22 view of the hardship claimed under this paragraph. A temporary residence approved under this
23 paragraph is not eligible for replacement under subsection (1)(p) of this section.

24 (m) Transmission towers over 200 feet in height.

25 (n) Dog kennels.

26 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

27 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
28 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
29 shall not include any species under quarantine by the State Department of Agriculture or the United
30 States Department of Agriculture. The county shall provide notice of all applications under this
31 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
32 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
33 tive decision or initial public hearing on the application.

34 (q) Construction of additional passing and travel lanes requiring the acquisition of right of way
35 but not resulting in the creation of new land parcels.

36 (r) Reconstruction or modification of public roads and highways involving the removal or dis-
37 placement of buildings but not resulting in the creation of new land parcels.

38 (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh
39 stations and rest areas, where additional property or right of way is required but not resulting in
40 the creation of new land parcels.

41 (t) A destination resort that is approved consistent with the requirements of any statewide
42 planning goal relating to the siting of a destination resort.

43 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-
44 dences.

45 (v) Operations for the extraction and bottling of water.

1 (w) Expansion of existing county fairgrounds and activities directly relating to county
2 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

3 (x) A living history museum related to resource based activities owned and operated by a gov-
4 ernmental agency or a local historical society, together with limited commercial activities and fa-
5 cilities that are directly related to the use and enjoyment of the museum and located within
6 authentic buildings of the depicted historic period or the museum administration building, if areas
7 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
8 the museum administration buildings and parking lot are located within one quarter mile of an ur-
9 ban growth boundary. As used in this paragraph:

10 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
11 culture of some specific historic period using authentic buildings, tools, equipment and people to
12 simulate past activities and events; and

13 (B) "Local historical society" means the local historical society recognized by the county gov-
14 erning body and organized under ORS chapter 65.

15 (y) An aerial fireworks display business that has been in continuous operation at its current
16 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
17 permit to sell or provide fireworks.

18 (z) A landscape contracting business, as defined in ORS 671.520, or a business providing land-
19 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction
20 with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

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

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

30 **SECTION 15.** ORS 308A.056 is amended to read:

31 308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the current employment
32 of land for the primary purpose of obtaining a profit in money by:

33 (a) Raising, harvesting and selling crops.

34 (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
35 or the produce thereof.

36 (c) Dairying and selling dairy products.

37 (d) Stabling or training equines, including but not limited to providing riding lessons, training
38 clinics and schooling shows.

39 (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
40 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission.

41 (f) On-site constructing and maintaining equipment and facilities used for the activities described
42 in this subsection.

43 (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
44 raised for human or animal use on land described in this section.

45 (h) Implementing a remediation plan previously presented to the assessor for the county in

1 which the land that is the subject of the plan is located.

2 (i) Using land described in this section for any other agricultural or horticultural use or animal
3 husbandry or any combination thereof.

4 (2) “Farm use” does not include the use of land subject to timber and forestland taxation under
5 ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land de-
6 scribed in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber,
7 including hybrid cottonwood).

8 (3) For purposes of this section, land is currently employed for farm use if the land is:

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

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

12 (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of
13 this subsection, prior to maturity;

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

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

20 (f) Except for land under a single family dwelling, land under buildings supporting accepted
21 farming practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)
22 and the processing of farm crops into **bioenergy or** biofuel as commercial activities in conjunction
23 with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

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

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

28 (i) Land lying idle for no more than one year when the absence of farming activity is the result
29 of the illness of the farmer or a member of the farmer’s immediate family, including injury or
30 infirmity, regardless of whether the illness results in death;

31 (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain
32 hardwood timber, including hybrid cottonwood);

33 (k) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
34 kenneling or training greyhounds for racing;

35 (L) Land subject to a remediation plan previously presented to the assessor for the county in
36 which the land that is the subject of the plan is located; or

37 (m) Land used for the processing of farm crops into **bioenergy or** biofuel, as defined in ORS
38 315.141, if:

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

40 (ii) The **bioenergy and** biofuel from all of the crops purchased for processing into **bioenergy**
41 **or** biofuel [*is*] **are** used on the farm of the landowner; or

42 (iii) The landowner is custom processing crops **from other landowners in the area** into
43 **bioenergy or** biofuel [*from other landowners in the area*] for [*their*] use or sale **by the landowners**.

44 (4) As used in this section:

45 (a) “Accepted farming practice” means a mode of operation that is common to farms of a similar

1 nature, necessary for the operation of these similar farms to obtain a profit in money and custom-
2 arily utilized in conjunction with farm use.

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

4 (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cul-
5 tivation methods such as plowing or turning over the soil;

6 (B) Of a marketable species;

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

9 (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
10 and brush control and one or more of the following practices:

11 (i) Basal pruning;

12 (ii) Fertilizing;

13 (iii) Insect and disease control;

14 (iv) Stump culture;

15 (v) Soil cultivation; or

16 (vi) Irrigation.

17 **SECTION 16. The amendments to ORS 215.203, 215.213, 215.283 and 308A.056 by sections**
18 **12 to 15 of this 2010 Act apply to tax years beginning on or after January 1, 2010.**

19
20 **BIOMASS SITING STUDY**

21
22 **SECTION 17. The State Department of Energy shall conduct a study of biomass facility**
23 **sites in this state, including retired or abandoned wood processing plants in rural communi-**
24 **ties, and the benefits of favorable tax treatment for biomass electrical generation operations**
25 **in rural communities. The department shall report the results of the study to the Legislative**
26 **Assembly in the manner provided by ORS 192.245 before February 1, 2011.**

27
28 **CAPTIONS; EFFECTIVE DATE**

29
30 **SECTION 18. The unit captions used in this 2010 Act are provided only for the conven-**
31 **ience of the reader and do not become part of the statutory law of this state or express any**
32 **legislative intent in the enactment of this 2010 Act.**

33 **SECTION 19. This 2010 Act takes effect on the 91st day after the date on which the**
34 **special session of the Seventy-fifth Legislative Assembly adjourns sine die.**