Enrolled
House Bill 2210

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor Theodore R. Kulongoski for State Department of Energy)

CHAPTER .....

AN ACT

Relating to fuel; creating new provisions; amending ORS 215.203, 215.213, 215.283, 283.327, 285C.350, 285C.353, 308A.056, 314.752, 318.031, 469.320, 646.905, 646.910 and 646.957; and prescribing an effective date.

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

PRODUCERS OF BIOFUEL RAW MATERIALS

SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS chapter 315.

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

(a) "Agricultural producer" means a person that produces biomass that is used in Oregon as biofuel or to produce biofuel.

(b) "Biofuel" means liquid, gaseous or solid fuels derived from biomass.

(c) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

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

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

(C) Agricultural residues;

(D) Offal and tallow from animal rendering;

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

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

(G) Wastewater solids; or

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

(d) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic or other inorganic chemical compounds.

(e) "Biomass collector" means a person that collects biomass to be used in Oregon as biofuel or to produce biofuel.

(2)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 for:

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

(B) The collection of biomass that is used in Oregon as biofuel or to produce biofuel.

(b) A credit under this section may be claimed in the tax year in which the agricultural producer or biomass collector transfers biomass to a biofuel producer.

(3) The amount of the credit shall be calculated as follows:

(a) Determine the quantity of biomass transferred to a biofuel producer during the tax year;

(b) Categorize the biomass into appropriate categories; and

(c) Multiply the quantity of biomass in a particular category by the appropriate credit rate for that category, expressed in dollars and cents, that is prescribed in section 5 of this 2007 Act.

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

(5)(a) A biofuel producer shall provide a written receipt to an agricultural producer or biomass collector at the time biomass is transferred from the agricultural producer or biomass collector to the biofuel producer. The receipt must state the quantity and type of biomass being transferred and that the biomass is to be used to produce biofuel.

(b) Each agricultural producer or biomass collector shall maintain the receipts described in this subsection in their records for a period of at least five years after the tax year in which the credit is claimed or for a longer period of time prescribed by the Department of Revenue.

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

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

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

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

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

(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

SECTION 3. (1) A person that has obtained a tax credit under section 2 of this 2007 Act may transfer the credit for consideration to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

(2) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will claim the credit shall jointly file a notice of tax credit transfer with the Department of Revenue. The notice shall be given on a form prescribed by the department that contains all of the following:

(a) The name, address and taxpayer identification number of the transferor and transferee;

(b) The amount of the tax credit; and

(c) Any other information required by the department.

(3) Notwithstanding subsection (1) of this section, a tax credit may not be transferred under this section:

(a) From an agricultural producer to a biomass collector claiming a credit for collecting the biomass; or

(b) From a biomass collector to an agricultural producer claiming a credit for producing the biomass.

SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS chapter 469.

SECTION 5. To be eligible for the tax credit under section 2 of this 2007 Act, 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.

SECTION 6. Sections 2, 3 and 5 of this 2007 Act apply to tax credits for tax years beginning on or after January 1, 2007, and before January 1, 2013.

SECTION 7. ORS 314.752 is amended to read:

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

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

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

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

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

assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) **and section 2 of this 2007 Act (biomass production for biofuel)**.

SECTION 8. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2007 Act** (all only to the extent applicable [*for*] **to** a corporation) and ORS chapter 317.

SECTION 8a. The State Department of Energy shall periodically conduct an impact study of the biofuels program. The study will include but is not limited to the following criteria with respect to the biofuel sector in this state:

(1) Jobs created;

(2) Average wage rates for those jobs;

(3) The provision of health care and other benefits;

(4) The extent to which workforce training opportunities are being provided to employees;

(5) The number of acres of biofuel feedstock planted;

(6) The number of gallons of biofuel blended fuel produced and consumed in the state;

(7) The cost of fuel with biofuel blends and how that compares with the cost of petroleum fuel;

(8) Environmental impacts such as reductions in greenhouse gas emissions and other toxic air pollution;

(9) The impact of biofuel feedstock production on the price of commodity crops and the cost of food staples; and

(10) The extent to which Oregon producers import biofuel or biofuel feedstock from outside the state.

SECTION 8b. (1) The State Department of Energy shall conduct the first study under section 8a of this 2007 Act two years after the effective date of this 2007 Act.

(2) Section 8a of this 2007 Act is repealed January 2, 2025.

RURAL RENEWABLE ENERGY DEVELOPMENT ZONES

SECTION 9. ORS 285C.350 is amended to read:

285C.350. As used in ORS 285C.350 to 285C.370:

(1) "Applicant" means the city, county or group of counties applying for designation of territory as a rural renewable energy development zone.

(2) "Renewable energy" means electricity that is generated through use of a renewable energy resource, as defined in ORS 469.185[.]**, or a liquid, gaseous or solid fuel for commercial sale or distribution that is one of the following:**

(a) A biofuel, such as biodiesel or ethanol, as those terms are defined in ORS 646.905, that is derived from an organic source. As used in this paragraph, "biofuel" includes, but is not limited, to raw biomass harvested for biofuel or suitable by-products, residue from agriculture, forestry or other industries and residue from commercial or municipal waste collection.

(b) A fuel additive that has been verified under the United States Environmental Protection Agency's Environmental Technology Verification Program or the California Air Resources Board verification program and is composed of at least 90 percent renewable materials.

[*(3) "Rural county" means a sparsely populated county, as defined in ORS 285C.050.*]

(3) "Rural area" means an area in the state that is not within the urban growth boundary of a city with a population of 30,000 or more.

SECTION 9a. ORS 285C.353 is amended to read:

285C.353. (1) A [*rural*] county, a city in a rural [*county*] **area** or a combination of contiguous [*rural*] counties may apply to the Director of the Economic and Community Development Department for designation of the entire territory of the applicant **that is located in a rural area** as a rural renewable energy development zone.

(2) An application for designation of a rural renewable energy development zone shall be in such form and shall contain such information as the Economic and Community Development Department prescribes by rule. The application shall include a copy of the resolution of the governing body of [*each*] **the** city or [*rural*] **each** county that constitutes the applicant that states that the city or county seeks rural renewable energy development zone designation.

(3) The director shall approve designation of the territory of the applicant as a rural renewable energy development zone [*if:*]**, excluding any territory of an applicant that is not within a rural area at the time of designation.**

[*(a) The area consists of territory in a rural county or is two or more contiguous rural counties; and*]

[*(b) The area would qualify for enterprise zone designation, without regard to any applicable numerical limitation on enterprise zones or to ORS 285C.090.*]

(4)(a) The designation of an area as a rural renewable energy development zone authorizes the exemption of up to an amount, determined as prescribed in paragraph (d) of this subsection, in real market value of property described in ORS 285C.359 that meets the requirements for exemption under ORS 285C.362.

(b) An applicant may seek subsequent additional designations under this section. An application for additional designation shall be made in the same manner as an application for initial designation, and shall be approved by the director if the application for additional designation meets the qualifications for designation under subsection (3) of this section.

(c) Each additional designation approved under this section authorizes the exemption of a new amount, determined as prescribed in paragraph (d) of this subsection, in real market value of property described in ORS 285C.359 that meets the requirements for exemption under ORS 285C.362.

(d) Each amount authorized for exemption under this section shall be determined as follows:

(A) The amount shall be set forth in the resolution described in subsection (2) of this section.

(B) If no amount is specified in the resolution described in subsection (2) of this section, the amount shall be [*$100 million*] **$250 million**.

(C) The amount may not exceed [*$100 million*] **$250 million** for any single designation under this section.

(D) The amount applies only to exemptions first claimed for a tax year that begins after January 1 following the date of adoption of the resolution described in subsection (2) of this section.

(5) If an application for designation was made by one city or county, that city or county shall serve as sponsor of the rural renewable energy development zone. If the application for designation was made by two or more [*rural*] counties, the application shall identify which county shall serve as the sponsor of the zone.

RENEWABLE FUEL STANDARDS

SECTION 10. ORS 646.905 is amended to read:

646.905. As used in ORS 646.910 to 646.920:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH(2n+1)OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D 6751.

(3) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

(A) Flash point (ASTM D 93);

(B) Acid number (ASTM D 664);

(C) Cloud point (ASTM D 2500);

(D) Water and sediment (ASTM D 2709);

(E) Visual appearance (ASTM D 4176);

(F) Free glycerin (ASTM D 6854); and

(G) Total glycerin (ASTM D 6854); and

(b) Certification of feedstock origination describing the percent of the feedstock sourced outside of the states of Oregon, Washington, Idaho and Montana.

[*(2)*] **(4)** "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

[*(3)*] **(5)** "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(4)*] **(6)** "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

[*(5)*] **(7)** "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(6)*] **(8)** "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

[*(7)*] **(9)** "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

(10) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM standard, is approved by the United States Environmental Protection Agency, meets specifications of the National Conference on Weights and Measures, and complies with standards promulgated under ORS 646.957.

[*(8)*] **(11)** "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

[*(9)*] **(12)** "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another.

SECTION 11. ORS 646.957 is amended to read:

646.957. **(1)** In accordance with any applicable provision of ORS chapter 183, the Director of Agriculture, not later than December 1, 1997, shall adopt rules to carry out the provisions of ORS 646.947 to 646.963. Such rules may include, but are not limited to, motor vehicle fuel grade advertising, pump grade labeling, testing procedures, quality standards and identification requirements for motor vehicle fuels **and ethanol, biodiesel and other renewable diesel, as those terms are defined in ORS 646.905**. Rules adopted by the director under this section shall be consistent, to the extent the director considers appropriate, with the most recent standards adopted by the American Society for Testing and Materials. As standards of the society are revised, the director shall revise the rules in a manner consistent with the revisions unless the director determines that those revised rules will significantly interfere with the director's ability to carry out the provisions of ORS 646.947 to 646.963. Rules adopted pursuant to this section must adequately protect confidential business information and trade secrets that the director or the director's authorized agent may discover when inspecting books, papers and records pursuant to ORS 646.955.

(2) Testing requirements, specifications and frequency of testing for each production lot of biodiesel, biodiesel blend or other renewable diesel produced in or brought into this state shall be defined by the director by rule.

SECTION 12. Sections 13 to 15, 17 and 18 of this 2007 Act are added to and made a part of ORS 646.910 to 646.920.

SECTION 13. (1) The State Department of Agriculture shall study and monitor biodiesel fuel production, use and sales and certificates of analysis in this state.

(2) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 5 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (5) of this section.

(3) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 15 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (5) of this section.

(4) All retail dealers, nonretail dealers and wholesale dealers in Oregon are required to provide, upon the request of the department, a certificate of analysis for biodiesel received.

(5) The notices required under this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this section, as appropriate; and

(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in section 14 of this 2007 Act.

SECTION 14. (1) Three months after the date of the notice given under section 13 (2) of this 2007 Act, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume or other renewable diesel with at least two percent renewable component by volume.

(2) Three months after the date of the notice given under section 13 (3) of this 2007 Act, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume or other renewable diesel with at least five percent renewable component by volume. Diesel fuel containing more than five percent biodiesel by volume or other renewable diesel with more than five percent renewable component by volume must be labeled as provided by the State Department of Agriculture by rule.

(3) The department shall adopt standards for biodiesel or other renewable diesel sold in this state. The department shall consult the specifications established for biodiesel or other renewable diesel by ASTM International in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content or renewable component in other renewable diesel requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating.

SECTION 15. (1) Each biodiesel or other renewable diesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel or other renewable diesel into this state for sale in this state shall keep for at least one year, at the person's registered place of business, the certificate of analysis for each batch or production lot of B100 biodiesel sold or delivered in this state.

(2) The Director of Agriculture, or the director's authorized agent, upon reasonable oral or written notice, may make such examinations of books, papers, records and equipment the

director requires to be kept by a biodiesel or other renewable diesel producer, facility operator or importer as may be necessary to carry out the duties of the director under ORS 646.910 to 646.920.

(3) The director, or the director's authorized agent, may test biodiesel or other renewable diesel for the purpose of inspecting the biodiesel or other renewable diesel of any producer, bulk facility, business or other establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel or other renewable diesel that is subsequently sold or offered for sale, for compliance with the motor fuel quality standards adopted pursuant to ORS 646.957.

(4) For the purpose of ensuring the quality of B100 biodiesel, the director, or the director's authorized agent, may obtain, at no cost to the department and as often as deemed necessary, a representative sample of B100 biodiesel from any producer, bulk facility, business or other establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel. The State Department of Agriculture shall adopt rules establishing the number of samples to be tested. The entire cost of transportation and testing of the samples shall be the responsibility of and invoiced directly to the business from which the sample was obtained.

SECTION 16. Sections 14 and 15 of this 2007 Act become operative on a date that is three months following the date of the first notice required under section 13 (2) of this 2007 Act.

SECTION 17. (1) The State Department of Agriculture shall study and monitor ethanol fuel production, use and sales in this state.

(2) When capacity of ethanol production facilities in Oregon reaches a level of at least 40 million gallons, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The capacity of ethanol production facilities in Oregon has reached the levels described in subsection (2) of this section; and

(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale only gasoline described in section 18 of this 2007 Act.

SECTION 18. (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale gasoline unless the gasoline contains 10 percent ethanol by volume.

(2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than 9.2 percent by volume of agriculturally derived, denatured ethanol that complies with the standards for ethanol adopted by the State Department of Agriculture.

(3) The department shall adopt standards for ethanol blended with gasoline sold in this state. The standards adopted shall require that the gasoline blended with ethanol:

(a) Contains ethanol that is derived from agricultural or woody waste or residue;

(b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

(c) Complies with the volatility requirements specified in 40 C.F.R. part 80;

(d) Complies with or is produced from a gasoline base stock that complies with ASTM International specification D 4814;

(e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gasoline after it has been sold, transferred or otherwise removed from a refinery or terminal; and

(f) Contains ethanol that complies with ASTM International specification D 4806.

(4) The department may review specifications adopted by ASTM International, or equivalent organizations, and federal regulations and revise the standards adopted pursuant to this section as necessary.

SECTION 19. Section 18 of this 2007 Act becomes operative on a date that is three months following the date of the notice required under section 17 of this 2007 Act.

GASOLINE ADDITIVE RESTRICTIONS

SECTION 20. ORS 646.910 is amended to read:

646.910. [*No*] **(1) A** wholesale or retail dealer may **not** sell or offer to sell any gasoline blended or mixed with**:**

(a) [*Alcohol*] **Ethanol** unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79**, and that complies with ASTM International specification D 4806**[.]**;**

(b) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(c) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:

(A) Diisopropylether.

(B) Ethyl tert-butylether.

(C) Iso-butanol.

(D) Iso-propanol.

(E) N-butanol.

(F) N-propanol.

(G) Sec-butanol.

(H) Tert-amyl methyl ether.

(I) Tert-butanol.

(J) Tert-pentanol or tert-amyl alcohol.

(K) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(2) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in subsection (1)(c) of this section, provided:

(a) The gasoline is used or disposed of outside this state; and

(b) The gasoline is segregated from gasoline intended for use within this state.

SECTION 21. The amendments to ORS 646.910 by section 20 of this 2007 Act become operative November 1, 2009.

SECTION 22. Section 23 of this 2007 Act is added to and made a part of ORS 646.910 to 646.920.

SECTION 23. Notwithstanding ORS 646.910, a person may sell, supply or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board, the California Environmental Policy Council or the United States Environmental Protection Agency allows the use of the oxygenate.

SECTION 24. Section 23 of this 2007 Act becomes operative on the effective date of this 2007 Act.

STATE GOVERNMENT USE OF BIOFUEL

SECTION 25. ORS 283.327 is amended to read:

283.327. (1) To the maximum extent economically possible, state-owned motor vehicles shall use alternative fuel for operation.

(2) State agencies shall acquire only motor vehicles capable of using alternative fuel, except that acquired vehicles assigned to areas unable economically to dispense alternative fuel need not be so configured.

(3) Each agency owning motor vehicles shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(4) To the maximum extent economically possible, state-owned structures shall use biofuel, or direct-application electricity generated from biofuel, where diesel is currently utilized for stationary or back-up generation.

BIOFUEL CONSUMER INCOME TAX CREDITS

SECTION 26. Sections 27 and 28 of this 2007 Act are added to and made a part of ORS chapter 315.

SECTION 27. (1) As used in this section and section 28 of this 2007 Act:

(a) "Alternative fuel vehicle" means a motor vehicle that can operate on a fuel blend.

(b) "Biodiesel" has the meaning given that term in ORS 646.905.

(c) "Biomass" has the meaning given that term in section 2 of this 2007 Act.

(d) "Bone dry ton" means matter that is dried to less than one percent moisture content and that weighs 2,000 pounds.

(e) "Fuel blend" means diesel fuel of blends equal to or exceeding 99 percent biodiesel or gasoline of a blend equal to or exceeding 85 percent methanol or ethanol.

(2)(a) A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 for costs paid or incurred to purchase fuel blends for use in an alternative fuel vehicle.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 for costs paid or incurred to purchase forest, rangeland or agriculture waste or residue densified and dried prepared solid biofuel that contains 100 percent biomass.

(3) The amount of the credit shall be calculated as follows:

(a) Determine the quantity of fuel blend or solid biofuel purchased by the taxpayer during the tax year;

(b) Categorize the fuel blend or solid biofuel as prescribed in rules adopted under section 31 of this 2007 Act; and

(c) Multiply the quantity of fuel blend or solid biofuel in a particular category by the appropriate credit rate for that category, expressed in dollars and cents.

(4) Notwithstanding subsection (3) of this section:

(a) The credit allowed under this section for diesel blended fuel is equal to $0.50 per gallon and in any one tax year may not exceed $200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days′ duration and that is capable of using a fuel blend.

(b) The credit allowed for gasoline blended fuel is equal to $0.50 per gallon and in any one tax year may not exceed $200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days′ duration and that is capable of using a fuel blend.

(c) The credit allowed for forest, rangeland or agriculture waste or residue densified and dried prepared solid biofuel is equal to $10 per bone dry ton of solid biofuel and in any one tax year may not exceed $200 per taxpayer.

(d) The credit allowed in any one tax year may not exceed the tax liability of the taxpayer and may not be carried forward to a subsequent tax year.

(5) For each tax year for which a credit is claimed under this section, the taxpayer shall maintain records sufficient to determine the taxpayer′s purchase of qualifying fuel blends. A taxpayer shall maintain the records required under this subsection for at least five years.

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

(7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

(9) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

SECTION 28. (1) A resident individual shall be allowed a tax credit against the taxes otherwise due under ORS chapter 316 for costs paid or incurred to purchase fuel for primary home space heating that is at least 20 percent biodiesel. The credit allowed under this section is the lesser of five cents per gallon or $200.

(2) The credit allowed in any one tax year may not exceed the tax liability of the taxpayer and may not be carried forward to a subsequent tax year.

(3) For each tax year for which a credit is claimed under this section, the taxpayer shall maintain records sufficient to determine the taxpayer's purchase of qualifying fuel for primary home space heating. A taxpayer shall maintain the records required under this subsection for at least five years.

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

(5) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

(7) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

SECTION 29. Sections 27 and 28 of this 2007 Act apply to tax years beginning on or after January 1, 2007, and before January 1, 2013.

SECTION 30. Section 31 of this 2007 Act is added to and made a part of ORS chapter 469.

SECTION 31. The State Department of Energy shall by rule identify categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed under section 27 of this 2007 Act.

SECTION 32. The State Department of Energy shall adopt rules under section 31 of this 2007 Act on or before 60 days after the effective date of this 2007 Act.

ENERGY FACILITY SITING PROCESS; EXCEPTIONS

SECTION 33. ORS 469.320 is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) A site certificate is not required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Exclusively uses **biomass, including but not limited to** grain, whey, potatoes, oil seeds, waste vegetable oil or cellulosic biomass**,** as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; [*and*]

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge**; and**

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

(g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,

the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

EXCLUSIVE FARM USE FOR ON-FARM BIOFUEL PRODUCTION

SECTION 34. ORS 215.203 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) Land used for the processing of farm crops into biofuel, as defined in section 2 of this 2007 Act, if:

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

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

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

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

(3) "Cultured Christmas trees" means trees:

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

(b) Of a marketable species;

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

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

SECTION 35. ORS 215.213 is amended to read:

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

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

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

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

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

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

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

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

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

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

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

(L) The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county.

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

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

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

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

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

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural

area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

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

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

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

(x) A facility for the processing of farm crops**, or the production of biofuel as defined in section 2 of this 2007 Act, that is** located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

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

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

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

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

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

(A) Consists of 20 or more acres; and

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

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

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

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

(c) Commercial activities that are in conjunction with farm use**,** [*but not including the processing of farm crops as described in*] **including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or** subsection (1)(x) of this section.

(d) Operations conducted for:

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

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

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

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

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

(f) Golf courses.

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

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

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

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

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

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

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

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

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

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

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

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

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Only one lot or parcel exists if:

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

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

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

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

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

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

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

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

SECTION 36. ORS 215.283 is amended to read:

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

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

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

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

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

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

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

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

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

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

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

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

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

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

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

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

(r) Farm stands if:

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

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

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

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

(u) A facility for the processing of farm crops**, or the production of biofuel as defined in section 2 of this 2007 Act, that is** located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

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

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

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

(A) A public right of way;

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

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

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

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

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

(a) Commercial activities that are in conjunction with farm use**,** [*but not including the processing of farm crops as described in*] **including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or** subsection (1)(u) of this section.

(b) Operations conducted for:

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

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

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

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

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

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

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

(f) Golf courses.

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

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

(i) Home occupations as provided in ORS 215.448.

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

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

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

(m) Transmission towers over 200 feet in height.

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

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

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

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

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

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

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

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

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

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

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

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

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

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

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

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

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

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

SECTION 37. ORS 308A.056 is amended to read:

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

(a) Raising, harvesting and selling crops;

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

(c) Dairying and selling dairy products;

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

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

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

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

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

(2) "Farm use" does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

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

(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 paragraph (d) of this subsection, prior to maturity;

(d) Land not in an exclusive farm use zone that 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 farm use land and that is not currently being used for any economic farm use;

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

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

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

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

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

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

(L) Land used for the processing of farm crops into biofuel, as defined in section 2 of this 2007 Act, if:

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

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

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

(4) As used in this section:

(a) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.

(b) "Cultured Christmas trees" means trees:

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

(B) Of a marketable species;

(C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service 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:

(i) Basal pruning;
(ii) Fertilizing;
(iii) Insect and disease control;
(iv) Stump culture;
(v) Soil cultivation; or
(vi) Irrigation.

SECTION 38. The amendments to ORS 308A.056 by section 37 of this 2007 Act apply to tax years beginning on or after July 1, 2008.

MISCELLANEOUS

SECTION 39. Nothing in sections 2, 3 and 5 of this 2007 Act or ORS 215.203, 215.213, 215.283, 308A.056 and 469.320:

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

(2) Authorizes the collection of solid waste within a city or county without permission of the city or county.

CAPTIONS

SECTION 40. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

EFFECTIVE DATE

SECTION 41. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House March 1, 2007

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Chief Clerk of House

.....
Speaker of House

Passed by Senate June 21, 2007

.....
President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

.....
Secretary of State