

Updated Sponsors

# House Bill 3608

Sponsored by Representatives THOMPSON, SPRENGER, SCHAUFLEER; Representatives BENTZ, BOONE, BRUUN, CAMERON, ESQUIVEL, FREEMAN, GARRARD, GILLIAM, HANNA, HUFFMAN, JENSON, KENNEMER, KRIEGER, MAURER, RICHARDSON, WEIDNER, WHISNANT (Presession filed.)

## SUMMARY

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

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

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

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

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

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

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

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

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

## TAX CREDIT FOR TRANSPORTATION OF WOODY BIOMASS

**SECTION 1.** ORS 469.790 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

4       315.141. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

20       (C) Agricultural residues;

21       (D) Offal and tallow from animal rendering;

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

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

24       (G) Wastewater solids; or

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

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

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

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

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

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

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

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

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

45       (b) A credit under this section may be claimed in the tax year in which the credit is certified

1 under subsection (5) of this section.

2 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined  
 3 in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or  
 4 a biomass collector may not claim a credit under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44  
 45 **TAX CREDIT FOR BIOMASS ELECTRICAL GENERATION**

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

**SECTION 5.** (1) A taxpayer may claim a credit against taxes imposed by ORS chapter 316 or, if the taxpayer is a corporation, by ORS chapter 317 or 318 for biomass electrical generation as described in subsection (4) of this section.

(2)(a) The amount of the credit allowed under this section is equal to 2.1 cents for every kilowatt hour of electricity generated from biomass by a closed-loop generating operation that grows the biomass used by the facility on a schedule of sustainable plantings and harvests.

(b) The amount of the credit allowed under this section is equal to one cent for every kilowatt hour of electricity generated from biomass by a facility that is not a closed-loop generating operation.

(3) The credit allowed under this section may not exceed the tax liability of the taxpayer.

(4) Electricity qualifies for the credit provided in this section if:

(a) The electricity is generated by a facility located in Oregon;

(b) The facility generates electricity using only biomass, as defined in ORS 315.141; and

(c) The facility generating the electricity is first placed in service on or after January 1, 1995.

(5) 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.

(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 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.

(8) 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 under this section shall be prorated or computed in a manner consistent with ORS 314.085.

**SECTION 6.** Section 5 of this 2010 Act applies to tax years beginning on or after January 1, 2010.

**TAX CREDIT FOR USE OF WASTE MATERIALS**

**SECTION 7.** Section 8 of this 2010 Act is added to and made a part of ORS chapter 315.

**SECTION 8.** (1) As used in this section, "waste material" means materials used in a business that would otherwise be destined for solid waste disposal, including materials and by-products generated from an original manufacturing or fabrication process.

(2) A credit against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for expenses related

1 to the purchase of equipment used to collect or process waste materials or used to manu-  
 2 facture a product from waste materials during the tax year. The taxpayer must be the owner  
 3 of the equipment.

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

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

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

16 **SECTION 9.** Section 8 of this 2010 Act applies to tax years beginning on or after January  
 17 1, 2010.

18  
 19 **CONFORMING AMENDMENTS**  
 20

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

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

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

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

35 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 36 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 37 316.117, then that provision shall apply to the nonresident shareholder.

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

1 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS  
 2 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and 469.207 (energy  
 3 conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommuni-  
 4 cations facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations  
 5 necessary to operate an alternative fuel vehicle), [and] ORS 315.141 (biomass [*production for*  
 6 *biofuel*]), **section 5 of this 2010 Act (biomass electrical generation) and section 8 of this 2010**  
 7 **Act (use of waste materials).**

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

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

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

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

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

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

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

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

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

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

45 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically

1 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and  
 2 which is not currently being used for any economic farm use;

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

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

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

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

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

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

17 (L) Land used for the processing of farm crops into **bioenergy or** biofuel, as defined in ORS  
 18 315.141, if:

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

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

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

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

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

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

30 (b) Of a marketable species;

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

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

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

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

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

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

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

45 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (C) Has interior wiring for interior lights;

6 (D) Has a heating system; and

7 (E) In the case of replacement:

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

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

30 (r) Farm stands if:

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

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

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

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

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

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

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

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

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

22 (A) A public right of way;

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

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

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

32 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
33 the following uses may be established in any area zoned for exclusive farm use subject to ORS  
34 215.296:

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

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

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

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

45 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar

1 years out of the three calendar years before the year in which the application for the dwelling was  
2 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000  
3 in annual gross farm income; or

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

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

9 (d) Operations conducted for:

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

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

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

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

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

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

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

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

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

1 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
2 contiguous land where the primary processing facility is located.

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

6 (k) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-  
45 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction

1 with the growing and marketing of nursery stock on the land that constitutes farm use.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,  
2 1948, and July 1, 1983. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

24 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

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

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

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

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

43 (f) Operations for the exploration for and production of geothermal resources as defined by ORS  
44 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
45 compressors, separators and other customary production equipment for an individual well adjacent

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

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

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

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

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

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

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

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

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

21 (o) Farm stands if:

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

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

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

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

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

35 (C) Has interior wiring for interior lights;

36 (D) Has a heating system; and

37 (E) In the case of replacement:

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

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

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

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

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

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

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

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

39 (A) A public right of way;

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

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

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

1 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
2 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
3 exclusive farm use zone under this chapter.

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

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

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

12 (b) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (n) Dog kennels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (a) Raising, harvesting and selling crops.

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

37 (c) Dairying and selling dairy products.

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

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

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

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

1 (h) Implementing a remediation plan previously presented to the assessor for the county in  
 2 which the land that is the subject of the plan is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (m) Land used for the processing of farm crops into **bioenergy or** biofuel, as defined in ORS  
 39 315.141, if:

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

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

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

45 (4) As used in this section:

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

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

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

7 (B) Of a marketable species;

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

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

12 (i) Basal pruning;

13 (ii) Fertilizing;

14 (iii) Insect and disease control;

15 (iv) Stump culture;

16 (v) Soil cultivation; or

17 (vi) Irrigation.

18 **SECTION 16. The amendments to ORS 215.203, 215.213, 215.283 and 308A.056 by sections**  
19 **12 to 15 of this 2010 Act apply to tax years beginning on or after January 1, 2010.**

20  
21 **BIOMASS SITING STUDY**

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

28  
29 **CAPTIONS; EFFECTIVE DATE**

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

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