

OREGON ADMINISTRATIVE RULE**DIVISION 430****TAX INCENTIVE PROGRAMS****Wildlife Habitat Conservation and Management Program****635-430-0000****Purpose**

The purpose of OAR 635-430-0000 through 635-430-0100, is to implement ORS 308A.400 through 308A.430, Oregon Laws 2003, which allows Oregon cities and counties to develop programs for the conservation and enhancement of wildlife habitat. These rules:

- (1) Establish criteria and standards for Department review and monitoring of wildlife habitat conservation and management plans;
- (2) Specify the form and content of a wildlife habitat and conservation management plan and the conservation and management practices that are appropriate to preserve, enhance or improve the structure or function of wildlife habitat; and
- (3) Establish a process for adding and removing eligible land.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0010**Definitions**

For the purposes of OAR 635-430-0000 through 635-430-0100 only:

(1) "Cooperating agency" means the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, the Oregon State University Extension Service or other persons with wildlife conservation and management training meeting the following qualifications:

(a) A degree or certification from an accredited educational institution in a field of study providing knowledge that may be applied to preserve, enhance or improve habitat for native wildlife. Such fields of study include, but are not limited to, wildlife biology, wildlife management, fisheries management, biology, zoology, limnology, botany, ecology, wetland

ecology, forest ecology, ecosystem management, environmental engineering, soil science, other natural science, or landscape architecture; or

(b) Certification from a professional society (including but not limited to The Wildlife Society, American Fisheries Society, or Ecological Society of America) or licensure by the state in a field listed in subsection (1)(a) of this rule; or

(c) Evidence of professional experience in a field listed in subsection (1)(a) of this rule.

(2) "Department" means the Oregon Department of Fish and Wildlife.

(3) "Landowner" means the party or parties having the fee interest in land, except where land is subject to a real estate sale contract where "landowner" means the contract vendee.

(4) "Land that is clearly identifiable as containing significant wildlife habitat" means land that meets one or more of the criteria identified in OAR 635-430-0020(1) through (7).

(5) "Lot" has the meaning given that term in ORS 92.010.

(6) "Native vegetation" means vegetation that is indigenous to the subject property or to the physiographic province in which the subject property is located.

(7) "Parcel" has the meaning given that term in ORS 215.010(1).

(8) "Subject property" means a lot, parcel or tract that is subject to a wildlife habitat conservation and management plan.

(9) "Tract" has the meaning given that term in ORS 215.010(2).

(10) "Wildlife" means fish, shellfish, intertidal animals, wild birds, amphibians, reptiles, and wild mammals.

(11) "Wildlife habitat conservation and management plan" or "plan" means a plan developed by a cooperating agency and landowner that specifies the conservation and management practices, including agricultural and forestry practices, that will be conducted to preserve, enhance or improve the structure or function of wildlife habitat on the subject property.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0020

Wildlife Habitat Conservation and Management Plan Objectives

The objective of a wildlife habitat conservation and management plan is to preserve, enhance or improve the composition, structure or function of habitat for native wildlife species, with emphasis on native habitats that:

- (1) Have been identified as scarce, becoming scarce or of special ecological significance within the city or county. Sources of information that may be used to identify these habitats include, but are not limited to, the Biodiversity Gap Analysis Program of the USGS Biological Resources Division and the Oregon Department of Fish and Wildlife, the Metropolitan Greenspaces Master Plan or equivalent Metropolitan Functional Plans, the Oregon Natural Heritage Program, the Oregon Biodiversity Project, the Oregon Habitat Joint Venture, the Oregon Comprehensive Wildlife Conservation Strategy, and the Oregon Plan for Salmon and Watersheds.
- (2) Have been identified by state or federal resource agencies, local governments, regional governments, watershed councils, conservation organizations or other qualified entities as important habitats for ecological restoration to prevent additional loss of native habitats or species.
- (3) Are important to achieve the conservation or management objectives for native habitats or species in public or private land management plans covering multiple land ownerships.
- (4) Provide habitat for threatened or endangered species listed in or pursuant to 16 USC Section 1533, ORS 496.172(2), and OAR 635-100-0125;
- (5) Provide habitat for state sensitive species listed pursuant to OAR 635-100-0040; or
- (6) Are identified as significant wildlife habitat in the Goal 5 elements of city or county comprehensive plans.
- (7) Areas that have been adopted by the Metropolitan Service District (Metro) as significant natural areas, open spaces or fish and wildlife habitats or regional resources under Goal 5 pursuant to OAR 660-023-0080.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0025

State Fish and Wildlife Commission Designation of Eligible Land

- (1) At the request of the governing body of a county, the Director of the State Fish and Wildlife Department may designate any or all of the following land in unincorporated areas within the county as eligible for wildlife habitat special assessment:

(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(2) At the request of the governing body of a city, the Director may designate any or all of the following land within the incorporated city as eligible for wildlife habitat special assessment:

(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(3) With the prior consent of the governing body of a city, the county in which all or a part of the city is located may apply to the Director on behalf of the city for designation of any area that is within both the city and the county as eligible for wildlife habitat special assessment.

(4) The Director may designate land described in subsection (1) or (2) of this section as eligible for wildlife habitat special assessment only if the Director finds that designation will promote the objectives of the program and the implementation requirements of these rules.

(5) Any county that did not forbid, by a resolution or other decision of the county governing body, the establishment of wildlife habitat conservation and management plans as of January 1, 2003, shall be deemed to have the land described in OAR 635-430-0025(1)(a) as eligible for wildlife habitat special assessment.

(6) The governing body of the city or county that requested designation under section OAR 635-430-0025 may request that the Director of the State Fish and Wildlife Department remove that designation.

(7) The Director shall remove the designation if:

(a) The city or county demonstrates that the designation creates an economic burden for the city or county; and

(b) The Director finds that the economic burden is significant.

(8) In making its determination under subsection (7) of this section, the Director shall give significant weight to the demonstration of economic burden made by the city or county.

(9) A determination by the Director of the State Fish and Wildlife Department to designate land as eligible for the wildlife special assessment or to remove that designation shall for property tax purposes be effective as of the tax year beginning the July 1 immediately following the determination.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: DFW 115-2004, f. & cert. ef. 11-26-04; DFW 42-2006 f. & cert. ef. 6-14-06

635-430-0030

Wildlife Conservation and Management Practices

Conservation and management practices appropriate to achieve the objectives of OAR 635-430-0020 may include, but are not limited to:

- (1) Protecting existing native vegetation;
- (2) Planting native trees, shrubs, grasses and other native vegetation;
- (3) Removing invasive, non-native vegetation that threatens native plant communities;
- (4) Control of invasive, non-native fish or wildlife that threaten native wildlife species;
- (5) Burning as prescribed by the Department to maintain fire-dependent native vegetation;
- (6) Fencing to protect wildlife habitat or plant communities;
- (7) Increasing habitat diversity by practices such as placing downed, woody material, preserving or creating standing dead trees, creating ponds, or other methods approved by the Department;
- (8) Placing boulders, logs and other appropriate materials in streams to enhance fish habitat;
- (9) Removing buildings, pavements and other man-made features;
- (10) Grading altered land areas to restore original hydrology and natural topography;
- (11) Restoring, enhancing or creating wetlands;
- (12) Establishing vegetative buffers or structural setbacks adjacent to wildlife habitats;
- (13) Amending or allowing farming and forestry management practices that preserve, enhance or improve the structure or function of wildlife habitat;
- (14) Locating new dwellings or structural improvements to minimize conflict with existing or proposed habitat for native wildlife species;
- (15) Planting new riparian vegetation or protecting existing riparian vegetation through fencing or other means;

(16) Leasing or selling in-stream water rights as an integral part of the wildlife habitat conservation and management practices; or

(17) Other efforts that improve water quality, protect and restore fish and wildlife habitats, recover threatened or endangered species, enhance stream flows or maintain or restore long-term ecological health, diversity and productivity on a broad geographic scale.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0040

Preparation and Content of a Plan

A wildlife habitat conservation and management plan shall be developed by the landowner and a cooperating agency as defined in OAR 635-430-0010(1). The plan shall include the following:

- (1) The signed county eligibility certification described in OAR 635-430-0050(1).
- (2) The name, home and business addresses and telephone number of the landowner.
- (3) The name, address, and telephone number of the cooperating agency.
- (4) The township, range, section and tax lot number(s) of the subject property.
- (5) The acreage of the subject property.
- (6) An aerial photograph of the subject property at a scale of 400 feet per inch, unless otherwise authorized by the Department.
- (7) Map(s) and written descriptions of the physical features, vegetation, and wildlife habitats that currently exist on the subject property. The map(s) shall be reproducible, and shall be at a scale of 400 feet per inch unless otherwise authorized by the Department. The map(s) shall display the following:
 - (a) Rivers and intermittent and perennial streams (including names);
 - (b) Lakes, ponds and other water bodies;
 - (c) Wetlands and riparian areas;
 - (d) Areas that contain threatened or endangered plant species listed under ORS 564.105(2) obtained from existing information available from the Oregon Department of Agriculture,

Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(e) Areas of native vegetation, such as oak woodlands or grasslands composed of native plant species;

(f) Location of federal threatened or endangered wildlife species or their critical habitats listed or identified pursuant to 16 USC Section 1533, obtained from existing information available from the Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(g) Location of state sensitive species identified pursuant to OAR 635-100-0040, state threatened or endangered species listed pursuant to ORS 496.172(2) and OAR 635-100-0125, and sites identified pursuant to ORS 496.182(2) that are critical to the survival of state listed threatened or endangered species, obtained from existing information available from the Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(h) Other areas identified in the local comprehensive plan as significant wildlife habitat;

(i) Areas currently managed for forestry;

(j) Areas currently farmed, including the location of all dikes, drainage ditches, or drainage tiles;

(k) Soil map units within the subject property from the Natural Resources Conservation Service Soil Survey.

(l) Dwellings, roads, fences and other artificial structures.

(m) Areas that have been adopted by the Metropolitan Service District (Metro) as significant natural areas, open spaces or fish and wildlife habitats or regional resources under Goal 5 pursuant to OAR 660-023-0080.

(8) A description of:

(a) The wildlife habitat conservation and management objectives to be achieved; and

(b) The conservation and management practices that will be conducted to preserve, enhance or improve the structure or function of wildlife habitat on the subject property.

(9) Time frames to implement each conservation and management practice identified in section (8) of this rule.

(10) Map(s) and written descriptions of the physical features, vegetation, and wildlife habitats reasonably expected to exist on the subject property after implementation of the conservation and management practices described in section (8) of this rule, including the location of areas managed for farming or forestry, existing and proposed dwellings and other proposed structural

improvements. The map(s) shall be reproducible, and shall be at a scale of 400 feet per inch unless otherwise authorized by the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0050

Plan Submission and Review Procedures

The Department will review wildlife habitat conservation and management plans and make decisions as follows:

- (1) Before preparing or submitting a plan, the applicant must obtain certification from the city or county, on a Department form, that the subject property lies within an area or zone designated for participation in the Wildlife Habitat Conservation and Management Program.
- (2) The landowner shall simultaneously submit the proposed plan to the appropriate district wildlife office of the Department and the appropriate city or county planning department.
- (3) The city or county planning department may submit comments on the proposed plan to the appropriate watershed district office of the Department within 30 working days of the city or county's receipt of the proposed plan.
- (4) The Department will review a complete plan for compliance with the standards in these rules and evidence of initial implementation.
- (5) The Department will, within 90 days of receipt of a complete plan, make a decision to either approve, approve with modifications, or reject the plan, and will notify the landowner of its decision in writing. If the plan is rejected, the Department will identify in writing the reasons for its decision. The landowner may accept the Department's proposed modifications or correct plan deficiencies identified by the Department and resubmit the plan for review.
- (6) The Department may choose to limit the number of plans approved each year due to workload constraints. Preference may be given to those plans with the highest quality and/or quantity of habitat. An application that is not approved due to time constraints shall be held for consideration for approval the following year.
- (7) Department decisions on plans may be appealed to the Department under the provisions of ORS 183.310 to 183.550 governing contested cases.
- (8) The Department will send one copy of an approved plan to the appropriate city or county planning department.

(9) When a wildlife habitat conservation and management plan is approved by the Department and has been initially implemented, the owner of the land subject to the plan may apply to the county assessor to receive wildlife habitat special assessment.

(10) Application shall be made to the county assessor on forms prepared by the Department of Revenue and supplied by the county assessor. (See ORS 308A.42-308A.430 for further tax assessment guidance.)

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0060

Approval Standards for Plans

The Department will approve plans that meet the following standards:

(1) The property is located on land that has been designated for participation in the program as defined in OAR 635-430-0025.

(2) The plan was developed by the landowner and a cooperating agency as defined in OAR 635-430-0010(1), and contains all of the elements required under 635-430-0040.

(3) The plan is consistent with the objectives in OAR 635-430-0020.

(4) The wildlife conservation and management practices are appropriate and adequate to carry out the objectives of the plan.

(5) The plan emphasizes preservation, enhancement or improvement of native vegetation appropriate to the site.

(6) All new dwellings or structural improvements are located to minimize conflicts with existing wildlife habitats and negative impacts to native wildlife species.

(7) The plan is consistent with the Fish and Wildlife Habitat Mitigation Policy (OAR chapter 635, division 415) and other applicable Department plans, policies, rules and statutes.

(8) The plan's proposed wildlife conservation and management practices will not increase wildlife damage on adjacent lands.

(9) Buffers needed to protect any new habitats created under the plan will be located on the subject property.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0070

Amendments to Approved Plans

- (1) Landowners may request amendments to approved wildlife habitat conservation and management plans by contacting the appropriate Department watershed district office.
- (2) The landowner shall provide a copy of the approved plan and a description of the proposed amendments.
- (3) The Department will follow the procedures in OAR 635-430-0050 when reviewing amendments to approved plans.
- (4) Amendments shall meet the standards in OAR 635-430-0060.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0080

Implementation of Approved Plans

- (1) For the purpose of making application to the county assessor for wildlife habitat special assessment under ORS 308A.424 to 308A.430, a landowner may request the Department to determine whether an approved wildlife habitat conservation and management plan has been initially implemented.
- (2) The Department will, within 90 days of receipt of such request, physically inspect the subject property and determine whether the plan has been implemented.
- (3) The Department will consider the plan initially implemented when:
 - (a) The landowner is carrying out and maintaining the conservation and management practices identified in the plan in accordance with the time frames established in the plan; and
 - (b) The conservation and management practices are progressing toward the plan's objectives.
- (4) If, based on its review, the Department determines the landowner is not implementing the plan as approved, the Department will notify the landowner in writing of the reasons for the

decision and the compliance measures he or she must take. The Department will send a copy of this notice to the county assessor.

(5) If the Department determines the landowner is implementing the plan as approved, the Department will provide the landowner with a written declaration to this effect. The Department will send a copy of this declaration to the county assessor.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0090

Monitoring Approved Plans

(1) The Department will monitor an approved wildlife habitat conservation and management plan periodically to determine continued compliance with the plan.

(2) The Department's monitoring activities will include a physical inspection of the subject property.

(3) The Department will notify the landowner prior to initiating its monitoring activities.

(4) If the ownership of the subject property has changed since Department approval of the plan, the Department will provide the landowner with a copy of the approved plan.

(5) If, based on its monitoring activities, the Department determines the landowner is not implementing the plan as approved, the Department will notify the landowner in writing and identify the compliance measures that he or she must take within six months.

(6) If, at the end of the six-month period, the landowner is still not implementing the compliance measures required by the Department, the Department will notify the landowner and the appropriate county assessor.

(7) If the property is disqualified or withdrawn from the program and all other special assessment programs, there is a potential additional tax liability (see ORS 308A.430 and 308A.700-308A.733).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0100

Compatibility with Existing Laws or Ordinances

(1) Department approval of a wildlife habitat conservation and management plan does not authorize violation of federal or state laws or local ordinances, nor does it supersede any requirements to obtain permits or authorizations required by federal or state laws or local ordinances.

(2) New and existing dwellings may be allowed on a lot or parcel subject to wildlife habitat special assessment as provided in ORS 215.799. The fact that a lot or parcel is subject to wildlife habitat special assessment does not make it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

Riparian Lands Tax Incentive Program

635-430-0300

Purpose

In accordance with Oregon Revised Statutes 308A.350 to 308A.383, the intent of the Riparian Lands Tax Incentive Program is to provide landowners with tax incentives to protect, conserve or restore healthy riparian habitat on private lands adjacent to perennial and intermittent streams.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0300

635-430-0310

Definitions

For the purpose of OAR 635-430-0300 through 635-430-0430:

(1) "Department" means the Oregon Department of Fish and Wildlife.

(2) "Designation as Riparian Land" means Department approval of a landowner's riparian management plan and agreement for qualifying riparian land, after application and review as

specified in OAR 635-430-0300 through 635-430-0430. This designation qualifies the riparian land for exemption or partial exemption from taxation.

(3) "Native vegetation" means vegetation that is indigenous to the subject property or to the physiographic province in which the subject property is located.

(4) "Non-aquatic Vegetation" means perennial vegetation adjacent to the edge of the stream channel, which may be submerged or partially submerged during periods of annual high streamflow, but spends the majority of the year completely out of surface water.

(5) "Private lands" means any real property, except real property in which the legal title is vested in a federal, state or local government entity.

(6) "Regular Cultivation" means the practice of annual or semi-annual tilling of soil, usually in conjunction with the production of various agricultural crops, produce or livestock.

(7) "Riparian" means pertaining to or situated on the edge of the bank of a river or stream.

(a) "Riparian Land" means land situated along the bank of a stream characterized by vegetation and microclimate influenced by perennial and/or intermittent water normally associated with high water tables and/or hydric soils. This area must be sufficient to support conservation or management measures identified in the riparian management plan and agreement.

(b) "Riparian Vegetation" means the aquatic and non-aquatic vegetation adjacent to streams that is dependent upon or tolerant of the presence of water near the ground surface for at least part of the year.

(8) "Riparian Management Plan and Agreement" means a written plan and agreement that specifically describes a segment of stream corridor and the protection or restoration measures necessary to meet the requirements of OAR 635-430-0300 to 635-430-0430.

(9) "Stream" means a natural channel that carries flowing surface water during some portion of the year. For the purposes of OAR 635-430-0300 to 635-430-0430, "stream" includes stream-associated wetlands, beaver ponds, oxbows and side channels if they are connected by surface flow to the stream during a portion of the year. A waterway that has been channelized through human interaction can meet the definition of a "stream" if the waterway still retains natural stream functions or can achieve natural stream functions through restoration activities required in a riparian management plan.

(a) "Intermittent Stream" means any natural stream in a natural channel that flows during a portion of every year but does not have continuous surface flow at all times of the year.

(b) "Perennial Stream" means a natural stream in a natural channel that ordinarily has continuous surface flow at all times of the year.

(c) "Stream-associated wetland" means a wetland that is adjacent and hydrologically connected to any stream.

(10) "Vegetation Restoration Potential" means the physical potential of a specific site to become re-vegetated with native vegetation if adequate protection, management, or restoration actions are implemented.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0310; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0320

Eligibility Criteria

(1) The Department may designate perennial and intermittent streams and the associated riparian lands, as limited by OAR 635-430-0300 to 635-430-0430, as riparian lands if the land meets the eligibility criteria in 2-6 below.

(2)(a) The stream and associated riparian land are outside adopted urban growth boundaries and are planned and zoned as forest or agricultural lands (including rangeland); or

(b) The stream and associated riparian land are no longer outside adopted urban growth boundaries, and/or planned or zoned as forest or agriculture but such lands:

(A) Were outside urban growth boundaries as of July 1, 1997;

(B) Were planned and zoned as forest or agricultural lands as of July 1, 1997;

(C) Are managed as designated riparian lands; and

(D) are otherwise eligible for riparian designation. However, the landowner must file an application with the Department for including such lands in the program no later than five years after the date of the zoning change, or incorporation into an adopted urban growth boundary; or

(c) The stream and associated riparian land are located within the boundaries of a city and urban growth boundary and the governing bodies of both the city and the county in which the land is located have adopted ordinances or resolutions that are in effect as of the date the application required under OAR 635-430-00360 is submitted to the Department that:

(A) Allow the designation of land as riparian land as defined in OAR 635-430-0310(7)(a); and

(B) If possible, describe how the city or county will provide technical assistance to landowners preparing riparian management plans and will monitor compliance with approved plans.

(3) The width of the riparian land proposed for tax exemption is sufficient to provide long-term stream bank stability, erosion control, water quality, large wood recruitment, fish and wildlife habitat protection, conservation or restoration, and other functions deemed important to healthy aquatic habitats.

(4) Riparian vegetation on the riparian land is sufficient to support the functions identified in section (3) of this rule, or if the riparian land currently lacks adequate riparian vegetation, the land has significant vegetation restoration potential.

(5) The landowner has implemented measures specified in an approved riparian management plan and agreement, for the continued protection, conservation or restoration of riparian lands.

(6) The riparian land is on private land.

(7) After the Department approves the land for designation as riparian land and all procedural requirements in OAR 635-430-0300 to 635-430-0430 are met:

(a) Lands described in 635-430-0320(2)(a) and (b) are eligible for exemption from ad valorem taxation under ORS 308A.356.

(b) For tax years beginning on or after July 1, 2001, lands described in 635-430-0320(2)(c) are eligible for partial exemption from ad valorem taxation under ORS 308A.359

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0315; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0330

Limitations on Designation of Riparian Lands

Department designation of riparian lands for inclusion in the Riparian Tax Incentive Program is subject to the following limitations:

(1)(a) For each tax year beginning before July 1, 2004, the Department may approve for designation as riparian land no more than 200 miles of private stream bank in any county.

(b) In addition to the amount of land approved under section (1)(a) of this rule, each year the Department may approve for designation as riparian land any remaining allocation from the previous year. This remaining allocation equals the difference between 200 miles and the number of miles designated as riparian land during the previous year, plus the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year.

(2) Department designation of urban lands described in OAR 635-430-0320(2)(c) as riparian lands is subject to the following additional limitations:

(a) The Department may only approve applications for land described in OAR 635-430-0320(2)(c) for tax years beginning on or after July 1, 2002.

(b) The Department may not approve more than 50 applications for land described in OAR 635-430-0320(2)(c) for any tax year. An application that is not approved because of the limitation imposed by this subsection shall be held for consideration for the next tax year.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0320; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0340

Factors for Determining Width of Riparian Lands

The Department may designate qualifying perennial and intermittent streams and associated riparian lands up to 100 feet landward (horizontal measurement) from the line of non-aquatic vegetation adjacent to the stream, or an area not exceeding 25 acres of riparian lands per mile of stream, as riparian lands. To determine the width of the land actually designated as riparian land, the Department will consider the following factors necessary to promote erosion control, long-term stream bank stability, water quality, fish and wildlife habitat protection, conservation or restoration, large wood recruitment and other functions deemed important to healthy aquatic habitat:

- (1) Stream size at various flows;
- (2) Existing riparian vegetation and vegetation restoration potential;
- (3) Stream bank slope;
- (4) Adjacent land uses;
- (5) Stream channel orientation;
- (6) Space necessary to establish and protect riparian fences or other structures needed to implement measures specified in an approved riparian management plan and agreement;
- (7) Potential for lateral channel migration or new channel formation and any constraints on such migration or formation; and
- (8) Location of stream-associated wetlands or off-channel features such as alcoves, oxbows, side channels or other areas important to fish and wildlife habitat.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0325

635-430-0350

Healthy Riparian Habitat

The goal of each riparian management plan and agreement is the protection, conservation or restoration of healthy riparian habitat. Department assessment of the current and potential health of riparian habitat will include, but is not limited to, consideration of the following general goals, as consistent with the ecological potential of an individual property:

- (1) Sufficient shade to moderate water and air temperatures;
- (2) Adequate native vegetative cover to reduce streambank erosion, provide organic matter input, enhance water quality, and provide for the delivery of large wood to the stream channel;
- (3) Sufficient in-channel large wood to promote complex stream habitat conditions, such as pools and riffles; and
- (4) Habitat for native fish and wildlife.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0330; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0360

Application Process

- (1) A landowner seeking enrollment in the Riparian Land Tax Incentive Program must apply to the applicable county assessor and the Department.
- (2) An applicant must apply to the county assessor no later than December 31 to receive a reduced assessment during the following tax year (beginning July 1). Applicants can obtain county application forms from the county assessor.
- (3) An applicant must submit a riparian management plan to the Department and sign a Riparian Land Tax Incentive Program agreement. Applicants can obtain these forms from the Department.
- (4) The riparian management plan must, at a minimum, include the following information:
 - (a) Name, mailing address and telephone number of landowner(s);
 - (b) Legal description of the subject property: township, range, section and tax lot number(s);

- (c) County in which the subject property is located;
 - (d) Name of the stream associated with the riparian land;
 - (e) Total streambank miles proposed for enrollment in the program;
 - (f) Acreage of land proposed for designation as riparian land;
 - (g) A description of the existing vegetation condition on the riparian lands;
 - (h) An explanation of the habitat objectives to be achieved on the riparian land by implementing the riparian management plan and agreement consistent with the riparian goals identified in OAR 635-430-0350;
 - (i) The linear length (feet) of unstable streambank (if any);
 - (j) Soil types;
 - (k) Existing use of, or activities on, the riparian land;
 - (l) Proposed use of, or activities on, the riparian land;
 - (m) Existing land use activities on the portion of the property immediately adjacent to the riparian lands;
 - (n) Proposed changes in land use activities (if any) on the portion of the property immediately adjacent to the riparian lands; and
 - (o) Specific conservation management practices the landowner will implement to meet program objectives and a timeline for implementing these management practices.
- (5) The riparian management plan must also contain a map of the subject property with a scale of four-inch per mile or eight-inch per mile (unless otherwise authorized by the Department), that includes the following information:
- (a) Legal description of the subject property: township, range, section and tax lot number(s);
 - (b) Boundaries of the riparian lands proposed for inclusion in the program;
 - (c) Stream name and location; and
 - (d) Property boundaries.
- (6) The Riparian Land Tax Incentive Program agreement must, at a minimum, contain:
- (a) Name, mailing address, and telephone number of the landowner(s);

- (b) Legal description of the subject property: township, range, section and tax lot number(s);
 - (c) Name of the county in which the subject property is located;
 - (d) Name of the stream associated with the riparian land;
 - (e) Boundaries of the riparian lands proposed for inclusion in the program;
 - (f) Authorization for the Department to inspect the property for continued compliance with the riparian management plan pursuant to OAR 635-430-0420, or if so requested by the county assessor, pursuant to ORS 308A.374, and following reasonable efforts to give the landowner prior notification;
 - (g) Landowner's commitment to follow the riparian management plan associated with the property unless a request for withdrawal is submitted to the county assessor; and
 - (h) Signatures of landowner(s), Department representative and any other participating party.
- (7) Applicants are encouraged to seek technical assistance with developing the riparian management plan and implementing management practices from the local offices of the Oregon Department of Fish and Wildlife or the Soil and Water Conservation District.
- (8) To amend an existing riparian management plan and/or agreement, the applicant must submit a new plan or agreement to the Department for review and approval pursuant to these rules.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0335; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0370

Plan Review and Approval

- (1) The Department will approve riparian management plans and agreements submitted to the Department that meet all eligibility requirements and contain adequate provisions for the protection, conservation or restoration of riparian lands, as provided in OAR 635-430-0300 to 635-430-0430. Department approval of a riparian management plan and agreement qualifies the subject land for designation as riparian land.
- (2) If only a portion of the property meets the criteria described in OAR 635-430-0320 to 635-430-0340, the Department may approve only the qualifying portion of the property for designation as riparian land. In such event, the applicant may withdraw the entire application.

(3) The riparian management plan and agreement are approved and the land is eligible for tax exempt status only after the plan and agreement are signed by the landowner(s), a Department representative, and any other participating party.

(4) The Department must approve or disapprove an application by April 1 of the year following receipt of the application materials. Applications not denied by that date are deemed approved and the land considered to be qualified as riparian land. The Department will notify the county assessor and the applicant of its approval or disapproval of an application.

(5) The Department will file an order of approval with the county assessor within ten days of Department approval of the completed plan and agreement.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00

635-430-0375

Riparian Conservation and Management Practices

Conservation and management practices appropriate to achieve the objectives of OAR 635-430-0350 may include, but are not limited to:

- (1) Protecting existing native vegetation;
- (2) Planting native trees, shrubs, grasses and other native vegetation;
- (3) Removing invasive, non-native vegetation that threatens native plant communities;
- (4) Control of invasive, non-native fish or wildlife that threaten native wildlife species;
- (5) Burning as prescribed by the Department to maintain fire-dependent native vegetation;
- (6) Fencing to protect wildlife habitat or plant communities;
- (7) Increasing habitat diversity by practices such as placing downed, woody material, preserving or creating standing dead trees, creating ponds, or other methods approved by the Department;
- (8) Placing boulders, logs and other appropriate materials in streams to enhance fish habitat;
- (9) Removing buildings, pavements and other man-made features;
- (10) Grading altered land areas to restore original hydrology and natural topography;
- (11) Restoring, enhancing or creating wetlands;

(12) Establishing vegetative buffers or structural setbacks adjacent to wildlife habitats.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0380

Activities Generally Compatible with Riparian Lands

Activities that are generally compatible with the intent of the riparian lands tax incentive program include, but are not limited to, the following when they are adequately described as a part of an approved riparian lands management plan and agreement:

- (1) Livestock watering and crossing areas when fenced and located at defined points, unless the Department specifically finds the watering or crossing areas are consistent with the objectives of the program without fencing or definite location;
- (2) All existing legal irrigation and utility developments, including powerlines, water lines, pipelines, irrigation diversion dams, pump stations, pump intakes, irrigation ditches and other similar developments, if they meet adequate fish passage and diversion screening requirements;
- (3) Fish habitat restoration projects;
- (4) Large wood removal after a natural disaster, but only when large wood poses an immediate and significant threat to private property or public safety, and only if the Department agrees to removal after the review process specified in OAR 635-430-0390;
- (5) Equipment or vehicle crossings at fords, culverts and bridges, if the crossing points are minimized, are constructed and maintained in a manner that minimizes sediment delivery to streams, and provide adequate fish passage in accordance with Oregon Department of Fish and Wildlife Guidelines and Criteria for Stream-Road Crossings;
- (6) Recreational facilities (i.e., trails, boat ramps, and primitive camp sites) when consistent with the objectives of the program; and
- (7) Tree harvest or vegetation management consistent with the objectives of this program and in compliance with the requirements of the Oregon Forest Practices Act (OAR 629-600-0100 through 629-665-0240).

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0340

635-430-0390

Activities Generally Incompatible with Riparian Lands Tax Incentive Program

Activities that are generally incompatible with the protection or restoration of riparian lands include, but are not limited to, the following. These activities may only occur on designated riparian lands if specifically described and approved in the riparian lands management plan or plan amendment.

- (1) Regular cultivation, seeding, and harvesting of crops or other farming activities which preclude the development of permanent vegetative cover.
- (2) Livestock grazing or feeding areas except at watering points that are approved and appropriately limited in the management plan.
- (3) Herbicide spraying, except for the spot control of noxious weeds or when necessary for establishment and survival of vegetation planted in compliance with the riparian management plan. Such spraying must prevent drift into aquatic areas.
- (4) Channel or stream bank alterations other than those determined by the Department to be necessary to achieve healthy aquatic habitat conditions.
- (5) Construction or relocation of buildings.
- (6) Gravel, mineral or soil removal.
- (7) Land clearing (vegetation removal).

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350-308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0345

635-430-0400

Natural Disasters

- (1) If an act of nature (e.g., floods, fire, wind and other natural disaster) significantly damages or reduces riparian vegetation, or reduces the effectiveness of conservation measures described in a riparian management plan and agreement, the landowner must notify the Department within 90 days of the occurrence.
- (2) Department personnel will tour the affected property with the landowner within 60 days of notification and determine if remedial or new conservation measures are required to meet program objectives.
- (3) If the Department determines that remedial or new conservation measures are necessary, the Department will notify the landowner, in writing, within 10 working days after touring the

affected property. The notification will include a general description of the necessary remedial actions.

(4) After receiving notification from the Department that remedial action is necessary, the landowner has two options:

(a) The landowner may continue enrollment in the program and notify the Department of his/her intention to revise or amend the riparian management plan and agreement; or

(b) The landowner may withdraw from the program by submitting a request for withdrawal to the county assessor in compliance with ORS 308A.365. The county assessor may assess back taxes in such cases.

(5) If the landowner elects to continue enrollment in the program, the landowner must submit a revised or amended riparian management plan and agreement to the Department within three months from the date the Department notified the landowner that new or remedial measures were necessary. The Department will process the plan and agreement in accordance with these rules.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0350

635-430-0410

Sale or Transfer of Exempted Riparian Lands

The purchaser of any lands enrolled in the Riparian Lands Tax Incentive Program has 120 days after recording of the land sale to retain the property tax exemption or withdraw from the program without penalty.

(1) To retain the riparian tax exemption, the new owner must:

(a) Agree to management provisions in the previous owner's riparian management plan by signing an identical plan, and sign a riparian management agreement consistent with the program; or

(b) Submit an amended riparian management plan to the Department for review and approval pursuant to these rules and sign a riparian management agreement consistent with the program.

(2) To withdraw from the riparian tax exemption program, the new owner must provide the county assessor with a notice of request for withdrawal in compliance with ORS 308A.365.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0355

635-430-0420

Monitoring and Compliance

(1) Department staff will periodically inspect the riparian land enrolled in the program to determine conformance with the riparian management plan and agreement. Department staff will provide a landowner with written notification at least 10 days before an inspection. The Department will ask the landowner to participate in the inspections, if possible.

(a) Department staff will conduct the first inspection within one year after the property was enrolled in the program.

(b) Department staff will conduct all subsequent inspections at approximately five-year intervals.

(2) If Department staff determine the riparian land is not in conformance with the riparian management plan or agreement, the Department will send written notification to the landowner. The notification will describe the reasons the property is not in conformance with the riparian management plan and agreement. The notification will also describe in detail the proposed changes necessary to achieve conformance with the plan and agreement, and an appropriate deadline for implementation of these remedial measures. This deadline will be 90 days from the date of the notification, unless the Department determines a longer timeframe is necessary to achieve the required remedial measures.

(3) After receiving a Department notification describing needed remedial measures, the landowner may request a meeting with Department staff to discuss these measures. During the meeting the landowner may propose other remediation to bring the riparian lands into conformance with the riparian management plan and agreement. Whenever possible, the Department and the landowner should jointly develop remedial measures and an implementation deadline.

(4) After the deadline described in sections (2) or (3) of this rule, and following written notification at least 15 days before the inspection, Department staff will reinspect the property for conformance with the necessary remedial measures.

(a) If the landowner has not implemented the necessary remedial measures, the Department will notify the assessor that the property is not in conformance with the riparian management plan and agreement.

(b) If the landowner has implemented the necessary remedial measures, the Department may continue such inspections of the property to ensure the property is progressing toward full compliance with the riparian management plan and agreement until the property reaches that goal.

(5) If a property owner does not allow Department staff to inspect riparian land designated under the Riparian Lands Tax Incentive Program as specified in a riparian management plan and agreement, the Department will notify the assessor that the landowner is not in compliance with their riparian management plan and agreement.

(6) A landowner may withdraw from the program by submitting a request for withdrawal to the county assessor in compliance with ORS 308A.365. The county assessor may assess back taxes in such cases.

(7) Only the county assessor may withdraw the land from designation as riparian and apply payments and penalties as provided in ORS 308A.368.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00

635-430-0430

Program Compatibility with Existing Laws or Ordinances

The Department's approval of land use activities compatible with the Riparian Lands Tax Incentive Program does not exempt any proposed activity from state or federal law, or local ordinance.

Stat. Auth.: ORS 308A.383, ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 308A.350 - ORS 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0360