

# Chapter 308A

2005 EDITION

## Land Special Assessments

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**FARM USE ASSESSMENT  
(Policy)**

**308A.050 Legislative intent.** The Legislative Assembly recognizes that agriculture and related land uses contribute significantly to Oregon's character and economy. The Legislative Assembly finds that providing the means for agriculture to continue and prosper is in the interest of all citizens of this state, who benefit directly or indirectly from agricultural production and stewardship of farmlands and ranchlands. Valuation of farm properties based upon market data from sales for investment or other purposes not connected with bona fide farm use encourages the conversion of agricultural land to other uses. The identification of agricultural land for farm use, as provided by law, substantially limits alternative uses of such land and justifies the valuation of that land based on its agricultural production capability. Therefore, it is the declared intent of the Legislative Assembly that bona fide farm properties be assessed for ad valorem property tax purposes at a value that is exclusive of values attributable to urban influences or speculative purposes. [1999 c.314 §1]

**(Qualification for Farm Use Assessment)**

**308A.053 Definitions for ORS 308A.050 to 308A.128.** As used in ORS 308A.050 to 308A.128:

(1) "Exclusive farm use zone" means a zoning district established by a county or a city under the authority granted by ORS chapter 215 or 227 that is consistent with the farm use zone provisions set forth in ORS 215.203 to 215.311, 215.438, 215.448, 215.452, 215.455 or 215.700 to 215.780.

(2) "Exclusive farm use zone farmland" means land that qualifies for special assessment under ORS 308A.062.

(3) "Homesite" means the land, including all tangible improvements to the land under and adjacent to a dwelling and other structures, if any, that are customarily provided in conjunction with a dwelling.

(4) "Nonexclusive farm use zone farmland" means land that is not within an exclusive farm use zone but that qualifies for farm use special assessment under ORS 308A.068. [1999 c.314 §2; 2003 c.539 §34]

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

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

- (c) Dairying and selling dairy products;
- (d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

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

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

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

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

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

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

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

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

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

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

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

(f) Except for land under a single family dwelling, land under buildings supporting accepted farming practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

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

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

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

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

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

(4) As used in this section:

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

(b) "Cultured Christmas trees" means trees:

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

(B) Of a marketable species;

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

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

(i) Basal pruning;

(ii) Fertilizing;

(iii) Insect and disease control;

(iv) Stump culture;

(v) Soil cultivation; or

(vi) Irrigation. [1999 c.314 §3; 2001 c.613 §21; 2003 c.454 §120; 2003 c.621 §81a]

**308A.059 Farm use definition; rules.**

(1) The Department of Revenue shall provide by rule for a more detailed definition of farm use, consistent with the general definition in ORS 308A.056, to be used by county assessors in determining qualification for special

assessment under ORS 308A.068. The rules shall not be designed to exclude from the special assessment those lands that are in farm use as defined in ORS 308A.056 for which tax relief is intended.

(2) In determining qualification for special assessment under ORS 308A.068, the county assessor shall consider the use of the land by the owner, renter or operator thereof together with any other lands that are a part of one farming unit being operated by the owner, renter or operator. [Formerly 308.380]

**308A.062 Qualification of exclusive farm use zone farmland.** (1) Any land that is within an exclusive farm use zone and that is used exclusively for farm use shall qualify for farm use special assessment under ORS 308A.050 to 308A.128, unless disqualified under other provisions of law.

(2) Whether farmland qualifies for special assessment under this section shall be determined as of January 1 of the assessment year. However, if land so qualified becomes disqualified prior to July 1 of the same assessment year, the land shall be valued under ORS 308.232, at its real market value as defined by law without regard to this section, and shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1, the land shall continue to qualify for special assessment as provided in this section for the current tax year. [1999 c.314 §5]

**308A.065 County counsel review of exclusive farm use zoning ordinances; notice upon determination of unqualified land; assessment pending zone requalification.** (1) Upon written request of the county assessor or county governing body, the county counsel shall review the zoning ordinances of the county that purport to establish exclusive farm use zones to determine if any zone mentioned in the ordinance is not an exclusive farm use zone. If the county counsel is in doubt as to whether a zone is an exclusive farm use zone, the county counsel shall request the assistance of the Department of Revenue under ORS 305.110. The county counsel shall promptly notify the county assessor and county governing body by letter of the findings of the county counsel.

(2) If the assessor discovers any land that has been granted farm use special assessment under ORS 308A.062 that is not qualified for such assessment because the zone is not an exclusive farm use zone, the assessor shall immediately notify the county governing body of this fact.

(3) Within six months from the date the county governing body receives notice from the assessor or from the Land Conservation

and Development Commission that a farm use zone is not an exclusive farm use zone, the county governing body shall qualify the zone as an exclusive farm use zone within the meaning of ORS 308A.062. The assessor shall continue to assess the land at the special assessment provided in ORS 308A.107 until the county governing body qualifies the zone or the land is disqualified under ORS 308A.113.

(4) Subsections (1) to (3) of this section shall provide the exclusive procedure for correcting the erroneous granting of farm use special assessment as exclusive farm use zone farmland when the zone does not meet the definition of an exclusive farm use zone under ORS 308A.053. [Formerly 308.403]

**308A.068 Qualification of nonexclusive farm use zone farmland.** (1) Any land that is not within an exclusive farm use zone but that is being used, and has been used for the preceding two years, exclusively for farm use shall qualify for farm use special assessment:

(a) If the land meets the income requirements set forth in ORS 308A.071; and

(b) Upon compliance with the application requirements set forth in ORS 308A.077.

(2)(a) The provisions of this section shall not apply to any land with respect to which the owner has granted, and has outstanding, any lease or option to buy the surface rights for other than farm use.

(b) This subsection does not apply in the case of a lease or option to buy surface rights:

(A)(i) For the exploration of geothermal resources, as defined by ORS 522.005, mineral resources or other subsurface resources; or

(ii) For the use of land for hunting, fishing, camping or other recreational use; and

(B) If the exploration, use or possession engaged in pursuant to the lease or option to buy does not interfere with the farm use of the farmland.

(3) Whether farmland qualifies for special assessment under this section shall be determined as of January 1 of the assessment year. However, if land so qualified becomes disqualified prior to July 1 of the same assessment year, the land shall be valued under ORS 308.232, at its real market value as defined by law without regard to this section, and shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1, the land shall continue to qualify for special assessment as provided in this section for the current tax year. [1999 c.314 §7]

**308A.071 Income requirements for nonexclusive farm use zone farmland.** (1) For purposes of ORS 308A.050 to 308A.128, farmland or a farm parcel that is not within an area zoned for exclusive farm use is not used exclusively for farm use unless all of the prerequisites of subsections (2) to (5) of this section are met.

(2)(a) Except as provided in subsection (6) of this section, in three out of the five full calendar years immediately preceding the assessment date, the farmland or farm parcel was operated as a part of a farm unit that has produced a gross income from farm uses in the following amount for a calendar year:

(A) If the farm unit consists of 6-1/2 acres or less, the gross income from farm use shall be at least \$650.

(B) If the farm unit consists of more than 6-1/2 acres but less than 30 acres, the gross income from farm use shall be at least equal to the product of \$100 times the number of acres and any fraction of an acre of land included.

(C) If the farm unit consists of 30 acres or more, the gross income from farm use shall be at least \$3,000.

(b) For purposes of determining the number of acres to be considered under paragraph (a) of this subsection, the land described in ORS 308A.056 (3) and the land, not exceeding one acre, used as a homestead shall not be included.

(c) If a farm parcel is operated as part of a farm unit and the farmland of the farm unit is not all under the same ownership, the gross income requirements applicable to the farm parcel shall be as provided under paragraph (a) of this subsection. In addition, the gross income from farm use of a farm parcel described under this paragraph must be at least:

(A) One-half of the gross income requirements described under paragraph (a) of this subsection that would be required if the farm parcel were the only farmland of the farm unit; or

(B) A cash or net share crop rental of one-quarter of the gross income requirements described under paragraph (a) of this subsection that would be required if the farm parcel were the only farmland of the farm unit. For purposes of this subparagraph, "net share crop rental" means the value of any crop received by the owner of the farm parcel less any costs borne by the owner of the farm parcel.

(3) Excise or income tax returns are filed with the Department of Revenue for purposes of ORS chapter 316, 317 or 318 by the farmland owner or the operator of the farm unit that include a Schedule F and, if appli-

cable, by the owner of a farm parcel that include a schedule or schedules showing rental income received by the owner of the farm parcel, during the years to which the income requirements of this section apply.

(4) Upon request, a copy of the returns or the schedules of the returns showing the gross income received from farm use is furnished by the taxpayer to the county assessor.

(5) The burden of proving the gross income of the farm unit for the years described in subsection (2) of this section is upon the person claiming special assessment for the land.

(6) The failure of a farm unit to produce the amount of gross income required by subsection (2) of this section shall not prevent the farm unit from meeting the qualifications of this section if:

(a) The failure is because:

(A) The effect of flooding substantially precludes normal and reasonable farming during the year; or

(B) Severe drought conditions are declared under ORS 536.700 to 536.780; and

(b) The farm unit produces the required amount of gross income in three out of the last five nonflood or nondrought years.

(7) As used in this section:

(a) "Farm parcel" means the contiguous land under the same ownership, whether assessed as one or more than one tax lot.

(b) "Gross income" includes the value of any crop or livestock that is used by the owner personally or in the farming operation of the owner, but does not include:

(A) The value of any crop or livestock so used unless records accurately reflecting both value and use of the crop or livestock are kept by the owner in a manner consistent with generally accepted accounting principles; and

(B) The purchase cost of livestock.

(c) "Owner" or "ownership" means any person described under ORS 308A.077 (2)(b)(A), (B), (D) or (E) and spouse or other person who is also an owner as tenant in common or other joint ownership interest. [Formerly 308.372; 2003 c.46 §22]

**308A.074 Wasteland qualifications; annual application.** (1) Wasteland, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with nonexclusive farm use zone farmland described in ORS 308A.068, and that is not currently being used for any economic farm use shall qualify for farm use special assessment under ORS 308A.068 if the farmland was operated as

part of a farm unit that produced more than one-half of the adjusted gross income of the owner or owners in the year prior to the year an application is filed under this section.

(2)(a) An owner of wasteland shall make annual application to qualify the wasteland as nonexclusive farm use zone farmland under ORS 308A.068.

(b) The application shall be filed with the county assessor on or before April 15 of each year qualification is desired. The application shall be made on forms prepared by the Department of Revenue and supplied by the county assessor and shall include any information as may be reasonably required to determine qualification, including copies of applicable state income tax returns. All information provided, including determinations made under administrative and court proceedings relating to the assessment of the wasteland, shall be confidential information of the assessor's office and shall be used only for purposes of ORS 308A.050 to 308A.128.

(c) There shall be attached to each application an affidavit or affirmation from the applicant providing that the statements contained in the application are true.

(3) For purposes of this section, "owner" or "owners" means the person or persons entitled to file for special assessment under ORS 308A.077 (2)(b). [1999 c.314 §9]

**308A.077 Application to qualify nonexclusive farm use zone farmland.** (1) Any owner of nonexclusive farm use zone farmland entitled to special assessment under ORS 308A.068 must, to secure the assessment, make application therefor to the county assessor on or before April 1 of the first year in which the assessment is desired.

(2)(a) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor and shall include any information as may reasonably be required to determine the entitlement of the applicant.

(b) The application may be signed by any one of the following:

(A) The owner of the farmland who holds an estate therein in fee simple or for life.

(B) Any one of tenants in common or tenants by the entirety, holding an estate in the farmland in fee simple or for life.

(C) Any person of legal age, duly authorized in writing to sign an application on behalf of any person described in subparagraph (A) or (B) of this paragraph.

(D) The guardian or conservator of an owner, or the executor or administrator of an owner's estate.

(E) The purchaser of the fee simple or life estate of an owner under a contract of sale.

(c) The assessor or the deputy of the assessor may not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney or other appropriate instrument evidencing the signer's interest or authority. When filed with the assessor only, such instrument shall not constitute a public record.

(3) There shall be attached to each application the affidavit or affirmation of the applicant that the statements contained therein are true. [Formerly 308.375; 2003 c.46 §23]

**308A.080 Acquired land qualifications.**

(1) Acquired land shall qualify for farm use special assessment if:

(a) The acquired land:

(A) Is not in an exclusive farm use zone;

(B) Is, immediately upon acquisition, put into farm use; and

(C) Is operated as part of the total farming unit with the original land; and

(b) The original land:

(A) Is owned by the purchaser of the acquired land;

(B) Is in farm use;

(C) Is assessed under ORS 308A.107; and

(D) Produced gross income of at least \$10,000 in the calendar year prior to acquisition.

(2) Land that qualifies for farm use special assessment under subsection (1) of this section shall, for purposes of the gross income requirement under ORS 308A.071, be added to and treated as a part of the entire farming unit upon acquisition.

(3) In order for acquired land described in this section to qualify under ORS 308A.068, an application must be filed under ORS 308A.077 on or before April 1 of the first year following acquisition in which farm use special assessment is sought for the acquired land. [Formerly 308.374]

**308A.083 Effect of qualification generally.** In the case of exclusive farm use zone farmland that qualifies for special assessment under ORS 308A.062 or nonexclusive farm use zone farmland that qualifies for special assessment under ORS 308A.068, the county assessor shall enter on the assessment and tax roll the notation "potential additional tax liability" until the land is disqualified under ORS 308A.113 or 308A.116. [1999 c.314 §12]

**308A.086 Requalification generally.** (1)

Any land that has been disqualified from farm use special assessment under ORS 308A.050 to 308A.128 may requalify for special assessment under ORS 308A.050 to 308A.128 at the same time and in the same manner and under the same provisions of law as land initially qualifies for farm use special assessment under ORS 308A.050 to 308A.128.

(2) Land that requalifies under this section must meet applicable qualification requirements as of the assessment date for the tax year for which special assessment of the requalified land under ORS 308A.050 to 308A.128 is sought.

(3) This section does not apply to the requalification of land that was disqualified and that is described:

(a) In the case of land in an exclusive farm use zone, under ORS 215.236 (relating to nonfarm dwellings) and ORS 308A.706 (1)(a) (relating to compatible nonuse);

(b) In the case of nonexclusive farm use zone farmland, under ORS 308A.089 (relating to requalification during first year of disqualification), 308A.116 (4) (relating to subdivision), 308A.122 (relating to abatement for failure to meet income requirements) or 308A.706 (1)(a) (relating to compatible nonuse); and

(c) Under ORS 308A.706 (1)(d) (relating to change in special assessment). [1999 c.314 §13]

**308A.089 Requalification of disqualified nonexclusive farm use zone farmland; fee.** (1) Notwithstanding ORS 308A.724, land that was nonexclusive farm use zone farmland and that has been disqualified by the county assessor from farm use special assessment for the reason that the land is no longer in farm use as described under ORS 308A.116 (1)(c) may be requalified for farm use special assessment for the first year in which the disqualification is in effect.

(2) Disqualified farmland may requalify for special assessment under this section upon compliance with the following:

(a) The owner shall make application for requalification to the county assessor on or before December 15 of the tax year for which the disqualification is first in effect.

(b) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor.

(c) The application shall contain the information necessary to determine that the property meets the requirements of ORS 308A.071 and the other requirements for property to receive a farm use special assessment under ORS 308A.050 to 308A.128.

(c) The application shall contain the information necessary to determine that the property meets the requirements of ORS 308A.071 and the other requirements for property to receive a farm use special assessment under ORS 308A.050 to 308A.128.

(d) The application shall be signed by the owner and shall be accompanied by a filing fee of:

(A) \$1 for each \$1,000 (or fraction of \$1,000) of real market value of the property as determined under ORS 308.232.

(B) Not less than \$10 or more than \$250.

(e) There shall be annexed to each application for requalification the affidavit or affirmation of the applicant that the statements contained therein are true.

(3) Upon receipt of the application, the county assessor shall determine if the property meets the requirements of ORS 308A.071 and the other requirements for farm use special assessment under ORS 308A.050 to 308A.128 for the year in which the disqualification is first in effect.

(4) Upon approval of the application the county assessor shall notify the officer in charge of the assessment and tax roll of the requalification for special assessment under ORS 308A.068. The officer shall correct the current assessment and tax roll to reflect the special assessment, as provided under ORS 311.205 (1)(e).

(5) Upon disapproval of the application, the county assessor shall notify the owner of the application's disapproval and the land's continued disqualification. If notice of disapproval is not mailed prior to April 15 of the tax year, the application shall be considered approved.

(6) As used in this section, "owner" means the person or persons entitled to file for special assessment under ORS 308A.077 (2)(b). [Formerly 308.392]

### (Valuation)

**308A.092 Establishing value for farm use; procedure.** (1) This section and ORS 308A.095 set forth the procedures by which the values for farm use are established for both:

(a) Exclusive farm use zone farmland that qualifies for special assessment under ORS 308A.062; and

(b) Nonexclusive farm use zone farmland that qualifies for special assessment under ORS 308A.068.

(2) The values for farm use of farmland shall be determined utilizing an income approach. In utilizing the income approach, the capitalization rate shall be the effective rate of interest charged in Oregon by the Federal Farm Credit Bank system at the time of closing on loans for farm properties estimated as an average over the past five reported calendar years, plus a component for

the local tax rate. The Department of Revenue annually shall determine and specify the rate according to the best information available, and shall certify the rate to the county assessors.

(3) The county assessors shall develop tables for each assessment year that reflect, for each class and area, the values determined under this section and that express the values as values per acre. [Formerly 308.345]

### **308A.095 County board of review to advise assessor on income-approach factors.**

(1) Income-approach factors being utilized by a county assessor in arriving at the values for farm use of farmland under ORS 308A.092 shall be submitted by the county assessor to a county board of review. The board of review shall advise the county assessor as to whether the factors being so utilized are proper under ORS 308A.092.

(2) The county board of review shall consist of:

(a) Two members appointed by the county court sitting for the transaction of county business, board of county commissioners or other county governing body of the county.

(b) Two members appointed by the county assessor.

(c) One member appointed by the four members appointed as provided in paragraphs (a) and (b) of this subsection, who shall serve for a term of one year.

(3) Each member of the county board of review appointed under subsection (2)(a) and (b) of this section shall serve for a term ending two years after the date of the expiration of the term for which the predecessor of the member was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of the term.

(4) Members of the county board of review must be persons knowledgeable and experienced in farmland values.

(5) Members of the county board of review shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their functions as members. [Formerly 308.350]

### **308A.098 County board of property tax appeals use of assessor's data.**

Data utilized by a county assessor in arriving at the values for farm use of farmland under ORS 308A.092 shall be made available by the county assessor to the county board of property tax appeals in the event of any consideration of a petition involving the assessed value of farmland by the board of property tax appeals under ORS 309.100. [Formerly 308.355]

**308A.101 Department of Revenue declaratory rulings; judicial review.** Any group or organization representing owners of farm properties may petition the Department of Revenue under ORS 305.105 for a declaratory ruling with respect to rules promulgated under ORS 308A.092 and 308A.095 and may obtain judicial review of the declaratory ruling in the manner provided by ORS 305.445. [Formerly 308.360]

**308A.104 Construction of provisions governing value for farm use.** ORS 308A.092 and 308A.095 shall be construed liberally to effectuate their intended purpose. However, except as expressly provided and to the extent necessary to carry out their terms, nothing contained in ORS 308A.092 and 308A.095 shall be construed to alter or modify, by implication or otherwise, any of the tax laws of this state. [Formerly 308.365]

**308A.107 Maximum assessed value and assessed value of farmland.** (1) The value for farm use, maximum assessed value and assessed value shall be determined under this section for both:

(a) Exclusive farm use zone farmland that qualifies for special assessment under ORS 308A.062; and

(b) Nonexclusive farm use zone farmland that qualifies for special assessment under ORS 308A.068.

(2) The value for farm use for each property subject to special assessment under this section shall equal the applicable value derived from the tables created pursuant to ORS 308A.092 for the tax year multiplied by the acreage of the property within the applicable class and area.

(3)(a) The maximum assessed value for property subject to special assessment under this section shall be determined as provided in this subsection.

(b) The county assessor shall develop tables for each tax year that provide, for each class and area, a maximum assessed value per acre that is equal to 103 percent of the assessed value per acre for the preceding tax year or 100 percent of the maximum assessed value per acre for the preceding tax year, whichever is greater.

(4) Property subject to special assessment under this section shall have an assessed value for the tax year equal to the acreage of the property that is within the same class and area multiplied by the lesser of the value per acre applicable to the property under subsection (2) of this section or under subsection (3) of this section.

(5) If property subject to special assessment under this section consists of different classes, the assessed value of the property

shall be the sum of the assessed values computed for each applicable class under subsection (4) of this section.

(6) Property that newly qualifies for farm use special assessment shall, for the first tax year for which the special assessment applies, have:

(a) A value for farm use as determined under subsection (2) of this section;

(b) A maximum assessed value as determined under the tables developed under subsection (3) of this section; and

(c) An assessed value as determined under subsections (4) and (5) of this section. [1999 c.314 §20; 2001 c.912 §5; 2005 c.94 §57]

**308A.110 Real property improvements and machinery not subject to farm use assessment.** Except for property that is exempt or specially assessed under other provisions of law, real property improvements and machinery or other personal property on, attached to or in any other respect connected with property subject to assessment under ORS 308A.050 to 308A.128, including property used in operations that constitute farm use operations, shall have an assessed value determined under ORS 308.146. Real property improvements and machinery and personal property may not be assessed as provided in ORS 308A.050 to 308A.128. [1999 c.314 §21]

### (Disqualification)

**308A.113 Disqualification of exclusive farm use zone farmland.** (1) Land within an exclusive farm use zone shall be disqualified from special assessment under ORS 308A.062 by:

(a) Removal of the special assessment by the assessor upon the discovery that the land is no longer being used as farmland;

(b) Removal of the land from any exclusive farm use zone; or

(c) Establishing a nonfarm dwelling on the land under ORS 215.236.

(2) Notwithstanding subsection (1)(a) of this section, the county assessor shall not disqualify land that has been receiving special assessment if the land is not being farmed because:

(a) The effect of flooding substantially precludes normal and reasonable farming during the year; or

(b) Severe drought conditions are declared under ORS 536.700 to 536.780.

(3)(a) Notwithstanding ORS 308.210, 308A.062, 311.405 or 311.410, if disqualification occurs as a result of the discovery that the land is no longer in farm use, then, regardless of when during the assessment year

discovery is actually made, disqualification by the county assessor shall occur as of the January 1 assessment date of the assessment year in which discovery is made.

(b) Paragraph (a) of this subsection shall apply only if the notice of disqualification required under ORS 308A.718 is mailed by the county assessor prior to August 15 of the tax year for which the disqualification of the land is asserted.

(4) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733. [Formerly 308.397]

**308A.116 Disqualification of nonexclusive farm use zone farmland.** (1) Nonexclusive farm use zone farmland qualified for special assessment under ORS 308A.068 shall be disqualified from such special assessment upon:

(a) Notification by the taxpayer to the assessor to remove the special assessment;

(b) Sale or transfer to an ownership making it exempt from ad valorem property taxation;

(c) Removal of the special assessment by the assessor upon the discovery that the land is no longer in farm use for failure to meet the income requirements under ORS 308A.071 or is no longer in farm use; or

(d) The act of recording a subdivision plat under the provisions of ORS chapter 92.

(2) The county assessor shall not disqualify the land that has been receiving special assessment upon the sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner if the land continues to be used solely for farm use.

(3) When, for any reason, the land or any portion thereof ceases to be used solely for farm use, the owner at the time of the change in use shall notify the assessor of the change prior to the next January 1 assessment date.

(4) If under subsection (1)(d) of this section, the county assessor disqualifies land for special assessment upon the act of platting the land, the land, or a part of the land, may be requalified for special assessment upon:

(a) Payment of all additional tax, interest or penalty that remains due and owing on the land;

(b) Submission by the owner of an application for special assessment under ORS 308A.077;

(c) Meeting all of the qualifications for farm use special assessment under ORS 308A.068; and

(d) Meeting the requirements, if any, of applicable local government zoning ordi-

nances with regard to minimum lot or parcel acreage for farm use.

(5) The county assessor shall not disqualify land that has been receiving special assessment if the land is not being farmed because:

(a) The effect of flooding substantially precludes normal and reasonable farming during the year; or

(b) Severe drought conditions are declared under ORS 536.700 to 536.780.

(6)(a) Notwithstanding ORS 308.210, 308A.068, 311.405 or 311.410, if disqualification occurs as a result of the discovery that the land is no longer in farm use, then, regardless of when during the assessment year discovery is actually made, disqualification by the county assessor shall occur as of the January 1 assessment date of the assessment year in which discovery is made.

(b) Paragraph (a) of this subsection shall apply only if the notice of disqualification required under ORS 308A.718 is mailed by the county assessor prior to August 15 of the tax year for which the disqualification of the land is asserted.

(7) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733. [Formerly 308.390]

**308A.119 Abatement; termination of abatement.** (1) If on January 1 of any year any farmland assessed under ORS 308A.068 has become disqualified for farm use special assessment because of any gross income or other requirement of ORS 308A.071, the collection of the additional taxes under ORS 308A.700 to 308A.733 shall be deferred, but only if each year for a period of five consecutive years (or such lesser number of years in which farm use assessment was in effect prior to disqualification) beginning on January 1 of the first year the land became so disqualified, the land is used as farmland (including, for the purposes of this section, the growing of forest products). As the limited use is continued and completed each year, additional taxes are abated on the basis of an abatement of one year's additional tax for each year of limited use beginning with the oldest year for which additional taxes are due for up to five years (or the number of years for which farm use assessment was in effect, whichever is less). Beginning on the January 1 the land became so disqualified the land shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by law without regard to any special assessment laws.

(2) If at any time prior to the expiration of the five-year (or lesser) period specified in subsection (1) of this section the land is used for a higher and better use than farmland,

the abatement process shall terminate, and there shall be added to the tax extended against the land on the next general property tax roll, (to be collected and distributed in the same manner as the remainder of the real property tax) the additional taxes that still remain deferred and unabated under subsection (1) of this section.

(3) When land described in this section is used for a higher and better use than farmland during the five-year (or lesser) period described in subsection (1) of this section, the owner shall notify the county assessor before the following January 1 of the change in use.

(4) The amount determined to be due under this section may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370. [Formerly 308.404]

**308A.122 Effect of requalification on abated taxes.** If during the period specified in ORS 308A.119, the farmland again meets the gross income or other requirements of ORS 308A.071, the owner may apply to the assessor on or before April 1 of the next calendar year, in the manner provided in ORS 308A.077, for farm use special assessment. If satisfied that the requirements of ORS 308A.071 have been met, the assessor shall restore farm use special assessment to the land. The potential additional taxes for all years not already abated under ORS 308A.119 shall continue as a potential liability against the land under ORS 308A.119 and 308A.706, except that each oldest year of potential liability shall abate as the total of all other years of potential additional tax liability for prior years reaches five. [Formerly 308.406]

**308A.125 Historic cemeteries within exclusive farm use zones; partition; effect of disqualification.** Any land that has received special assessment as exclusive farm use zone farmland, has been used as a cemetery at any time between 1810 to 1950, contains fewer than 50 marked graves, is less than one acre in size and was issued a patent, whether recorded or unrecorded, before 1900 may be partitioned from a parcel that shall continue to qualify for special assessment. The parcel that continues in special assessment and the partitioned cemetery shall not be subject to the provisions of ORS 308A.703 as a result of partitioning under this section. [Formerly 308.400]

**308A.128 Certain district assessments inapplicable to exclusive farm use zone farmland.** (1) Except as otherwise provided in subsection (2) of this section, the assessments and levies of the following taxing units and special districts shall not be im-

posed while land is qualified for special assessment as exclusive farm use zone farmland under ORS 308A.062:

(a) Sanitary districts formed under ORS 450.005 to 450.245.

(b) Domestic water supply districts formed under ORS chapter 264.

(c) Water authorities, sanitary authorities or joint water and sanitary authorities formed under ORS 450.600 to 450.989.

(2) Subsection (1) of this section does not apply to:

(a) Benefit assessments or special ad valorem tax levies imposed upon homesites situated within a parcel of farm use land. As used in this paragraph, "homesite" means not more than one acre of land upon which are constructed nonfarm dwellings and appurtenances; or

(b) Benefit assessments or special ad valorem tax levies imposed subsequent to disqualification of lands for farm use special assessment under ORS 308A.062. [Formerly 308.401]

## FARM AND FOREST HOMESITES

**308A.250 Definitions for ORS 308A.250 to 308A.259.** As used in ORS 308A.250 to 308A.259:

(1) "Exclusive farm use zone" has the meaning given that term in ORS 308A.053.

(2) "Forestland" means forestland that is a parcel of land of more than 10 acres that has been zoned in the comprehensive plan for exclusive farm use, forest use or farm and forest use and that is, as of the assessment date for which value for the forest homesite is being determined:

(a) Land that has as its highest and best use the growing and harvesting of trees of a marketable species;

(b) Land that has been designated as forestland under ORS 321.257 to 321.390 or 321.805 to 321.855; or

(c) Land that is assessed as small tract forestland under ORS 321.700 to 321.754.

(3) "Homesite" means land described in ORS 308A.253, including all tangible improvements to the land under and adjacent to a dwelling and other structures, if any, that are customarily provided in conjunction with the dwelling.

(4) "Nonexclusive farm use zone farmland" has the meaning given that term in ORS 308A.053.

(5) "Owner" or "owners" means:

(a) The person who holds an estate in the homesite in fee simple or for life.

(b) Any one of tenants in common or tenants by the entirety, holding an estate in the homesite in fee simple or for life.

(c) Any person of legal age, duly authorized in writing to act on behalf of any person described in paragraph (a) or (b) of this subsection in filing an application for special assessment of nonexclusive farm use zone farmland.

(d) The guardian or conservator of an owner, or the executor or administrator of an owner's estate.

(e) The purchaser of the fee simple or life estate of an owner under a contract of sale. [1999 c.314 §29; 2003 c.454 §§96,98; 2003 c.621 §82]

### **308A.253 Qualification of homesites.**

(1) Land under a dwelling that is used in conjunction with the activities customarily carried on in the management and operation of forestland held or used for the predominant purpose of growing and harvesting trees of a marketable species shall qualify for special assessment under ORS 308A.256.

(2) Land under dwellings located within an exclusive farm use zone and used in conjunction with farm use shall qualify for special assessment under ORS 308A.256.

(3) Land under dwellings used in conjunction with the farm use of nonexclusive farm use zone farmland shall qualify for special assessment under ORS 308A.256 if the farmland was operated as a part of a farm unit that produced more than one-half of the adjusted gross income of the owner or owners in the year prior to the year an application is filed under this section.

(4) Land under a dwelling on a lot or parcel that is specially assessed under ORS 308A.403 to 308A.430 shall qualify for special assessment under ORS 308A.256 if the land associated with the homesite:

(a) Was the subject of an application for wildlife habitat special assessment under ORS 308A.424 and includes an existing homesite that was specially assessed under one of the special assessments listed in ORS 308A.703 (1) during the assessment year prior to application; or

(b)(A) Is zoned in the comprehensive plan for exclusive farm use, forest use or farm and forest use; and

(B) The parcel has a minimum of 10 acres that meet the stocking and species requirements of land specially assessed under ORS 321.354 or 321.833.

(5) For purposes of ORS 308A.250 to 308A.259, the use of a dwelling "in conjunction with the activities customarily carried on in the management and operation of forestland" includes but is not limited to use of the dwelling under circumstances as follows:

(a) The dwelling is owned and occupied by a person who is engaged in the operation of the forestland, is occupied by an employee of the owner of forestland who is employed in connection with the forest operation or is occupied by a person who is involved in the forest operation; or

(b) The dwelling is owned and occupied by a person who is no longer engaged in the forest operation but:

(A) Whose principal source of income is derived from the harvest of timber from the forestland on which the dwelling is located;

(B) Who owned and occupied the dwelling, and was engaged in the forest operation, during the five consecutive tax years before the tax year in which engagement in the forest operation ended; and

(C) Who has owned and occupied the dwelling continuously during the period since engagement in the forest operation ended. For purposes of this subparagraph, "continuous" includes any period in which the dwelling is unoccupied because of health, vacation or other reason, if during the period the dwelling is not leased or rented to another person.

(6) For purposes of ORS 308A.250 to 308A.259, the use of a dwelling "in conjunction with farm use" of farm use land includes but is not limited to use of the dwelling under circumstances as follows:

(a) The dwelling is owned and occupied by a person who is engaged in the operation of the farm use land, is occupied by an employee of the owner of farm use land who is employed in connection with the farming operation or is occupied by a person who is involved in the farming operation; or

(b) The dwelling is owned and occupied by a person who is no longer engaged in the farm operation on the farm use land but:

(A) Whose principal source of income is from the farm operation on the farm use land on which the dwelling is located;

(B) Who owned and occupied the dwelling, and was engaged in the farm operation, during the five consecutive tax years before the tax year in which engagement in the farm operation ended; and

(C) Who has owned and occupied the dwelling continuously during the period since engagement in the farm operation ended. For purposes of this subparagraph, "continuous" includes any period in which the dwelling is unoccupied because of health, vacation or other reason, if during the period the dwelling is not leased or rented to another person.

(7)(a) In order for land described in subsection (3) of this section to qualify for as-

assessment under ORS 308A.250 to 308A.259, the owner or owners shall file an application with the county assessor on or before April 15 of each year the assessment is desired. The application shall be made on forms prepared by the Department of Revenue and supplied by the assessor and shall include any information as may be reasonably required to determine the entitlement of the applicant, including copies of applicable state income tax returns. All information provided, including determinations made under administrative and court proceedings where entitlement is in issue, shall be confidential information of the assessor's office and shall be used only for purposes of this subsection.

(b) There shall be attached to each application an affidavit or affirmation from the applicant providing that the statements contained in the application are true. [Formerly 308.376; 2003 c.539 §12]

**308A.256 Maximum assessed value and assessed value of homesites.** (1) The maximum assessed value and assessed value of a homesite shall be determined as provided in this section.

(2) A homesite shall have an assessed value for ad valorem property tax purposes for the tax year equal to the lesser of the homesite's maximum assessed value or homesite value.

(3) The homesite value for purposes of ORS 308A.250 to 308A.259 shall equal the real market value of the bare land of the total parcel and contiguous acres under same ownership, as determined under ORS 308.205, divided by the number of acres in the total parcel and contiguous acres under the same ownership, plus the lesser of:

(a) \$4,000; or

(b) The depreciated replacement cost of land improvements necessary to establish the homesite.

(4) For the purposes of establishing a homesite value, the value of one acre of land for each homesite, as determined in subsection (3) of this section shall be used.

(5) The homesite's maximum assessed value shall equal 103 percent of the homesite's assessed value for the previous tax year or 100 percent of the homesite's maximum assessed value for the previous tax year, whichever is greater.

(6) For the first tax year for which property constitutes a homesite under this section, the homesite's maximum assessed value shall equal the homesite's value as determined under subsection (3) of this section multiplied by the ratio of average maximum assessed value to real market value of the residential property class in the county. [Formerly 308.377; 2003 c.169 §2]

**308A.259 Disqualification of homesite.**

(1) A homesite shall be disqualified from assessment under ORS 308A.256 and shall be assessed at the assessed value under ORS 308.146 if the dwelling:

(a) Is not being used in conjunction with the activities customarily carried on in the management and operation of forestland held or used for the predominant purpose of growing and harvesting trees of a marketable species; or

(b)(A) Is not being used in conjunction with farm use; and

(B) Is used for a nonfarm purpose; however, vacancy does not constitute a change in use.

(2) If a homesite becomes disqualified from special assessment under the provisions of subsection (1) of this section, except for establishing a nonfarm dwelling pursuant to ORS 215.236, no additional tax shall be imposed following disqualification. The remaining qualifying portion of the parcel shall be valued as specially assessed.

(3) If the owner establishes a nonfarm dwelling in an exclusive farm use zone under ORS 215.236, additional taxes shall be imposed as provided in ORS 308A.700 to 308A.733. [Formerly 308.378]

**OPEN SPACE LANDS**

**308A.300 Definitions for ORS 308A.300 to 308A.330.** As used in ORS 308A.300 to 308A.330, unless a different meaning is required by the context:

(1) "Open space land" means:

(a) Any land area so designated by an official comprehensive land use plan adopted by any city or county; or

(b) Any land area, the preservation of which in its present use would:

(A) Conserve and enhance natural or scenic resources;

(B) Protect air or streams or water supply;

(C) Promote conservation of soils, wetlands, beaches or tidal marshes;

(D) Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of abutting or neighboring property;

(E) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;

(F) Enhance recreation opportunities;

(G) Preserve historic sites;

(H) Promote orderly urban or suburban development; or

(1) Retain in their natural state tracts of land, on such conditions as may be reasonably required by the legislative body granting the open space classification.

(2) "Current" or "currently" means as of next January 1, on which the property is to be listed and valued by the county assessor under ORS chapter 308.

(3) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" shall mean the contract vendee. [Formerly 308.740]

**308A.303 Policy.** The legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and the vegetation thereon to assure continued public health by counteracting pollutants and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declares that it is in the public interest to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land, and that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of ORS 308A.300 to 308A.330 to so provide. [Formerly 308.745]

**308A.306 Application for open space use assessment; contents of application; filing; reapplication.** An owner of land desiring current open space use assessment under ORS 308A.300 to 308A.330 shall make application to the county assessor upon forms prepared by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which classification is requested, the current open space use or uses of the land, and shall designate the paragraph of ORS 308A.300 (1) under which each such use falls. The application shall include such other information as is reasonably necessary to properly classify an area of land under ORS 308A.300 to 308A.330 with a verification of the truth thereof. Applications shall be made to the county assessor during the calendar year preceding the first assessment year for which such classification is requested. If the ownership of all property included in the application remains unchanged, a new application is not required after the first year for which application was made and approved. [Formerly 308.750]

**308A.309 Submission of application for approval of local granting authority; grounds for denial; approval; application withdrawal.** (1) Within 10 days of filing in the office of the assessor, the assessor shall refer each application for classification to the planning commission, if any, of the governing body and to the granting authority, which shall be the county governing body, if the land is in an unincorporated area, or the city legislative body, if it is in an incorporated area. An application shall be acted upon in a city or county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed. In determining whether an application made for classification under ORS 308A.300 (1)(b) should be approved or disapproved, the granting authority shall weigh:

(a) The projected costs and other consequences of extending urban services to the affected lot or parcel;

(b) The value of preserving the lot or parcel as open space;

(c) The projected costs and other consequences of extending urban services beyond the affected lot or parcel; and

(d) The projected costs and other consequences, including the projected costs of extending urban services, of expanding the urban growth boundary in other areas if necessary to compensate for any reduction in available buildable lands.

(2) The granting authority shall not deny the application solely because of the potential loss in revenue that may result from granting the application if the granting authority determines that preservation of the current use of the land will:

(a) Conserve or enhance natural or scenic resources;

(b) Protect air or streams or water supplies;

(c) Promote conservation of soils, wetlands, beaches or tidal marshes;

(d) Conserve landscaped areas, such as public or private golf courses, which enhance the value of abutting or neighboring property;

(e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;

(f) Enhance recreation opportunities;

(g) Preserve historic sites;

(h) Promote orderly urban or suburban development; or

(i) Affect any other factors relevant to the general welfare of preserving the current use of the property.

(3) The granting authority may approve the application with respect to only part of the land which is the subject of the application; but if any part of the application is denied, the applicant may withdraw the entire application. [Formerly 308.755]

**308A.312 Notice to assessor of approval or denial; recording approval; assessor to record potential additional taxes on tax roll; appeal from denial.** (1) The granting authority shall immediately notify the county assessor and the applicant of its approval or disapproval which shall in no event be later than April 1 of the year following the year of receipt of said application. An application not denied by April 1 shall be deemed approved, and shall be considered to be land which qualifies under ORS 308A.300 to 308A.330.

(2) When the granting authority determines that land qualifies under ORS 308A.300 to 308A.330, it shall enter on record its order of approval and file a copy of the order with the county assessor within 10 days. The order shall state the open space use upon which approval was based. The county assessor shall, as to any such land, assess on the basis provided in ORS 308A.315, and each year the land is classified shall also enter on the assessment roll, as a notation, the assessed value of such land were it not so classified.

(3) Each year the assessor shall include in the certificate made under ORS 311.105 a notation of the amount of additional taxes which would be due if the land were not so classified.

(4) The additional taxes noted under subsection (3) of this section shall be deemed assessed and imposed in the year to which the additional taxes relate.

(5) On approval of an application filed under ORS 308A.306, for each year of classification the assessor shall indicate on the tax roll that the property is being specially assessed as open space land and is subject to potential additional taxes as provided by ORS 308A.318, by adding the notation "open space land (potential add'l tax)".

(6) Any owner whose application for classification has been denied may appeal to the circuit court in the county where the land is located, or if located in more than one county, in that county in which the major portion is located. [Formerly 308.760]

**308A.315 Determination of maximum assessed value and assessed value of open space lands.** (1) The maximum assessed value and assessed value of land classified as open space land under ORS 308A.300 to 308A.330 shall be determined as provided in this section.

(2) Land classified as open space land shall have an assessed value for the tax year equal to the lesser of the land's maximum assessed value or the land's open space value determined under subsection (5) of this section.

(3) The land's maximum assessed value shall equal 103 percent of the land's assessed value for the previous tax year or 100 percent of the land's maximum assessed value for the previous tax year, whichever is greater.

(4)(a) For the first tax year for which the land is classified as open space land, the land shall have a maximum assessed value equal to the land's open space value determined under subsection (5) of this section multiplied by the ratio of the total maximum assessed value of all open space land within the county over the total open space value of all open space land in the county.

(b) If there is an insufficient amount of land classified as open space land in a county to permit a statistically reliable ratio to be determined under paragraph (a) of this subsection, the statewide totals of maximum assessed value of open space land and open space value shall be used in determining the ratio.

(c) The Department of Revenue shall prescribe rules setting forth the minimum amount of open space land in a county needed to establish a statistically reliable ratio.

(5) The open space value of land classified as such under ORS 308A.300 to 308A.330 shall be the land's real market value under ORS 308.205:

(a) Assuming the highest and best use of the land to be the current open space use, such as park, sanctuary or golf course. The assessor shall not consider alternative uses to which the land might be put.

(b) Valuing the improvements on the land, if any, as required by ORS 308.205. [Formerly 308.765; 2003 c.169 §3]

**308A.318 Change in use of open space land; notice to assessor; withdrawal from classification; collection of additional taxes; exception.** (1) When land has once been classified under ORS 308A.300 to 308A.330, it shall remain under such classification and it shall not be applied to any other use than as open space unless withdrawn from classification as provided in subsection (2) of this section, except that if the use as open space land changes from one open space use to another open space use, such as a change from park purposes to golf course land, the owner shall notify the assessor of such change prior to the next January 1 assessment date.

(2) During any year after classification, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which such land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from such classification, and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be collected on such land in an amount equal to the total amount of potential additional taxes computed under ORS 308A.312 (3) during each year in which the land was classified, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable had the land not been so classified, limited to a total amount not in excess of the dollar difference in the value of the land as open space land for the last year of classification and the real market value under ORS 308.205 for the year of withdrawal.

(3) If the owner fails to give the notice required under subsection (1) of this section during the period of classification, upon withdrawal under subsection (2) of this section, the assessor shall add to the tax extended against the land previously classified, an amount, if any, equal to the additional taxes that would have been collected had the assessor valued the classified land on the basis of the changed open space use, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable.

(4) Notwithstanding subsection (2) of this section, open space lands that qualify for wildlife habitat special assessment under ORS 308A.403 to 308A.430 may be disqualified from open space special assessment and qualified for wildlife habitat special assessment without payment of any additional tax under this section.

(a) The additional tax as determined under subsection (2) of this section shall remain a potential liability notated on the assessment and tax roll, separate from and in addition to the wildlife habitat potential additional tax described in ORS 308A.427.

(b) The interest as described in subsection (2) of this section shall be frozen for as long as the land remains in wildlife habitat special assessment.

(c) If the land is disqualified from wildlife habitat special assessment and again becomes qualified for open space special assessment, the open space potential tax calculation shall resume as of the date of the renewed open space use special assessment qualification. [Formerly 308.770; 2003 c.539 §15]

**308A.321 Withdrawal by assessor when use changed; notice; imposition of additional taxes; interest; penalty; exception.** (1) When land which has been classified and assessed under ORS 308A.300 to 308A.330 as open space land is applied to some use other than as open space land, except through compliance with ORS 308A.318 (2), or except as a result of the exercise of the power of eminent domain, the owner shall within 60 days thereof notify the county assessor of such change in use. The assessor or assessors shall withdraw the land from classification and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be imposed upon such land in an amount equal to the amount that would have been due under ORS 308A.318 if notice had been given by the owner as of the date of withdrawal, plus a penalty equal to 20 percent of the amount so determined.

(2) If no notice is given as required by subsection (1) of this section, the assessor, upon discovery of the change in use, shall compute the amount of taxes, penalty and interest described in subsection (1) of this section, as though notice had been given, and shall add thereto an additional penalty equal to 20 percent of the total amount so computed, for failure to give such notice.

(3) The limitation described in ORS 308A.318 (2) applies only to the computation of taxes and interest, and not to the penalties described in subsections (1) and (2) of this section.

(4) The provisions of subsections (1) and (2) of this section shall not apply in the event that the change in use results from the sale of a least 50 percent of such land classified under ORS 308A.300 to 308A.330 within two years after the death of the owner. [Formerly 308.775]

**308A.324 Prepayment of additional taxes; extending taxes on tax roll; collection; distribution.** (1) The amount determined to be due under ORS 308A.318 or 308A.321 may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under ORS 308A.318 or 308A.321 shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [Formerly 308.780]

**308A.327 Reports from owner to assessor; effect of failure to make report upon request.** The assessor shall at all times be authorized to demand and receive reports by registered or certified mail from

owners of land classified under ORS 308A.300 to 308A.330 as to the use of the same. If the owner shall fail, after 90 days' notice in writing by certified mail to comply with such demand, the assessor may immediately withdraw the land from classification, give written notice to the granting authority of the withdrawal, and apply the penalties provided in ORS 308A.318 and 308A.321. [Formerly 308.785]

**308A.330 Rules.** The Department of Revenue of the State of Oregon shall make such rules and regulations consistent with ORS 308A.300 to 308A.330 as shall be necessary or desirable to permit its effective administration. [Formerly 308.790]

### RIPARIAN HABITAT EXEMPTION

**308A.350 Definitions for ORS 308A.350 to 308A.383.** As used in ORS 308A.350 to 308A.383:

(1) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" means the contract vendee under a recorded contract.

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

(3) "Designated riparian land" means the beds of streams, the adjacent vegetation communities, and the land thereunder, which are predominantly influenced by their association with water, not to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately owned and which qualify for exemption under ORS 308A.350 to 308A.383.

(4) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3). [Formerly 308.792]

**308A.353 Policy.** The Legislative Assembly declares that it is in the best interest of the state to maintain, preserve, conserve and rehabilitate riparian lands to assure the protection of the soil, water, fish and wildlife resources of the state for the economic and social well-being of the state and its citizens. The Legislative Assembly declares that riparian habitat maintained in a healthy condition is a legitimate land use that contributes to erosion control, improved water quality and prolonged streamflow. The Legislative Assembly further declares that it is in the public interest to prevent the forced conversion of riparian environments to more

intensive uses as a result of economic pressures caused by the assessment of those lands for purposes of property taxation at values incompatible with their protection as riparian lands and that tax exemption must be granted to permit the continued availability of riparian environments for these purposes, and it is the intent of ORS 308A.350 to 308A.383 to so provide. [Formerly 308.793]

**308A.356 Application for exemption as riparian land; contents; notice after sale or transfer.** An owner of land desiring designation and exemption of that land from ad valorem taxation as riparian land under ORS 308A.350 to 308A.383 shall make application to the county assessor upon forms prescribed by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which designation as riparian lands is requested and the current use of the land. The application shall include any other information as is reasonably necessary to properly designate an area of land as riparian land under ORS 308A.350 to 308A.383 with a verification of the truth thereof. Applications to the county assessor shall be made on or before December 31 of the calendar year preceding the first tax year for which such designation is requested. The county assessor shall notify the State Department of Fish and Wildlife if a recorded sale or transfer of the land granted exemption under ORS 308A.350 to 308A.383 occurs for the purpose of determining continued eligibility of the land for the exemption. The State Department of Fish and Wildlife shall notify the county assessor in writing of the finding within 120 days after the date the county assessor's notice is mailed or delivered. Failure of the assessor to notify the State Department of Fish and Wildlife shall not prevent the imposition of the additional tax prescribed by ORS 308A.368 (2). [Formerly 308.794]

**308A.359 Standards and criteria for exemption; determination; exemption limited to certain lands.** (1) The State Department of Fish and Wildlife shall develop standards and criteria for the designation of land as riparian. Upon the receipt of an application referred to it by the county assessor, the department shall determine if the land described in the application is qualified for designation as riparian.

(2) The department shall review riparian management plans submitted by applicants to assure compliance with the intent of ORS 308A.353. Standards and criteria to be used to determine consistency with the intent of ORS 308A.350 to 308A.383 shall be developed by the department and shall be reviewed by the department annually. These criteria shall be in addition to the following provisions

limiting participation under ORS 308A.350 to 308A.383:

(a)(A) Subject to subparagraph (B) of this paragraph, and except as provided in subparagraph (C) of this paragraph, only lands planned and zoned as forest or agricultural lands, including rangeland, in compliance with the statewide planning goals adopted under ORS 197.240 and outside adopted urban growth boundaries shall qualify.

(B) Lands that, as of July 1, 1997, are outside adopted urban growth boundaries and also as of that date are planned and zoned as forest or agricultural lands, including rangeland, in compliance with the statewide planning goals adopted under ORS 197.240 qualify, for tax years beginning on or after July 1, 1998, for riparian designation if they are managed in the manner provided for designated riparian lands and are otherwise eligible for riparian designation under ORS 308A.350 to 308A.383 even though the lands are no longer outside adopted urban growth boundaries or planned or zoned as forest or agriculture.

(C) Lands within the boundaries of a city and an urban growth boundary, if the city and county governing bodies have authorized the exemption under ORS 308A.360, may qualify if the lands are managed in the manner provided for riparian designation under ORS 308A.350 to 308A.383.

(b) Land management activities permitted within designated riparian lands shall be consistent with the intent of ORS 308A.350 to 308A.383.

(3) Land that the State Department of Fish and Wildlife determines may qualify for designation as riparian shall be approved by the department for designation and exemption under ORS 308A.350 to 308A.383 only if the owner of the land has developed and implemented, in accordance with the standards adopted under subsections (1) and (2) of this section, adequate measures for:

(a) The continued protection of the land; or

(b) Techniques for rehabilitation of the riparian land and those measures or techniques are approved by the department.

(4) The department may approve the application for designation of land as riparian with respect to only part of the land that is the subject of the application, but if any part of the application is denied, the applicant may withdraw the entire application. [Formerly 308.795; 2001 c.925 §7]

**308A.360 City and county authorization required for exemption of riparian land within city and urban growth boundary.** (1) Land located within the boundaries of a city and an urban growth

boundary is exempt from the ad valorem property taxes of the city and county in which the land is located if:

(a) The governing bodies of the city and the county in which the land is located have both adopted ordinances or resolutions:

(A) Permitting the designation of land as riparian land; and

(B) If possible, describing how the city or county will provide technical assistance to landowners preparing riparian management plans pursuant to ORS 308A.359 and will monitor landowner compliance with approved plans; and

(b) The land qualifies for designation and exemption as riparian land under ORS 308A.350 to 308A.383.

(2) Copies of the authorizing ordinances or resolutions must be given to the county assessor and to the State Department of Fish and Wildlife. [2001 c.925 §6]

**308A.362 Approval or disapproval of application; limitation on approval; order; notice; exemption; potential additional taxes.** (1) The State Department of Fish and Wildlife shall immediately notify the county assessor and the applicant of its approval or disapproval of an application which shall in no event be later than April 1 of the year following the year of receipt of the application. Subject to subsection (2) of this section and the mileage limitation of ORS 308A.380, an application not denied by April 1 shall be deemed approved, and the land that is the subject of the application shall be considered to be land that qualifies under ORS 308A.359.

(2) An application for land described in ORS 308A.359 (2)(a)(B) shall be approved only if filed on or before five years after the date the land became land no longer outside adopted urban growth boundaries or planned or zoned as forest or agricultural land.

(3) An application for land described in ORS 308A.360 (1) may be approved only if ordinances or resolutions authorizing the exemption have been adopted by the city and county in which the land is located and these ordinances or resolutions are in effect on the date of application.

(4) The department may not approve more than 50 applications for land described in ORS 308A.360 (1) 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.

(5)(a) When the department approves land for designation as riparian under ORS 308A.359, it shall enter an order of approval and file a copy of the order with the county assessor within 10 days. Upon receipt of the

order, the county assessor shall enter a notation on the assessment roll that the land described in the order is exempt from ad valorem taxation.

(b) If the land is as described in ORS 308A.360 (1), the exemption shall apply only to the ad valorem property taxes of the city and county that have authorized the exemption.

(6) On approval of an application filed under ORS 308A.356, for each year of designation the assessor shall indicate on the assessment and tax roll that the property is exempt from taxation as riparian land or, in the case of land described in ORS 308A.360 (1), partially exempt from taxation. The assessor shall also indicate on the tax roll that the land is subject to potential additional taxes as provided by ORS 308A.368, by adding the notation "designated riparian land (potential add'l tax)."

(7) Any owner whose application for designation has been denied may appeal to the department under the provisions of ORS chapter 183 governing contested cases. [Formerly 308.796; 2001 c.925 §8]

**308A.365 Duration of exemption; change in use; withdrawal at request of owner.** (1) When land has once been designated as riparian under ORS 308A.350 to 308A.383, it shall remain under that designation and it shall not be applied to any use other than those specifically included in the management plan or consistent with the intent of ORS 308A.350 to 308A.383 unless withdrawn from designation as provided in subsection (2) of this section.

(2) During any year after designation, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which the land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from designation as riparian and shall immediately give written notice of the withdrawal to the State Department of Fish and Wildlife. [Formerly 308.797]

**308A.368 Additional taxes upon withdrawal from riparian land designation; computation.** (1) When land that has been designated as exempt from taxation under ORS 308A.350 to 308A.383 as riparian is applied to some use other than that compatible with riparian use, as defined in the management plan, except through compliance with ORS 308A.365 (2), or except as a result of the exercise of the power of eminent domain, the owner shall within 60 days after the change in use notify the county assessor of the change in use. The assessor or assessors shall withdraw the land from designation and immediately give written notice of the withdrawal to the State Department of Fish and

Wildlife. Thereafter, the land shall be assessed and taxed as other property similarly situated is assessed and taxed.

(2) The assessor, upon discovery of the change in use to a use other than that compatible with riparian or upon withdrawal by the owner of the land from designation, shall compute an additional tax equal to the difference between the taxes assessed against the land and the taxes that otherwise would have been assessed against the land had the land not received exemption for each of the last five years (or such lesser number of years, corresponding to the number of years of exemption under ORS 308A.350 to 308A.383 applicable to the property after its most recent change of ownership) preceding the tax year in which the land was withdrawn from designation. [Formerly 308.798]

**308A.371 Additional taxes; payment; collection.** (1) The amount determined to be due under ORS 308A.368 may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under ORS 308A.368 shall be added to the tax extended against the entire parcel of land of which the riparian land is a part on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [Formerly 308.799]

**308A.374 Reports from owners; re-exemption after exemption granted for determination of continued qualification.** (1) The assessor shall at all times be authorized to demand and receive reports by registered or certified mail from owners of land designated as riparian under ORS 308A.350 to 308A.383 as to the use of the same. If the owner fails, after 90 days' notice in writing by certified mail to comply with such demand, the assessor shall give written notice to the State Department of Fish and Wildlife and to the landowner of the assessor's intention to withdraw the land from designation and apply the payments and penalties provided in ORS 308A.368 not less than 30 days prior to automatic withdrawal of the riparian land from designation. If, prior to the expiration of the 30-day period, the landowner fails to file the requested report, the assessor immediately shall withdraw the land from designation and apply the payments and penalties provided in ORS 308A.368.

(2) If the assessor has reason to believe that land designated as riparian land no longer qualifies for designation and special assessment, the assessor shall request the State Department of Fish and Wildlife to determine if the land continues to qualify. The request shall be in writing. Upon receipt of the request, the State Department of Fish

and Wildlife shall inspect the property and may take whatever steps are necessary to determine if the land continues to qualify for special assessment. The State Department of Fish and Wildlife shall notify the assessor of the determination made pursuant to the request of the assessor within 120 days after the request is received. A determination by the State Department of Fish and Wildlife that the property no longer qualifies shall constitute a discovery described in ORS 308A.368 (2). [Formerly 308.800]

**308A.377 Abatement of additional tax when farm, forest or open space land designated riparian.** (1) Land may be designated as riparian upon application and approval of the application under ORS 308A.356 and 308A.359 if the land is being assessed under any of the following special assessment programs:

(a) ORS 308A.050 to 308A.128 (relating to farm use special assessment).

(b) ORS 321.257 to 321.390 (relating to special assessment as designated forestland in western Oregon).

(c) ORS 321.805 to 321.855 (relating to special assessment as designated forestland in eastern Oregon).

(d) ORS 321.700 to 321.754 (relating to special assessment as small tract forestland).

(e) ORS 308A.300 to 308A.330 (relating to classification as open space land).

(2) Notwithstanding the provisions of any of the special assessment laws listed in subsection (1) of this section, the additional taxes, penalties and interest that would be due as a result of a change of designation to riparian shall be abated and shall not be collected. [Formerly 308.801; 2003 c.454 §§100,102; 2003 c.621 §83]

**308A.380 Limitation on amount of land that may be exempt as riparian land.** (1)(a) For the tax years beginning prior to July 1, 2004, the department may approve for designation as riparian land not more than 200 miles of private streambank in any county.

(b) The land approved for designation as riparian land under this subsection each year shall be in addition to, and not restricted by, the approval of designation of land as riparian during the previous year. However, the department may, in addition, approve for designation as riparian land each year an amount of land equal to the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year, and, an amount of land equal to the difference between the amount of land approved for designation as riparian land during the previous years and the maximum

established under paragraph (a) of this subsection.

(2) If the department receives applications for designation of land as riparian in excess of the maximum established under subsection (1) of this section, preference shall be afforded according to the date the application was filed with the county assessor. Applications which are not approved because the maximum has been reached shall be held for consideration for approval for the next tax year. [Formerly 308.802]

**308A.383 Rules.** The Department of Revenue and the State Department of Fish and Wildlife shall make such rules consistent with ORS 308A.350 to 308A.383 as may be necessary or desirable to permit its effective administration. [Formerly 308.803]

#### **WILDLIFE HABITAT SPECIAL ASSESSMENT**

**308A.400 Findings.** (1) The Legislative Assembly finds that the State of Oregon has a rich diversity of plants, animals and other natural resources on private lands. Conservation and careful management of these resources is evident in Oregon's working landscape and is essential to the economic and ecological health of Oregon.

(2) The Legislative Assembly further finds that conservation of natural resources on private lands is desirable, and nonregulatory programs that encourage and enable landowners to engage voluntarily in conservation should be available to supplement regulatory and other approaches.

(3) The Legislative Assembly further finds that to maximize voluntary landowner participation in conservation programs, conservation should be recognized as a legitimate land use and landowners should have a full range of incentive programs from which to choose.

(4) The Legislative Assembly further finds that state government should have a mechanism to coordinate, facilitate and memorialize a landowner's compliance with regulatory requirements while simultaneously providing a means to combine or coordinate multiple incentive programs among agencies and levels of government.

(5) The Legislative Assembly further finds that efforts should be made to more effectively and efficiently target conservation programs administered by federal, state and local governments.

(6) The Legislative Assembly further finds that there should be a comprehensive review to identify and assess the state's conservation needs and to coordinate the development, dissemination and implementation of a comprehensive statewide conservation

strategy to define priorities and address ecological goals while enhancing economic and social conditions. [2003 c.539 §1]

**Note:** 308A.400 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 308A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**308A.403 Policy.** (1) The Legislative Assembly declares that the protection and preservation of the wildlife resources of this state ought to be encouraged by recognizing wildlife habitat conservation and management as a legitimate land use.

(2) The Legislative Assembly further declares that ORS 308A.403 to 308A.430 are intended to allow for the conservation and management of wildlife habitat.

(3) The Legislative Assembly recognizes that the integration of wildlife habitat conservation and management plans with generally accepted agricultural and forestry practices is an important element in exercising good land stewardship. [2003 c.539 §3]

**308A.406 Definitions for ORS 308A.403 to 308A.430.** As used in ORS 308A.403 to 308A.430:

(1) "Cooperating agency" means the State Department of Fish and Wildlife, the United States Fish and Wildlife Service, the Natural Resources Conservation Service of the United States Department of Agriculture, the Oregon State University Extension Service or other persons with wildlife habitat conservation and management training considered appropriate for the preparation of a wildlife habitat conservation and management plan, as established by rules adopted by the State Fish and Wildlife Commission under ORS 308A.409.

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

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

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

(5) "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 farm and forest uses consistent with the overall intent of the plan, that will be conducted to preserve and improve wildlife habitat on an affected lot or parcel. [2003 c.539 §4; 2005 c.94 §58]

**308A.409 Wildlife habitat conservation and management plans; rules.** (1)(a) The State Fish and Wildlife Commission shall adopt rules specifying the form and content of a wildlife habitat conservation and management plan that is sufficient for land that

is subject to the plan to be specially assessed under ORS 308A.403 to 308A.430.

(b) The rules adopted pursuant to this section shall:

(A) Specify the conservation and management practices that are appropriate to preserve and enhance wildlife common to the diverse regions of this state; and

(B) Specify that wildlife habitat conservation and management plans may include those efforts that improve water quality, protect and restore fish and wildlife habitats, recover threatened or endangered species, enhance stream flows and maintain or restore long-term ecological health, diversity and productivity on a broad geographic scale.

(2) Under rules adopted pursuant to this section, the commission shall allow:

(a) Accepted agricultural and forestry practices as an integral part of the wildlife habitat conservation and management practices specified in an approved plan; and

(b) The lease or sale of in-stream water rights as an integral part of the wildlife habitat conservation and management practices specified in an approved plan.

(3) The rules shall be reviewed periodically by the commission and revised when considered necessary or appropriate by the commission. [2003 c.539 §5]

**308A.412 Plan submission and review; limitation on approval; rules.** (1) An owner of land described in ORS 308A.415 who seeks special assessment under ORS 308A.403 to 308A.430 shall first submit a proposed wildlife habitat conservation and management plan to the State Department of Fish and Wildlife for review.

(2) The department shall review each submitted plan for compliance with the standards set forth in the rules adopted under ORS 308A.409 and shall determine if the plan is being implemented.

(3) Upon completing a review of a proposed plan and determining that the plan is in compliance with the standards set forth in the rules adopted under ORS 308A.409 and is being implemented, the department shall issue to the landowner a written declaration that the land is subject to a wildlife habitat conservation and management plan approved by the department and that the landowner has begun implementing the plan.

(4) The State Fish and Wildlife Commission may establish by rule a limit on the number of plans that may be approved in each calendar year. An application that is not approved because the maximum number of plans for a year has already been approved shall be held for consideration for approval for the next year. [2003 c.539 §6]

**308A.415 Designation by State Fish and Wildlife Commission of land eligible for wildlife habitat special assessment.**

(1) At the request of the governing body of a county, the State Fish and Wildlife Commission may designate 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 commission may designate the following land within the 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 commission 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 commission may designate land described in subsection (1) or (2) of this section as eligible for wildlife habitat special assessment only if the commission finds:

(a) That designation will promote the findings in ORS 308A.400 and the policy in ORS 308A.403; and

(b) That the land described in subsection (1) or (2) of this section is of the nature and quality to allow for implementation of wildlife habitat conservation and management plans approved under rules adopted pursuant to ORS 308A.409.

(5) Land may not qualify for wildlife habitat special assessment under ORS 308A.424 unless the commission has determined that the land is eligible for wildlife habitat special assessment under this section. [2003 c.539 §7]

**308A.418 Removal of designation upon request of city or county; requirements.**

(1) The governing body of the city or county that requested designation under ORS 308A.415 may request that the State Fish and Wildlife Commission remove that designation.

(2) The commission 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 commission finds that the economic burden is significant.

(3) In making its determination under subsection (2) of this section, the commission shall give significant weight to the demonstration of economic burden made by the city or county. [2003 c.539 §7a]

**308A.421 Effect of designation or removal for property tax purposes.**

A determination by the State Fish and Wildlife Commission to designate land as eligible for wildlife habitat special assessment under ORS 308A.415 or to remove that designation under ORS 308A.418 shall for property tax purposes be effective as of the tax year beginning the July 1 immediately following the determination. [2003 c.539 §7b]

**308A.424 Application for special assessment; approval.**

(1) When a wildlife habitat conservation and management plan is approved by the State Department of Fish and Wildlife and is being implemented, the owner of the land subject to the plan may apply to the county assessor to receive wildlife habitat special assessment.

(2) Application shall be made to the county assessor on forms prepared by the Department of Revenue and supplied by the county assessor.

(3) Applications for wildlife habitat special assessment shall be made to the county assessor on or before April 1 of the first assessment year for which the assessment is desired. The application shall include:

(a) A copy of the wildlife habitat conservation and management plan.

(b) A certified copy of the declaration described in ORS 308A.412 (3).

(c) A description of the land that is the subject of the application that is sufficient for the county assessor to determine whether the land for which wildlife habitat special assessment is sought is within an area eligible for wildlife habitat special assessment.

(d) A statement that the applicant is aware of the potential tax liability that arises under ORS 308A.703 upon disqualification from wildlife habitat special assessment.

(e) An affirmation that the statements contained in the application are true.

(4) An application to the county assessor shall be deemed approved unless, before August 15 of the year in which the application was filed, the assessor notifies the applicant in writing that the application has been wholly or partially denied.

(5) Whether land that is subject to a wildlife habitat conservation and management plan qualifies for special assessment under this section shall be determined as of January 1 of the assessment year. If land so qualified becomes disqualified prior to July 1 of the same assessment year, the land shall be valued under ORS 308.232 at its real market value as defined by law without regard to this section and shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1, the land shall continue to qualify for special assessment as provided in this section for the current tax year. [2003 c.539 §8]

**308A.427 Valuation.** (1) The county assessor shall value land for wildlife habitat special assessment in accordance with this section.

(a) For property that was specially assessed during the previous assessment year under a program listed in ORS 308A.706 (1)(d), the property shall continue to have a specially assessed value, a maximum assessed value and an assessed value as determined under whichever of the following was an applicable method of valuation for the previous assessment year:

- (A) Under ORS 308A.050 to 308A.128; or
- (B) Under ORS 321.354 or 321.833.

(b) For property that was not specially assessed during the previous assessment year, the property shall have a specially assessed value, a maximum assessed value and an assessed value:

(A) Determined under ORS 321.354 or 321.833 if, at the time of application, the land has growing upon it trees of a marketable species and in numbers sufficient to meet requirements for designated forestland under ORS 321.358 or 321.839; or

(B) If the criteria set forth in subparagraph (A) of this paragraph are not satisfied, determined under ORS 308A.050 to 308A.128.

(2) For property subject to wildlife habitat special assessment, the county assessor shall enter on the assessment and tax roll the notation "potential additional tax liability" until the land is disqualified under ORS 308A.430. [2003 c.539 §9]

**308A.430 Disqualification from special assessment.** (1) Land subject to a wildlife habitat conservation and management plan shall be inspected by the State Department of Fish and Wildlife periodically to ensure that the land is managed in accordance with the plan. If the plan is not being implemented as approved, the department shall notify the landowner and require compliance measures to be taken within six months. If

the plan is still not being implemented as required by the department at the end of the six-month period, the department shall notify the county assessor that the plan is not being implemented as approved.

(2) The county assessor shall disqualify the land from wildlife habitat special assessment upon:

(a) Notice from the department as described in subsection (1) of this section;

(b) Notice of request by the landowner for withdrawal of the land from wildlife habitat special assessment;

(c) Sale or transfer to an ownership making the land exempt from ad valorem property taxation;

(d) The land qualifying for another special assessment listed in ORS 308A.703 (1); or

(e) The act of recording a subdivision plat under ORS chapter 92.

(3) If, pursuant to subsection (2)(e) of this section, the county assessor disqualifies land for wildlife habitat special assessment upon the act of recording a subdivision plat, the land may requalify for wildlife habitat special assessment upon:

(a) Payment of all additional tax and interest that remains due and owing as a result of the disqualification;

(b) Compliance with ORS 308A.403 to 308A.430; and

(c) Submission of an application for wildlife habitat special assessment under ORS 308A.424 and approval of the application by the county assessor.

(4) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733. [2003 c.539 §10]

**ADDITIONAL TAXES, PROCEDURES  
APPLICABLE TO CERTAIN LAND  
SPECIAL ASSESSMENT PROGRAMS  
(Additional Taxes)**

**308A.700 Definitions for ORS 308A.700 to 308A.733.** As used in ORS 308A.700 to 308A.733:

(1) "Disqualification" includes the removal of forestland designation under ORS 321.359, 321.712, 321.716 or 321.842.

(2) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district under ORS 268.390 (3). [1999 c.314 §33; 2003 c.454 §§19,21; 2003 c.621 §84]

**308A.703 Additional taxes upon disqualification.** (1) This section applies to land upon the land's disqualification from special assessment under any of the following sections:

- (a) Exclusive farm use zone farmland under ORS 308A.113;
- (b) Nonexclusive farm use zone farmland under ORS 308A.116;
- (c) Western Oregon designated forestland under ORS 321.359;
- (d) Eastern Oregon designated forestland under ORS 321.842; or
- (e) Wildlife habitat special assessment under ORS 308A.430.

(2) Following a disqualification listed in subsection (1) of this section, an additional tax shall be added to the tax extended against the land on the next assessment and tax roll, to be collected and distributed in the same manner as other ad valorem property tax moneys. The additional tax shall be equal to the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land, for each of the number of years determined under subsection (3) of this section.

(3) The number of years for which additional taxes shall be calculated shall equal the lesser of the number of consecutive years the land had qualified for the special assessment program for which disqualification has occurred or:

- (a) Ten years, in the case of exclusive farm use zone farmland, but only if the land, immediately following disqualification, remains outside an urban growth boundary;
- (b) Ten years, in the case of wildlife habitat special assessment land within an exclusive farm use zone, but only if the land, immediately following disqualification, remains outside an urban growth boundary; or
- (c) Five years, in the case of:
  - (A) Nonexclusive farm use zone farmland;
  - (B) Western Oregon designated forestland;
  - (C) Eastern Oregon designated forestland;
  - (D) Exclusive farm use zone farmland that is not described in paragraph (a) of this subsection; or
  - (E) Wildlife habitat special assessment land that is not described in paragraph (b) of this subsection.

(4) The additional taxes described in this section shall be deemed assessed and imposed in the year to which the additional taxes relate.

(5) If the disqualification of the land is the result of the sale or transfer of the land

to an ownership making the land exempt from ad valorem property taxation, the lien for additional taxes shall attach as of the day preceding the sale or transfer.

(6) The amount determined to be due under this section may be paid to the tax collector prior to the time of the next general property tax roll, pursuant to the provisions of ORS 311.370. [1999 c.314 §34; 2001 c.114 §21; 2003 c.454 §§23,25; 2003 c.539 §16; 2003 c.621 §85; 2005 c.400 §3]

**Note:** Section 6, chapter 400, Oregon Laws 2005, provides:

**Sec. 6.** The amendments to ORS 308A.703, 308A.707, 321.706, 321.716 and 321.719 by sections 1 to 5 of this 2005 Act apply to tax years beginning on or after July 1, 2005, and to small tract forestland assessment disqualifications occurring on or after January 1, 2005. [2005 c.400 §6]

**308A.706 Circumstances when additional taxes are deferred; potential additional tax liability.** (1) Notwithstanding that land may have been disqualified from special assessment, the additional taxes described under ORS 308A.703 shall not be imposed and shall remain a potential tax liability if, as of the date the disqualification is taken into account on the assessment and tax roll, the land is any of the following:

(a) Disqualified exclusive farm use zone farmland or nonexclusive farm use zone farmland that:

- (A) Is not being used as farmland; and
- (B) Is not being used for industrial, commercial, residential or other use that is incompatible with a purpose to return the land to farm use.

(b) Acquired by a governmental agency or body as a result of an exchange of the land for land of approximately equal value held by the governmental agency or body.

(c) Acquired and used for natural heritage purposes and all of the following additional requirements are met:

- (A) The land is registered under ORS 273.581 as a natural heritage conservation area;
- (B) The land is acquired by a private nonprofit corporation;
- (C) The land is retained by the corporation, or transferred to the state by the corporation, for the purpose of educational, scientific and passive recreational use consistent with conservation of the ecological values and natural heritage elements of the area;

(D) If the land is retained by the corporation, it remains open to the public without charge for the uses described in subparagraph (C) of this paragraph; and

(E) The land is managed pursuant to a voluntary management agreement under ORS 273.581 (5).

(d) Qualified for special assessment under:

(A) ORS 308A.062, relating to farm use special assessment of land in an exclusive farm use zone;

(B) ORS 308A.068, relating to farm use special assessment of nonexclusive farm use zone farmland;

(C) ORS 321.358, relating to classification as designated forestland in western Oregon;

(D) ORS 321.839, relating to classification as designated forestland in eastern Oregon;

(E) ORS 321.709, relating to qualification as small tract forestland; or

(F) ORS 308A.424, relating to wildlife habitat special assessment.

(e) Disqualified nonexclusive farm use zone farmland, to the extent the additional taxes are deferred or abated as provided in ORS 308A.119.

(2) In any case where the additional tax is deferred under the provisions of this section but may subsequently be imposed under ORS 308A.712, the county assessor shall continue to enter the notation "potential additional tax liability" on the assessment and tax roll. [1999 c.314 §35; 2003 c.454 §§27,29; 2003 c.539 §17; 2003 c.621 §86]

**308A.707 Additional taxes when land disqualified from small tract forestland assessment.** (1) Notwithstanding ORS 308A.706, additional taxes shall be imposed on land that is disqualified from small tract forestland assessment under ORS 321.712 or 321.716. If after disqualification the land remains specially assessed under a special assessment program described in ORS 308A.706 (1)(d)(A) to (D) or (F), the additional taxes shall be computed under subsection (2) of this section. If after disqualification the land is not specially assessed under a program described in ORS 308A.706 (1)(d)(A) to (D) or (F), the additional taxes shall be computed under subsection (3) of this section.

(2)(a) The additional taxes for disqualified small tract forestland that is qualified for special assessment under a program described in ORS 308A.706 (1)(d)(A) to (D) or (F) shall be equal to the difference between the taxes assessed against the land under ORS 321.700 to 321.754 and the taxes that would have been assessed against the land:

(A) Under ORS 321.257 to 321.390, if the land is located in western Oregon; or

(B) Under ORS 321.805 to 321.855, if the land is located in eastern Oregon.

(b) The number of years for which additional taxes shall be calculated shall equal the lesser of 10 years or the number of consecutive years the land has been assessed as small tract forestland.

(3)(a) The additional taxes for disqualified small tract forestland that is not qualified for special assessment under a program described in ORS 308A.706 (1)(d)(A) to (D) or (F) shall be equal to the sum of:

(A) The amount determined under subsection (2) of this section; and

(B) The difference between the taxes that would have been assessed against the land under ORS 321.257 to 321.390, if located in western Oregon, or ORS 321.805 to 321.855, if located in eastern Oregon, and the taxes that would otherwise have been assessed against the land, for the lesser of the number of consecutive years the land was forestland or five years.

(b) Notwithstanding paragraph (a)(B) of this subsection, if any provision of ORS 308A.700 to 308A.733 would cause the deferral or elimination of additional taxes that are imposed under ORS 308A.703 or 308A.712, that provision shall also cause the deferral or elimination of the additional taxes imposed under paragraph (a)(B) of this subsection, under the same terms, requirements and conditions that additional taxes under ORS 308A.700 to 308A.733 are deferred or eliminated.

(4) The additional taxes described in this section shall be imposed and collected at the same time and in the same manner as additional taxes described in ORS 308A.703 are imposed and collected.

(5) The additional taxes described in this section shall be deemed assessed and imposed in the year to which the additional taxes relate.

(6) The amount determined to be due under this section may be paid to the tax collector prior to the time of the next general property tax roll, pursuant to the provisions of ORS 311.370.

(7) As used in this section, "forestland," "western Oregon" and "eastern Oregon" have the meanings given those terms in ORS 321.700. [2003 c.454 §31; 2005 c.400 §4]

**Note:** See note under 308A.703.

**308A.709 Circumstances when additional taxes are not imposed.** Notwithstanding that land may have been disqualified from special assessment, no additional taxes may be imposed under ORS 308A.703 if, as of the date the disqualification is taken into account on the assessment and tax roll, the land is any of the following:

(1) Acquired by a governmental agency as a result of the lawful exercise of the power of eminent domain or the threat or imminence thereof.

(2) Acquired by purchase, agreement or donation under ORS 390.121 (relating to State Parks and Recreation Commission acquisitions).

(3) Acquired by a city, county, metropolitan service district created under ORS chapter 268 or park and recreation district organized under ORS chapter 266 for public recreational purposes or for the preservation of scenic or historic places.

(4) Acquired for wildlife management purposes under ORS 496.146.

(5) Public property that was leased or rented to a taxable owner as described in ORS 307.110 at the time of disqualification, and the reason for the disqualification was the termination of the lease under which the land was assessed.

(6) Land that ceases to be located within the boundaries of an exclusive farm use zone as the result of a change in the boundaries of the zone or removal of the zone following an action by the governing body of the county or city that:

(a) Was not requested or initiated by the owner of the land; or

(b) Was requested by:

(A) The State Parks and Recreation Department for public park purposes under ORS 390.121; or

(B) The State Fish and Wildlife Commission for wildlife management purposes under ORS 496.146.

(7) Forestland acquired by a federal, state or local governmental agency. In the case of an acquisition described in this subsection, a lien for additional taxes and interest may not attach on the day preceding the day of transfer of the forestland to the governmental agency. [1999 c.314 §36; 1999 c.800 §1a; 2003 c.454 §34; 2003 c.621 §87]

**308A.712 Determining amount of deferred additional taxes and period for which additional taxes are due.** (1) If the disqualification of land from special assessment results in the deferral of additional taxes under ORS 308A.706:

(a) The amount of deferred additional taxes shall be determined as provided for in this section in lieu of ORS 308A.703; and

(b) The deferred additional taxes shall be added to the assessment and tax roll for the year in which the event described in subsections (2) to (6) of this section is first taken into account for property tax purposes, to be

collected and distributed in the same manner as other ad valorem property taxes.

(2) If additional taxes are deferred under ORS 308A.706 (1)(a) (relating to compatible nonuse of farmland) and subsequently the land is changed to an industrial, commercial, residential or other use incompatible with a return of the land to farm use, then:

(a) The amount of additional tax due for each year to which the additional tax applies shall be the difference between the taxes assessed against the land and the taxes that would have been assessed against the land in that year had the land not been in special assessment; and

(b) The number of years for which the additional tax shall be collected shall be the total number of years (whether or not continuous) that the farm use special assessment was in effect for the land, not to exceed:

(A) In the case of disqualified exclusive farm use zone farmland located outside an urban growth boundary, 10 tax years, or such lesser number of years, corresponding to the number of years of farm use zoning applicable to the property; or

(B) In the case of all other farmland disqualified from farm use special assessment, five tax years.

(3)(a) If additional taxes are deferred under ORS 308A.706 (1)(b) (relating to government exchange of land), additional taxes shall be collected when the land acquired as a result of the exchange is disqualified from special assessment. The additional taxes shall equal the total amount of additional taxes under ORS 308A.703 (2) attributable to the number of years the land transferred to the governmental agency or body received the special assessment before the exchange plus the number of years, if any, the land acquired from the governmental agency or body received a special assessment after the exchange.

(b) The total number of years taken into account shall not exceed the maximum number of years for which additional taxes may be collected under the provision of law applicable to either the exchanged land (immediately before the exchange) or the acquired land, whichever is greater.

(4) If additional taxes are deferred under ORS 308A.706 (1)(c) (relating to natural heritage), the additional taxes that would have been imposed under ORS 308A.703 at the time of disqualification shall be collected when the land is no longer used as described in ORS 308A.706 (1)(c).

(5) If additional taxes are deferred under ORS 308A.706 (1)(d) (relating to change in special assessment), the additional taxes that would have been collected at the time of

disqualification shall be collected at the time the land is disqualified from any other special assessment law listed in ORS 308A.706 (1)(d). The total amount of additional tax shall be calculated as follows:

(a) The amount of the additional tax due for each year to which the additional tax applies shall be the difference between the taxes assessed against the land and the taxes that would have been assessed against the land in that year had the land not been in special assessment; and

(b) The number of years for which the additional tax shall be collected shall be the total number of continuous tax years that a special assessment listed in ORS 308A.706 (1)(d) was in effect for the land, not to exceed:

(A) Five tax years; or

(B) If the property had, within the past 10 tax years, been disqualified from a special assessment program described in ORS 308A.703 (3)(a) or (b) and had been continuously subject to special assessment, then 10 tax years. However, the number of continuous preceding years of special assessment under the special assessment programs listed in ORS 308A.703 (3)(c) that may be taken into consideration for purposes of computing the additional tax may not exceed five years.

(6) In determining the additional tax under subsection (5) of this section, the number of continuous preceding years of special assessment counted shall not include those years in which the land was specially assessed under any of the special assessment laws listed in ORS 308A.706 (1)(d) prior to a disqualification of the land for special assessment as exclusive farm use zone farmland under the conditions described in ORS 308A.709 (6). [1999 c.314 §37; 2003 c.454 §36; 2003 c.621 §88]

**308A.715 Imposition of deferred additional taxes upon request of owner.** (1) Notwithstanding that additional taxes otherwise due under ORS 308A.703 are deferred under ORS 308A.706, the additional taxes may be imposed at any time after disqualification of the property from special assessment if the property owner so requests.

(2) A request for imposition of tax under this section shall be made in writing to the county assessor.

(3) If the request for imposition of tax under this section is made prior to August 15 of the assessment year, the additional tax shall be added to the current general property tax roll to be collected and distributed in the same manner as other real property tax. If the request for imposition of tax is made on or after August 15 of the assessment year, the additional tax shall be added to the

next general property tax roll to be collected in the same manner as other ad valorem property taxes. [1999 c.314 §38]

**(Disqualification Notification Procedures)**

**308A.718 Assessor to send notice upon disqualification or forestland change in use; deadline; appeal; change in special assessment explanation.** (1) The county assessor shall send notice as provided in this section if land is disqualified under any of the following special assessment programs:

(a) Farm use special assessment under ORS 308A.050 to 308A.128.

(b) Farm or forest homesite special assessment under ORS 308A.250 to 308A.259.

(c) Western Oregon designated forestland special assessment under ORS 321.257 to 321.390.

(d) Eastern Oregon designated forestland special assessment under ORS 321.805 to 321.855.

(e) Small tract forestland special assessment under ORS 321.700 to 321.754.

(f) Wildlife habitat special assessment under ORS 308A.403 to 308A.430.

(2) Notwithstanding that a change in use described in this section is not a disqualification, the assessor shall send notice as provided in this section when the highest and best use of land changes from forestland to a different highest and best use.

(3) Within 30 days after the date that land is disqualified from special assessment, the assessor shall notify the taxpayer in writing of the disqualification and shall state the reason for the disqualification.

(4) Following receipt of the notification, the taxpayer may appeal the assessor's determination to the Oregon Tax Court within the time and in the manner provided in ORS 305.404 to 305.560.

(5)(a) When any land has been granted special assessment under any of the special assessment laws listed in subsection (1) of this section and the land is disqualified from such special assessment, the county assessor shall furnish the owner with a written explanation summarizing:

(A) ORS 308A.706 (1)(d) (relating to change in special assessment);

(B) ORS 308A.727 (relating to change in use to open space use special assessment for certain golf courses);

(C) The administrative act necessary under ORS 308A.724 to change the property to another classification described in this paragraph; and

(D) The imposition of any penalties that would result from the disqualification if no

requalification or reclassification is made under one of the other special assessment laws listed in this paragraph.

(b) The written explanation required by this subsection shall be given in conjunction either with the notice of disqualification required under this section or with an order or notice of disqualification otherwise provided by law.

(c)(A) If no notice of disqualification is required to be made by this section or other provision of law, the written explanation required by this subsection shall be made by the county assessor.

(B) A written explanation made under this paragraph shall be made by the assessor within 30 days of the effective date of the disqualification.

(6) Subsections (1) to (5) of this section do not apply if the reason for the disqualification is:

(a) The result of a request for disqualification by the property owner; or

(b) Because the property is being acquired by a government or tax-exempt entity. [1999 c.314 §39; 2003 c.454 §38; 2003 c.539 §18; 2003 c.621 §89]

**308A.721** [1999 c.314 §40; repealed by 2003 c.454 §81 and 2003 c.621 §49]

#### (Change of Special Assessment)

**308A.724 Application for change of special assessment following disqualification; time for meeting farm use income requirements; application due dates; limitation on special assessments for disqualified wildlife habitat land.** (1)(a) In order for additional taxes imposed under ORS 308A.703 to be deferred under ORS 308A.706 (1)(d) (relating to change in special assessment), the owner must file an application or claim for classification under another special assessment law.

(b) If the disqualification is effective prior to July 1 in any year, the owner shall file the required claim or application on or before August 1 of that year.

(c) If the disqualification is effective on or after July 1 in any year, the county taxing authorities shall continue the classification on the current assessment and tax rolls, and the owner shall file the required claim or application in the next calendar year in accordance with the laws governing the particular special assessment program.

(2) If an owner of land disqualified under one of the special assessment laws listed in ORS 308A.706 (1)(d) seeks to qualify for farm use special assessment of nonexclusive farm use zone farmland under ORS 308A.068, the owner shall have five years, beginning with the first year in which application is made

under this section, to qualify for the two-year farm use requirement of ORS 308A.068 and the income requirement under ORS 308A.071.

(3) Notwithstanding subsection (1) of this section, an owner may make application under this section at any time within 30 days of the date notice of disqualification is sent by the assessor under ORS 308A.718.

(4) Notwithstanding subsections (1) to (3) of this section, an owner of land disqualified from wildlife habitat special assessment under ORS 308A.430 that was previously subject to ORS 215.236 (5) may not apply for another special assessment under this section without first satisfying the requirements of ORS 215.236 (5). [1999 c.314 §41; 2003 c.454 §40; 2003 c.539 §20; 2003 c.621 §90]

**308A.727 Change to open space use; additional taxes upon withdrawal; notification upon application.** (1) Land specially assessed under any of the special assessment laws listed in ORS 308A.706 (1)(d) shall be changed to open space use special assessment under ORS 308A.300 to 308A.330 if:

(a) Application for open space use special assessment is or has been made under ORS 308A.306;

(b) The land qualifies for open space use special assessment;

(c) The application for open space use special assessment is or has been approved under ORS 308A.309 and 308A.312;

(d) The open space use is for a golf course open to the general public with or without payment of fee or charge; and

(e) All or a portion of the land is within or is contiguous to an urban growth boundary.

(2) Land described in subsection (1) of this section shall not, upon the change from farm or forest use to open space use, be subject to any of the additional taxes ordinarily applicable when land specially assessed under one of the special assessment laws listed under ORS 308A.706 (1)(d) is disqualified, declassified or otherwise removed from such special assessment.

(3) When land that has been changed from special assessment as farm or forest land to open space use special assessment under subsections (1) and (2) of this section is later withdrawn or otherwise removed from open space use special assessment, all the provisions of ORS 308A.300 to 308A.330 shall apply except that there shall be added to the amount of additional taxes imposed under ORS 308A.318 or 308A.321 and computed under ORS 308A.312 (3), the amount of the additional taxes that, except for subsections (1) and (2) of this section, would have been added at the time of the change.

However, in making the computation of the amount to be added under this subsection, the number of years specified in ORS 308A.703 shall be reduced by the number of continuous years of open space use special assessment in effect for the land pursuant to the change. At the time of the change to open space use and each year thereafter, the assessor shall determine and note upon the assessment and tax rolls the added amount of potential additional taxes, if any, that may become due under this subsection.

(4) For purposes of ORS 308A.324 and in construing any other provision of ORS 308A.300 to 308A.330, the amount of additional taxes added under subsection (3) of this section shall be treated as additional taxes imposed under ORS 308A.318 or 308A.321.

(5) Upon receipt of any application for open space use special assessment under ORS 308A.300 to 308A.330, the public official or agency shall notify the owner of the provisions of this section. [Formerly 321.795]

**308A.730 Application for special assessment following acquisition of land through government exchange; amount of additional taxes following disqualification.** (1) If land specially valued under ORS 308A.062, 308A.068, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 is acquired by a governmental agency or body as a result of an exchange of the land for land of approximately equal value held by the governmental agency or body and the land acquired from the governmental agency or body is not farm use land located within an exclusive farm use zone or is not land, the highest and best use of which is the growing and harvesting of trees of a marketable species, the owner shall make application for special valuation as farm or forest land in the manner provided under ORS 308A.077, 321.358, 321.706 or 321.839, whichever is applicable, as follows:

(a) If the exchange takes place prior to July 1, the owner shall file the application on or before August 1.

(b) If the exchange takes place on or after July 1, the owner shall file the application on or before April 1 of the following year.

(2) Failure to file an application as required under this section, or failure to otherwise meet the qualification for special valuation under the special assessment law for which application is made shall disqualify the land under ORS 308A.703. However, the amount of additional taxes imposed upon the disqualification under this subsection shall be equal to those that would have been imposed against the land transferred to the

governmental agency or body on account of the exchange were it not for ORS 308A.706 (1)(b).

(3) If an application filed under this section is for classification for farm use special assessment under ORS 308A.068, the owner shall have five years beginning with the first year of classification to meet the income requirements under ORS 308.372 and need not meet the two-year farm use requirements of ORS 308A.068.

(4) This section does not apply to an exchange of forestland to which ORS 308A.706 (1)(b) (relating to governmental exchange) applies. [Formerly 308.373; 2003 c.454 §§42,44; 2003 c.621 §91]

**308A.733 Withdrawal of change of special assessment application.** (1) Where any property has been granted special assessment for the purposes of property taxation under any of the special assessment laws listed in subsection (2) of this section, and the owner or other qualified person applies for a change in the classification under another special assessment law, the applicant shall have 30 days thereafter within which to withdraw the application, by giving written notice to the public official or agency to whom the applicant applied for the change in classification. If no notice of withdrawal is given by the applicant, the application shall be acted upon and the change in classification made, as otherwise provided by law.

(2) This section applies to the following special assessment laws:

(a) ORS 308A.050 to 308A.128 (relating to special assessment at value for farm use).

(b) ORS 321.257 to 321.390 (relating to special assessment as designated forestland in western Oregon).

(c) ORS 321.805 to 321.855 (relating to special assessment as designated forestland in eastern Oregon).

(d) ORS 321.700 to 321.754 (relating to special assessment as small tract forestland).

(e) ORS 308A.300 to 308A.330 (relating to classification as open space land).

(f) ORS 308A.350 to 308A.383 (relating to designation as riparian land). [Formerly 308.025; 2003 c.454 §§46,48; 2003 c.621 §92]

### **(Conservation Management; Effect on Disqualification)**

**308A.740 Legislative findings and declarations.** (1) The Legislative Assembly finds that it is in the interests of the people of this state that certain private lands be managed in a sustainable manner for the purpose of maintaining the long-term ecological, economic and social values that these lands provide.

(2) The Legislative Assembly declares that it is the policy of this state to encourage landowners to manage private lands in a sustainable manner through tax policy, land use planning, education and technical and financial incentives.

(3) The Legislative Assembly further declares that it is the policy of this state not to impose additional taxes on property, commodities or income if a landowner voluntarily forgoes, limits or postpones economic uses of private land for conservation purposes.

(4) As used in this section, "conservation" means the management of land, water and natural resources for the purpose of meeting human and ecological needs in a sustainable manner. [2001 c.708 §2]

**308A.743 Disqualification limited when land subject to conservation and management plan, conservation easement or deed restriction; procedural requirements.** (1) Land that is specially assessed under ORS 308A.050 to 308A.128, 308A.300 to 308A.330, 308A.403 to 308A.430, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, or land that is exempt from property tax under ORS 308A.350 to 308A.383, may not be disqualified from the special assessment or exemption, and may not be subject to additional taxes under ORS 308A.700 to 308A.733 or other law, if the property owner has:

(a) Entered into a wildlife habitat conservation and management plan, as described in ORS 308A.403 to 308A.430, approved by

the State Department of Fish and Wildlife; or

(b) Executed a conservation easement, as defined in ORS 271.715, or a deed restriction and the land:

(A) Is managed in compliance with the conservation easement or deed restriction; and

(B) Continues to meet the requirements for special assessment or exemption. The existence of the conservation easement or deed restriction may not cause the disqualification of the land from special assessment or exemption or preclude the disqualification of the land from special assessment or exemption for some other reason.

(2) A property owner who executes a conservation easement may convey the easement to a land trust or other qualified entity without a loss of benefits under this section.

(3) In order for land to be subject to this section:

(a) The conservation easement, deed restriction or wildlife habitat conservation and management plan must be recorded in the records of the clerk of the county in which the land is located; and

(b) A copy of the conservation easement, deed restriction or wildlife habitat conservation and management plan, along with the property tax account number for the land, must be sent to the county assessor. [2001 c.708 §3; 2003 c.454 §§50,52; 2003 c.539 §35; 2003 c.621 §93]

**DIVISION 308A**

**ASSESSMENT OF PROPERTY FOR TAXATION**

- 150-308A.056** Farm Use Definitions and Inactivity Due to Illness
- 150-308A.059** Description of Lands in Farm Use
- 150-308A.062** Assessment of Farmlands Within Exclusive Farm Use (EFU) Zones
- 150-308A.068** Assessment of Farmlands Outside of Exclusive Farm Use (EFU) Zones
- 150-308A.071** Gross Income Requirement
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**DIVISION 308A**

**ASSESSMENT OF PROPERTY FOR TAXATION**

- 150-308A.056**  
**Farm Use Definitions and Inactivity Due to Illness**
  - (1) Definitions:
    - (a) "Farm use" is defined in ORS 308A.056 and applies to land both inside and outside exclusive farm use zones.
    - (b) "Wasteland" includes but is not limited to swamps, rock outcroppings, gullies, unusable overflow lands and drainage ways.
      - (A) Wasteland does not include tillable lands left idle or uncultivated and non-tillable grazing lands left unused when the accepted farming practice is to utilize the land.
      - (B) Wasteland does include land described in subsection (A), if the owner can show that it is uneconomical to utilize the land as part of the farm unit. Utilizing the land is uneconomical if the costs to raise crops or animals exceeds the value of the crops or animals. Examples in which it would not be economical to utilize the land include:
        - (i) An unfenced area of grazing land where the annualized cost of fencing would exceed the income derived from the land.
        - (ii) An area of a farm that was only profitable through irrigation is now unused because the cost of electricity to operate the irrigation pumps increases expenses beyond the income that can be derived from that area of land.
      - (C) Wasteland caused by the taxpayer, owner, or person in control of the property is not entitled to special farm use assessment. Examples of taxpayer created wasteland include "mined out" land where gravel, soil, or other minerals have been extracted, and mine tailing refuse areas.
      - (c) "Land" includes all mines, minerals, quarries, dikes, banks, drainage tile, water rights, and the like. See ORS 307.010. Since ORS 308A.056 relates only to land used for farming, any mineral reserves under the land continue to be assessed at real market value as defined by ORS 308.205. Minerals include oil and gas. Severed mineral

interests, even though underlying zoned farmland, are assessed to the owner in accordance with ORS 308.115.

- (d) For the purpose of assessment of land in farm use, "land" does not include:
  - (A) Buildings.
  - (B) Structures.
  - (C) Improvements, unless their contribution is an integral part of the income attributable to the land.
  - (D) Machinery.
  - (E) Equipment.
  - (F) Land improvements for homesites.
  - (G) Fixtures erected upon or affixed to the land itself.
  - (H) Land used for a nonfarm residence or other nonfarm purposes.

(e) "Illness" means sickness, disease, injury or disorder of body or mind which prevent the farmer or immediate family member from performing necessary farm operations.

(f) For purposes of subsection (e): "Immediate family member" means the farmer's spouse, their children living and working on the farm, or any person for whom the farmer has a legal responsibility including but not limited to guardianship of a dependent parent or child.

(2)(a) Farm inactivity for one year or less due to illness of the farmer or an immediate family member does not disqualify the property from farm use special assessment or continuation of abatement.

(A) Proof of illness must be provided by a written statement from a licensed medical practitioner to the assessor. The statement must identify the nature of the illness, the onset of the illness, and the extent of its debilitating nature.

(B) The timing of the illness must prevent farming practices.

(b) For meeting the farm income requirements of ORS 308A.071 and 308A.119, the year of farm inactivity due to illness is not counted as one of the five years for income or abatement determination.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.380 & 308A.056

Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(C)

**150-308A.059**  
**Description of Lands in Farm Use**

(1) "Farm Unit" means a farming enterprise which includes all parcels being farmed by a single operator, whether the operator owns or leases the farmland.

(2)(a) The law seeks to give the benefits of ORS 308A.062 and 308A.068 to that farmland which is operated primarily for the purpose of obtaining a profit in money.

(b) The assessor must consider all the requirements of ORS 308A.056 and must be convinced that not only such requirements are met but, in addition, the land must be used in a manner that is reasonably designed and intended to give rise to a profit in money by accepted farming practices. If the primary purpose of the current use of the land is not to obtain a profit in money, the land is not farm use land. This primary purpose must be ascertained from overt acts. The assessor should consider all pertinent facts in reaching a conclusion as to whether the use of a particular parcel of land qualifies as farm use land. For example, one or more of the following considerations may be pertinent:

(A) Present and past use of the land.

(B) If the farming operation is conducted by another for the owner, the provisions of the oral or written agreement including the term, area let, consideration, and provisions for termination.

(C) Participation in governmental or private agricultural programs or activities.

(D) Productivity of the land.

(E) Number of livestock or poultry (by type).

(F) Amount of last harvest of each crop.

(G) Gross income from crops, livestock and livestock products.

(H) Uses of the land for other than farming operation.

(I) Ratio of farm or agricultural use as against other uses of the land.

(3) Any part of a farm unit which is being used for a non-farm use must be disqualified.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.380 & 308A.059

Hist.: 12-63; 1-66; 2-68; 3-70; 9-71; 11-73; 3-76; 12-31-77; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered from 150-308.380; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(A)

**150-308A.062**

**Assessment of Farmlands Within Exclusive Farm Use (EFU) Zones**

(1)(a) Zoned farm use land means land that is zoned as farm use land pursuant to ORS 215.010 to 215.190.

(b) Real market value is the basis for the assessment of farmland not qualified to be assessed at farm use value. Real market value is defined in ORS 308.205.

(2) Qualification and Disqualification Dates:

(a) To be entitled to farm use assessment, land must be qualified as of January 1 each year. Often, qualifying farm use land is not farmed during the winter months which include the qualifying date of January 1. If land is not employed in farm use on January 1, the assessor may look at the prior year's usage of the land to determine qualification for January 1.

(b) Farm use disqualifications take effect July 1 following the disqualification.

(3) Appeal on the question of qualification for special assessment as farm use land: An appeal from a decision of the assessor concerning qualification for special assessment as farmland under ORS Ch. 308A is made directly to the Magistrate Division of the Tax Court under ORS 305.275(1) (also see ORS 305.280). It is not made through an appeal to the county Board of Property Tax Appeals.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.370 & 308A.062

Hist.: 12-63; 1-66; 2-68; 3-70; 9-71; 11-73; 12-75; 12-31-77; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.370

**150-308A.068**

**Assessment of Farmlands Outside of Exclusive Farm Use (EFU) Zones**

(1)(a) To qualify for assessment at its farm use value, land not within an exclusive farm use zone:

(A) Must be currently employed in a qualifying farm use;

(B) Must have been used for farm use for the two years preceding the current assessment year;

(C) Must have met the income requirement for three out of the last five years and;

(D) Must have an application filed with the assessor meeting the requirements of ORS 308A.077.

(b) Real market value is the basis for the assessment of farmland not qualified to be specially assessed at farm use value. Real market value is defined in ORS 308.205.

(2) Qualification and Disqualification Dates:

(a) To be entitled to farm use assessment, land must be qualified as of January 1 each year. Most land is not farmed during the winter months including January 1. If land is not employed in farm use on January 1, the assessor may look at the prior year's usage of the land to determine qualification for January 1.

(b) All farm use disqualification takes effect July 1 following the disqualification.

(3) Effect of lease or option to buy surface rights. If any owner of land outside an EFU zone grants and has outstanding a lease or option to buy surface rights of such land that permits other than farm use of all or a portion of the land, that land subject to such other use is not qualified for special farm use assessment under ORS Ch. 308A. Leases for hunting, fishing, camping or other recreational use or the exploration of geothermal, mineral or other subsurface resources will not disqualify the land if the exploration, use, or possession does not interfere with the farm use of the farmland. The

income derived from such leases will not be included for the income test.

(4) Appeal on the question of qualification for special assessment as farm use land: An appeal from a decision of the assessor concerning qualification for special farm use assessment under ORS Ch. 308A is made directly to the Magistrate Division of the Tax Court under ORS 305.275(1) (also see ORS 305.280). It is not made through an appeal to the county Board of Property Tax Appeals.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.380 & 308A.068

Hist.: 12-63; 1-66; 2-68; 3-70; 9-71; 11-73; 3-76; 12-31-77; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(B)

**150-308A.071**

**Gross Income Requirement**

(1) *Income From Consumed Products.* For purposes of the income requirement for farmland or a farm parcel outside an exclusive farm use zone, gross income includes the value of any crop or livestock used by the owner personally or in the farming operation. The owner must keep records accurately reflecting both the value and the use of the crop or livestock in a manner consistent with generally accepted accounting practices. The value of any crop or livestock used by the owner personally or in the farming operation is the amount of money the product would have been sold for in the normal marketing of the crop or livestock by the taxpayer. However, the value of products consumed, by the owner personally or in the farming operation, must constitute no more than 49 percent of gross income as required under ORS 308A.071.

(2) *Adjusted Gross Income From Livestock.* In determining gross income from livestock, the purchase cost must be deducted from the gross sales price.

(3) *Burden of Proving Income.* The burden of proving that property that is not within an exclusive farm use zone meets the gross income requirements of ORS 308A.071 is upon the owner or person claiming special assessment. This burden is met if information establishing sufficient gross income is supplied to the county assessor as provided below. A failure to provide the required income information to the county assessor constitutes grounds for disqualification under ORS 308A.116(1)(c).

(4) *Income Information.* The following procedures apply if the assessor lacks sufficient information on March 1 to support a determination that land not in an EFU zone qualifies for special farm use assessment.

(a) On or before March 1, the assessor must send notice to the owner or person claiming special assessment of the need to provide income information for property subject to special assessment. The assessor must include an income information questionnaire with the notice. The property owner must use the questionnaire to provide income information to the county assessor. The property owner must provide the income information to the county assessor no later than April 15.

(b) The assessor must send the notice and the questionnaire to the last known address of record of the owner or person claiming special assessment for the subject property. The notice and questionnaire must be in a form approved by the Department of Revenue.

(c) If the information provided to the county assessor is sufficient to determine whether or not the subject property is qualified for special assessment, the assessor must take the appropriate action.

(d) If the information provided to the county assessor is insufficient to make a determination as to the qualification of the subject property for special assessment, or if no information is provided, the assessor must send a notice to the last known address of record for the owner or person claiming special assessment. The notice must be in a form approved by the Department of Revenue and must include:

(A) A statement of the assessor's intent to disqualify the subject property; and

(B) A statement that within 30 days after the date of the mailing of the notice, the owner or person claiming special assessment may appear and show cause why the property should not be disqualified.

(e) In determining whether the subject property qualifies for special assessment, the assessor must take into consideration information obtained through the income information questionnaire, the show cause hearing and the county assessor's records.

(f) If property is disqualified from special assessment solely because no income information was provided by April 15, or within the 30 days of assessor's notice of intent to disqualify, the property owner may file an appeal with the Magistrate Division of the Tax Court.

(A) "Good and sufficient cause" has the meaning given in OAR 150-307.475. The failure of the county assessor to provide the notice required in subsection (a) of this rule on or before March 1 constitutes good and sufficient cause for the owner's failure to provide timely income information.

(B) The procedural requirements contained in this rule are in addition to the requirements of ORS 308A.718.

(C) Nothing contained in this rule alters the right of a person claiming special assessment to deferral and abatement of additional tax, pursuant to ORS 308A.119.

(D) Nothing contained in this rule precludes the assessor from continuing special assessment on farmland if the assessor determines that the property meets the qualifications.

(5) The assessor may send a copy of the income information received by the assessor under subsection (3) of this rule to the Department of Revenue.

(6) *Examples: Satisfying income requirements:*

(a) A ten acre parcel in an area not zoned EFU has never been used for farm purposes. For this parcel to qualify for special farm use assessment, the owner must develop an income history from farm uses of the parcel. The parcel will meet the income requirements of ORS 308A.071(2)(a) if it produces at least \$1,000 gross income in each of the last three consecutive years or in any three of the last five consecutive years.

(b) A ten acre parcel was segregated from a larger farm one year ago. The land was not farmed during the year following segregation. In order to qualify for farm use assessment, the parcel must be farmed for two successive years (ORS 308A.068(1)) and meet the income requirement of at least \$1,000 in one of the two years (assuming the large farm met the income requirement before the ten acre parcel was segregated).

(c) A four acre parcel in an area not zoned EFU has been farmed continually. The income has never exceeded \$300. In order to qualify for special farm use assessment, the parcel must produce at least \$650 in gross income per year for any three years during any consecutive five year period.

(d) A twenty two acre parcel in an area not zoned EFU includes a ten acre farm woodlot, four and one-half acres of three year old cherry trees, five acres of pasture, two acres of wasteland and a one-half acre non-farm homesite. The five acres of pasture must have produced at least \$650 gross income in one of the last three years (assuming the property met the income requirement in the two years preceding the planting of the cherry trees) to remain qualified for special assessment. The one-half acre non-farm homesite (at market), the immature cherry orchard (see ORS 308A.056(3)(d)), the farm woodlot (see ORS 308A.056(3)(h), and the wasteland (see ORS 308A.074)) are not counted in determining the number of acres to be considered under ORS 308A.071(2)(a). The wasteland in a non-EFU zone does not qualify because it is not currently employed under ORS 308A.056(3), and should not be in the calculation for the income test.

**NOTE:** In order for the two acres of wasteland to be assessed at its farm use value under ORS 308A.074, and the homesite to be valued under ORS 308A.256, the owners must meet an adjusted gross income test and file an annual application.

(7) The farmland owner or the operator of the farm unit must file the required excise or income tax returns including a Schedule F or a schedule showing rental income or expenses of each farmland owner or the operator of the farm unit.

(a) The assessor may require the farmland owner or farm unit operator provide a copy of the income tax returns and schedules showing farm income. Failure to provide required income information including copies of the required tax returns and schedules is grounds for disqualification.

(b) Copies of income tax returns and schedules of farm income are confidential and must be safeguarded in accordance with OAR 150-192.501.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.372 & 308A.071  
 Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.372

**150-308A.074**

**Wasteland**

"Wasteland" has the same meaning as defined in OAR 150-308A.056(1)(b).

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308A.074  
 Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

**150-308A.080**

**Acquired Land as Part of Farming Unit**

Land not in an exclusive farm use zone (non-EFU) that is acquired by an owner of a qualifying farm unit may be added to the farm unit if:

(1) Newly acquired land is put to a farm use in a timely manner consistent with accepted farming practices. There is no requirement that a previous owner used the land for farming.

(2) The owner, described in ORS 308A.077(2)(b), files an application with the county assessor on or before April 1 preceding the first tax year for which special farm use assessment is requested.

(a) The first year the acquired property may be eligible for special assessment is the calendar year following acquisition.

*Example:* Non-EFU property acquired February 10, 1999. Calendar year 2000 is the first year after acquisition. Therefore, the first year that this property could receive special assessment is tax year 2000-01 and applications for tax year 2000-01 special farm use assessment are due April 1, 2000.

(b) There is no requirement that the taxpayer seek or receive special farm use assessment for the property for its first eligible tax year.

*Example:* Non-EFU property acquired February 10, 1999. Although the acquired property was put into farm use immediately after purchase, the owner decided to wait three years before applying for special assessment. For this property to be placed under special assessment for tax year 2003-04, the taxpayer must apply by April 1, 2003.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.374 & 308A.080  
 Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.374

**150-308A.092**

**Valuation of Certain Agricultural Land to Reflect Value for Farm Use Only**

(1) Certain farm properties are set aside under a government payment program such as the federally administered Conservation Reserve Program (CRP). The payments received for farmlands placed in these conservation programs must not be used as income for computing farm use values. Income data from similar lands that are not included in the conservation programs should be used instead to compute farm use values. New farm use values must be computed each year as though the land in the conservation programs was being used for a farm use.

**NOTE:** Acreage that is not in an exclusive farm use zone, and is under a farm-related government conservation program, is not subject to the gross income requirements.

(2) Values for farm use are to be determined on the basis of highest and best agriculture use, regardless of how the land is currently used and employed in agriculture.

*Example 1:* The land is capable of raising wheat, but the owner elects to pasture the property. The highest and best agricultural use of the property is as wheat land, so the farm use value would be based on wheat land.

*Example 2:* The land is capable of raising wheat, but the owner adds site improvements to enable the planting of an orchard. The highest and best agricultural use is now as orchard land, so the farm use value would be based on orchard land.

(3) If the owner of land assessed as farm use land contends the assessor's farm use value is not correct, the value may be appealed to the county Board of Property Tax Appeals as provided by ORS 309.100. An appeal from an adverse decision of the board may be filed with the Magistrate Division of the Tax Court as provided by ORS 305.275(2) (also see ORS 305.280). If the board has determined the farm use value is not in excess of \$250,000, the owner may elect small claims treatment in the Magistrate Division.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.345 & 308A.092  
 Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.345

**150-308A.107**

**Calculation of MSAV When SAV Soil Classification is Changed**

(1) Definitions:

(a) "MSAV" means maximum assessed value for property subject to special assessment (maximum specially assessed value).

(b) "SAV" means specially assessed value.

(c) "MSAV tables" are the tables that provide a maximum assessed value per acre equal to 103% of the maximum assessed value per acre from the previous assessment year. The county assessor is required to develop these tables for each assessment year under ORS 308A.107(3)(b).

(2) When an SAV soil classification as provided by the assessor in each county is changed, the MSAV must use corresponding soil classification values from the MSAV Table if:

(A) There is a physical change such as, but not limited to:

(A) Irrigation is added.

(B) Irrigation is removed.

(C) Soil movement caused by slides, erosion, flooding, wind, etc.

(D) Soil is depleted indefinitely due to extended over use of crop.

(E) Soil is enhanced due to extensive additives to the soil.

(F) Trees are removed so that cultivation can take place and previous classification was based in part on the inability to cultivate.

(G) Rocks and other debris are removed to enhance cultivation.

(H) Site improvements are added including but not limited to drainage system, fill, contouring, leveling, and diking.

(b) There are specific non-physical changes such as:

(A) Comprehensive soil reclassification due to a new published government agency soil survey.

(B) Land class acreage adjustments to implement a GIS mapping system.

(C) The assessor reasonably determines that a property's land is no longer in the same land class that it was in during the prior assessment year. The assessor's determination that the land is no longer in the same land class cannot be arbitrary, but must be based on preexisting criteria for the respective land classes. The preexisting criteria for the respective land classes must be clear, objective, consistently applied and uniform within the county. Land classification changes must be the result of the reasonable application of the pre-existing criteria to the actual condition of the land.

(3) The assessor must calculate the corresponding MSAV for new SAV soil classes using the following procedure:

(a) Divide the average MSAV for all soil types by the average SAV for all soil types to derive a changed property ratio.

(b) Multiply the SAV value of the new soil type by the changed property ratio to obtain the MSAV for the new soil class.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.370 & 308A.107  
 Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.370(5)

**150-308A.113**

**Disqualification of Exclusive Farm Use Farmland; Site Inspection and Notation**

(1)(a) Before Exclusive Farm Use (EFU) land is disqualified from farm use assessment due to discovery by the assessor that the land is no longer being devoted to a farm use, the assessor must:

(A) Make a reasonable effort to contact the owner, owner's agent or person using the land;

(B) Make a site inspection of the property; and

(C) Request the recent history of the property's use.

(b) The assessor must make a record of the inspection that includes when the inspection was made, who made the inspection, copy of contact letter(s) or record of other means of contact, information from the person contacted, and notations of the conditions found. Notations about the conditions found may include the farm uses being made of the property, areas having no apparent farm use, vegetation on the property and its condition, whether the property is fenced and the fence's condition, and other conditions of the property that indicate a farm use or lack of farm use. The record of inspection must be retained in the assessor's office for at least three years.

(2) If property disqualification is effective after June 30, the EFU property will remain valued for farm use on the assessment and tax roll until the following July 1.

(a) Disqualification for non-farm use occurs as of the January 1 assessment date and is effective as of June 30 if the disqualification notice is mailed on or before August 14.

(b) If EFU property disqualification is effective on or before June 30 for any reason other than for non-farm use, to be valid the notice must be mailed within 30 days after the date that land is disqualified.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.397 & 308A.113  
 Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.397

**150-308A.116**

**Disqualification of Non-Exclusive Farm Use (Non-EFU) Farmland; Site Inspection and Notation**

(1)(a) Before non-EFU land is disqualified from farm use assessment due to discovery by the assessor that the land is no longer being devoted to a farm use, the assessor must:

(A) Make a reasonable effort to contact the owner, owner's agent or person using the land;

(B) Make a site inspection of the property; and

(C) Request the recent history of the property's use.

(b) The assessor must make a record of the inspection that includes when the inspection was made, who made the inspection, copy of contact letter(s) or record of other means of contact, information from the person contacted, and notations of the conditions found. Notations about the conditions found may include the farm uses being made of the property, areas having no apparent farm use, vegetation on the property and its condition, whether the property is fenced and the fence's condition, and other conditions of the property that indicate a farm use or lack of farm use. The record of inspection must be retained in the assessor's office for at least three years.

(c) If the inspection indicates a farm activity being conducted which may not provide sufficient income to satisfy the income test, the assessor must demand that the landowner complete an income questionnaire.

(2) If property disqualification is effective after June 30, the non-EFU property will remain valued for farm use on the assessment and tax roll until the following July 1.

(a) Disqualification for non-farm use occurs as of the January 1 assessment date and is effective as of June 30 if the disqualification notice is mailed on or before August 14.

(b) If non-EFU property disqualification is effective on or before June 30 for any reason other than for non-farm use, to be valid the notice must be mailed within 30 days after the date that land is disqualified.

Stat. Auth.: ORS 305.100  
 Stats. Implemented: ORS 308.390 & 308A.116  
 Hist.: 8/64, 1/66; 2/68; 3/70; 9/71; 11/73; 12/31/77; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.390

**150-308A.250**

**Definition of Specially Assessed Homesites**

(1) "Homesite" as defined in ORS 308A.250(3) includes site developments as defined in OAR 150-307.010(1)(2)(a)(A) and amenities associated with the raw, undeveloped land such as topography that affords the site a particular view, river frontage, property access, and utility access.

(2) A forest homesite qualified under ORS 308A.253(1) must be located on a parcel of land with greater than 10 acres of specially assessed forestland, that is zoned exclusive farm use (EFU), forest use, or farm and forest use.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.229 & 308A.250

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.229

**150-308A.253**

**Application for Specially Assessed Homesite**

(1) A homesite on a farm use parcel in an exclusive farm use (EFU) zone qualified under ORS 308A.253(5) will receive the special valuation with no application.

(2) A forest homesite qualified under ORS 308A.253(4), in an EFU, forest use or farm and forest use zone will receive the special valuation with no application.

(3) If a homesite qualified under ORS 308A.253(5) is not within an EFU zone, an annual application must be filed with the assessor on or before April 15 of each year the farm use special assessment is desired. The farmland on which the homesite sits must be operated as part of a farm unit that produced over one-half of the adjusted gross income of the owner or owners in the year prior to application.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.253

Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

**150-308A.256**

**Qualified Specially Assessed Homesite Valuation**

(1) Definitions:

(a) "Parcel" is a quantity of land that is capable of being described in a single description by a closed traverse, or as one of a number of subsections or sections in a township(s), or as lots, blocks, or tracts in a subdivision. A "parcel" may consist of one or more tax lots.

(b) "Contiguous" means having a common boundary to some extent greater than a point. Parcels are contiguous if separated by public or county roads, state highways, or non-navigable streams or rivers. Parcels are not contiguous if they are separated by interstate freeways, or navigable streams or rivers, except where there is direct connecting access, such as an underpass, for property separated by an interstate freeway.

(c) "Site Developments" has the same meaning as in OAR 150-307.010(1) (2)(a)(A).

(d) "Land Improvements" is synonymous with "site developments."

(e) "Same Ownership" — to be considered the "same ownership," separate land accounts (tax lots) must have a common name in the property title. For example, a parcel owned by a wife just in her name is under the same ownership as a parcel she owns jointly with her husband. Properties do not have the "same ownership" if one parcel is owned by a husband and wife and the other parcel is owned by a corporation even though the corporation is owned by the husband and wife.

(f) "MSAV" means maximum assessed value for property subject to special assessment (maximum specially assessed value).

(2) Land comprising homesites for dwellings being used in conjunction with farm use in EFU zones, qualifying homesites outside the EFU zones, and qualified forest homesites must be valued at the special value provided by ORS 308A.256. Land comprising a non-qualifying homesite must be assessed at its real market value as defined in ORS 308.205 pursuant to 308A.259.

(3) The method for determining the value for a qualified homesite is the same whether the homesite is located within an exclusive farm use (EFU) zone, an area not zoned for exclusive farm use (non-EFU), or for forest homesites as defined in ORS 308A.253(1).

(a) The first step in valuing a qualified homesite is to determine the total number of acres of the "parcel" and contiguous acres under the same ownership.

(b) The second step is to determine the bare land average per acre real market value (RMV) of the parcel. To do this:

(A) First, determine the total bare land RMV (including river-front, view, etc.) for the parcel and contiguous acres under the same ownership on which the homesite is located.

(B) Second, divide the total bare land RMV of the parcel and contiguous acres under the same ownership by the total number of acres in the parcel and contiguous acres under the same ownership.

(C) The result is the average RMV for one acre of the parcel and contiguous acres under the same ownership.

(c) The third step is to determine the specially assessed value (SAV) of the "land improvements." The SAV of land improvements are to be valued at \$4,000, or the depreciated replacement cost of the items that make up the land improvements, whichever is less.

(d) The average RMV of one acre of the land plus the land improvement SAV equals the total "homesite" SAV. However, the land improvement value must be carried as a separate item on the land record as specified in OAR 150-307.010(1) (2)(a)(B).

(4) Calculation of homesite MSAV.

(a) For the 1997-98 tax year, the MSAV on homesites qualified for the 1995-96 tax year and before equals the homesite's SAV for the 1995-96 tax year reduced by 10 percent.

(b) For the 1997-98 and subsequent tax years, the MSAV of any newly qualified homesite equals the product of the residential rural property class 4-X-X changed property ratio multiplied by the farm or forest homesite SAV. The MSAV for a homesite first qualified for the 1996-97 tax year is calculated under this subsection for the 1997-98 tax year.

(c) Once the MSAV of a homesite has been established by subsection (a) or (b) above, the MSAV increases 3% each year thereafter.

(5) The assessed value of a qualified farm or forest homesite equals the lesser of the homesite's SAV or the homesite's MSAV.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.377 & 308A.256

Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.377

**150-308A.315(4)**

**Ratio Calculation for Open Space Lands**

(1) An open space ratio must be applied to the open space special assessed value of newly designated open space lands to determine a maximum specially assessed value. The Department of Revenue will annually calculate a statewide ratio for open space lands.

(a) Counties with 10 or more open space accounts must develop and apply their own ratio.

(b) Counties having less than 10 open space accounts must use the statewide ratio.

(2) The ratio is calculated by dividing:

(a) The total current year maximum specially assessed value of land for all open space accounts (prior year's maximum specially assessed value multiplied by 103 percent), by

(b) The total current year specially assessed value of land for the same open space accounts.

(3) Only land that is specially assessed as open space may be used in the open space ratio calculation.

(4) Property that may not be used in developing the open space ratio calculation includes:

(a) Land that is valued under another special assessment program;

(b) Land that does not qualify for open space assessment;

(c) Any portion of an account that is assessed at market value, such as buildings;

(d) New open space accounts; and

(e) Disqualified accounts.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.315

Hist.: RD 9-1997, f. & cert. ef. 12-31-97; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02, Renumbered from 150-308.765

**150-308A.703**

**When to Impose Additional Tax**

(1) Additional Tax Computation:

(a) Additional taxes computed for 1991–92 tax year and thereafter equal the difference between the taxes assessed against the land in that year and the taxes that would have been assessed against the land had the land not been in farm use.

(b) Additional taxes computed for the years of special assessment prior to the 1991–92 tax year equal the difference between the real market value and the specially assessed value for the last year of special assessment prior to the 1991–92 tax year times the tax rate for that tax year times the number of remaining years the special assessment was in effect.

(2) Under certain circumstances, farm use special assessment may be disqualified after July 1 and advance collection of additional taxes made. Disqualifications made under these circumstances are for the next tax year, therefore, the property will remain at its value for farm use on the tax roll until the following July 1. The collection of the additional tax is provided for in subsection (3). The specific circumstances for this type of disqualification are as follows:

(a) For non exclusive farm use (Non-EFU) zoned farmland:

(A) Subdivision plats under Chapter 92;

(B) At the owner’s request.

(b) For exclusive farm use (EFU) zoned farmland, a non-farm dwelling under ORS 215.236.

(3)(a) Collection of Additional Tax: Advance collections of the additional tax made under the provisions of ORS 311.370 are entitled to the discount allowed by ORS 311.505 if the assessor can compute the exact amount of the additional tax at the time the taxes are paid. If the assessor is unable to determine the exact amount due, the discount is allowed when final settlement is made at the time taxes are regularly due, as provided by ORS 311.370.

(b) Any additional tax entered on the tax roll becomes part of the tax extended against the property and is collected in the same manner as other real property taxes. ORS 311.505 governs whether a discount is allowed or interest is charged.

(4) Distribution of Additional Tax: The total amount of the additional tax added to the tax roll must be apportioned between the taxing districts in which the property is located.

(a) The apportionment must be based on the ratio that the billing tax rate of each district bears to the total billing tax rates on the property, as shown on the tax roll on which the additional tax is entered.

(b) In preparing the certificate of the tax roll under ORS 311.105, the assessor must add the additional tax due to each taxing district to the total amount to be raised for each district under ORS 311.105. The amount of additional tax due to each taxing district must be included in the percentage distribution schedule computed by the tax collector under ORS 311.390.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.703

Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

**150-308A.706**

**No Additional Tax; Notation Remains**

(1) In any case where additional tax is deferred under ORS 308A.706, the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

(2)(a) When specially assessed farmland situated within an exclusive farm use (EFU) zone is transferred to a government ownership making it exempt, the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

(b) If the use of the land changes to a use inconsistent with a purpose to returning the land to farm use, the additional tax will not be imposed but will remain a lien since the government owner is exempt from taxation.

(3) If the disqualification results from the failure of the land to meet the gross income requirement, the additional taxes will not be imposed as long as the land continues to be used as farmland.

(4) If disqualification results solely because the land is no longer being devoted to a farm use and if the land is not being used for another use, the additional tax will not be imposed and the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.706

Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

**150-308A.712**

**Deferred Additional Tax (ORS 308A.706); When to Collect**

(1)(a) When a non-exempt owner acquires exclusive farm use (EFU) farmland that was exempt because it was government owned, any amount designated by the county assessor as potential additional taxes must be added to the next general tax roll by the tax collector if the land is used for purposes inconsistent with returning the land to farm use.

(b) Non-EFU farmland liens are collected regardless of use when a non-exempt owner acquires farmland that was disqualified under ORS 308A.116(1)(b) and had liens attached under 308A.703(5).

(2) For additional information on collection and distribution of additional tax, see OAR 150-308A.703(3) and (4).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.712

Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

**150-308A.718**

**Disqualification Notification Procedures**

(1) Notice of Disqualification:

(a) A notation must be made on the assessment and tax roll on or before June 30 to indicate that a disqualification of farmland, forestland, or a homesite as listed in ORS 308A.718 has taken place. The assessor must mail notice to the owner or person claiming special assessment within 30 days after the date that land is disqualified.

(b) If the disqualification occurs because the land is no longer in farm or forest use, as described under ORS 308A.113(3) (Exclusive Farm Use), 308A.116(6) (Non-Exclusive Farm Use), 321.366 (Western Oregon forestland), or 321.845 (Eastern Oregon forestland), the disqualification is effective only if the notice of disqualification is mailed on or before August 14.

(2) The notice to the person claiming special assessment must state:

(a) That the subject property has been disqualified from special assessment;

(b) That the property will be assessed under ORS 308.156;

(c) The amount of the additional tax liability that will be imposed or if the land is not used for another use the amount of the potential additional tax liability (ORS 308A.706(1));

(d) Provisions and timing for change of type of special assessment under ORS 308A.724; and

(e) Appeal rights.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.399 & 308A.718

Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.399; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

**150-308A.724**

**Owner Requests Change to a Different Special Assessment**

The filing date provisions of ORS 308A.724 only apply to an owner of property which has either been disqualified by the assessor or declassified by the State Forester under ORS 321.760. When such land is changed to a different special assessment that is a part of ORS 308A.706(1)(d) at the request of the owner, the provisions and filing dates of the special assessment requested by the owner apply.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.960 & 308A.724

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-321.960-(B)