

SB

240

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

JAN 31 1994
P.O. BOX 25526
JUNEAU ALASKA 99802-5526
PHONE: (907) 465-4105/4125
FAX: (907) 465-4759

January 25, 1994

The Honorable Gary Davis
Alaska State Legislature
State Capitol, Room 15
Juneau, AK 99811

Dear Representative Davis:

Your staff requested information on tax incentive programs from other states that are similar to the Kenai program established by SB236/HB306. Based on conversations with other state fish and wildlife management agencies and The Nature Conservancy, the State of Oregon may have the only riparian tax incentive program specifically directed at restoring or enhancing degraded fish habitat. I have included the following information on the Oregon program: (1) a three page public information summary (prepared by Oregon Department of Fish and Wildlife); (2) the enabling Oregon Statutes (§316.084 and notes); and (3) the riparian lands tax incentive program regulations.

It is important to note that there are several key differences between Oregon's program and that proposed in SB236/HB306:

- Tax relief in the Oregon program is from state property tax exemption and personal income tax. Since Alaska does not have either a state property or personal income tax, such a program cannot be developed for Alaska. The proposed legislation allows a credit against municipal property taxes.
- The Oregon program is not regionally focussed (i.e., restoration/enhancement projects can occur on any river or stream), whereas the SB236/HB306 focus on a specific watershed -- the Kenai River and its tributaries.
- Both the Oregon riparian personal tax credit program and the proposed legislation provide for project certification by the state fish and wildlife/habitat management agency -- the agency with expertise in whether a project would restore or enhance fish habitat.

1/25/94

ADF&G HABITAT DIVISION LETTER

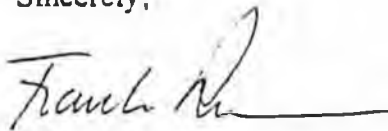
Representative Gary Davis

January 25, 1994

Based on discussions with staff at the Oregon Department of Fish and Wildlife, the principal defects in Oregon's riparian tax incentive program involve the lack of a watershed focus and an inadequate monetary incentive for landowners to protect common property resources. Consequently, there has been little landowner participation in the Oregon program and it has had limited success in protecting fish habitat. SB236/HB306 addresses these concerns by focusing on the Kenai River and allowing for a maximum exemption of up to 50 percent of project costs.

I hope this addresses your needs. Let me know if I can provide additional information.

Sincerely,



Frank Rue
Director

Enclosures

cc: Representative Gail Phillips
Senator Suzanne Little
Representative Mike Navarre
Senator Drue Pearce
Gerry Gallagher, DNR
Lance Trasky
Geron Bruce

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 26, 1994

SUBJECT: Tax credit for river habitat protection improvements (SB 240)

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director *TBC*

Here is the sectional summary you requested.

Sec. 1. Permits a municipality to provide for a river habitat protection credit by ordinance to be applied to offset property taxes on land upon which an improvement has been constructed that aids in protecting the Kenai River or a tributary of that river or restoring fish habitat in the Kenai River or a tributary.

The amount of the credit must be based on a percentage of the costs of the improvement. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws and certified by the Department of Fish and Game. A credit may not be granted for certain types of improvements listed.

The Department of Fish and Game is required to establish by regulation criteria to be used in determining whether an improvement qualifies for a credit.

TBC:lmb
94-025.lmb

Alaska State Legislature

During Interim:
3111 C Street, Suite 150
Anchorage, AK 99503-3925
(907) 561-2038
Fax (907) 561-4194



During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce
District F

Sponsor Statement

This bill would permissively authorize the Kenai Borough to offer credits against real property taxes whenever a land owner completes an eligible project to protect or restore river bank fish spawning habitat. Eligible projects would be determined by the Department of Fish and Game. The Kenai River municipalities would pass the ordinances needed to administer the program within their jurisdiction.

This bill would provide the Kenai Peninsula Borough with an additional tool to protect fisheries resources along the Kenai River. Senate Bill 240 sets parameters that allow local governments flexibility in determining their needs and interests, while protecting river bank habitats. No local government is required to offer these credits. If the program proves effective on the Kenai River, it may serve as a pilot project for other areas of the state.

I introduced this bill in cooperation with the Kenai Borough and Mayor Don Gilman and have worked extensively with them to develop this language.

RESOLUTION #94-1, February 10, 1994

A Resolution related to tax assessments on lands along the Kenai River

Introduction:

It is the mission of the Kenai River Special Management Area Advisory Board to assist the Department of Natural Resources in preserving and protecting the fish and wildlife habitat and resources on the Kenai River, and to promote the recreational opportunities on the river.

Whereas since the inception of the KRSMA in 1984, we have found that:

1. Protecting existing riparian river habitat in its natural state is extremely critical for the habitat needs of Kenai River fish; and
2. Valuable riparian habitat along the Kenai River is being subjected to more and more development pressure as private property is developed for commercial and private use; and
3. Encouraging river bank landowners to voluntarily protect the river banks and rehabilitate damaged riparian habitat lands is a high priority for restoring the full vitality of fish habitat on the Kenai River; and
4. Property tax assessment laws require that any improvements, even for rehabilitating damaged river banks, be taxed at their full and true value,

And Whereas Senate Bill 240 and House Bill 306 will allow municipalities to provide tax credits to offset the costs of certain Kenai River habitat protection improvements, so long as the improvements meet certain criteria established by the Department of Fish and Game,

Therefore be it resolved that the Kenai River Special Management Area Advisory Board encourages the Alaska Legislature to pass Senate Bill 240 and House Bill 306, as proposed for amendment in attached copy.

Adopted February 10, 1994 by the Kenai River Special Management Area Advisory Board.

Jim Richardson, Vice President, KRSMA Advisor Board

A BILL
FOR AN ACT ENTITLED

"An Act relating to an optional municipal tax credit for costs of certain river habitat protection improvements."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA :

• Section 1. AS 29.45 is amended by adding a new section to read:

Sec. 29.45.046. RIVER HABITAT PROTECTION TAX CREDIT.

(a) A municipality may by ordinance provide for a river habitat protection credit to be applied to offset a portion of the property taxes due on land, or an interest in land taxable under this chapter, upon which an improvement has been constructed that aids in

(1) protecting the Kenai River or a tributary of the Kenai River from degradation of fish habitat due to public or private use; or

(2) restoring riparian fish habitat along or in the Kenai River or a tributary of the Kenai River that has been damaged by land use practices.

(b) The amount of a river habitat protection credit shall be based upon a percentage of the verifiable costs of the improvement and may not exceed 50 percent of the total amount of taxes levied upon the land or upon the taxable interest in the land during a single tax year, but the credit may be granted for more than one years. The ordinance may limit the availability of a credit to some, but not all types of improvements for which a credit may be granted under this section and to some, but not all areas of the municipality. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws and certified by the Department of Fish and Game under (c) of this section. The Department may require submission of plans for approval prior to construction as a condition of certification. A credit may not be granted for an improvement

New Text Underlined [DELETED TEXT BRACKETED]

(1) required under state or federal law; [OR AS A CONDITION OF A PERMIT FOR OR EXEMPTION FROM A REQUIREMENT FOR LAND DEVELOPMENT GRANTED BY THE FEDERAL, STATE, OR MUNICIPAL GOVERNMENT;

(2) CONSTRUCTED OR DESIGNED SOLEY TO PREVENT NATURAL EROSION;

(3) CONSTRUCTED OR DESIGNED PRIMARILY TO PROVIDE COMMERCIAL ACCESS TO A STREAM OR A RIVER; OR (4)]

(2) located more than 150 feet from the mean high tide line or ordinary high water line; in this paragraph, "ordinary high water line" means that line on the shore of the nontidal portion of a [A NONTIDAL] river or stream that reflects the highest level of water during an ordinary year and is established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

(c) The Department of Fish and Game shall by regulation establish criteria and procedures as necessary to be used in determining whether an improvement is effective in accomplishing the purposes listed in (a)(1) or (2) of this section. Upon application by the owner of land or taxable interest in land, the department shall certify whether an improvement meets the criteria established under this subsection.

New Text Underlined [DELETED TEXT BRACKETED]

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB240

1994 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: "An Act relating to municipal tax credit for cost of certain habitat improvements." BRU: Parks and Recreation Management
 Component: Parks Management
 Sponsor: Senator Pearce
 Requestor: Senator Pearce Component Serial No. 452

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GFMHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

SB240/HJ306 as it presently exists will provide an economic incentive to Kenai River land owners who desire to restore or rehabilitate their damaged river banks. It unfortunately may give the impression that "improvements" are desirable, and therefore eligible for tax incentives. Not all "improvements" should be encouraged, and in fact, improvements should only be encouraged to restore damaged riparian habitat.

Prepared by: Neil Johannsen, Director Phone: 762-2600
 Division: Parks Management Date: 1-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 1-Feb-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

8-LS1450J
Cook
2/11/94

CS FOR SENATE BILL NO. 240()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

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7 applied to offset a portion of the property taxes due on land, or an interest in land
8 taxable under this chapter, upon which an improvement has been constructed that aids
9 in

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11 degradation of fish habitat due to public or private use; or

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13 tributary of the Kenai River that has been damaged by land use practices.

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1 percentage of the verifiable costs of the improvement and may not exceed 50 percent
2 of the total amount of taxes levied upon the land or upon the taxable interest in the
3 land during a single tax year, but the credit may be granted for more than one year.
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5 improvements for which a credit may be granted under this section and to some, but
6 not all areas of the municipality. A credit may only be granted for an improvement
7 that has been constructed in compliance with state and federal laws and certified by
8 the Department of Fish and Game under (c) of this section. A credit may not be
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13 shore of the nontidal portion of a river or stream that reflects the highest level of water
14 during an ordinary year and is established by fluctuations of water and indicated by
15 physical characteristics such as a clear, natural line impressed on the bank, shelving,
16 changes in the character of soil, destruction of terrestrial vegetation, the presence of
17 litter and debris, or other appropriate means that consider the characteristics of the
18 surrounding area.

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20 be used in determining whether an improvement is effective in accomplishing the
21 purposes listed in (a)(1) or (2) of this section. Upon application by the owner of land
22 or taxable interest in land, the Department of Fish and Game shall certify whether an
23 improvement meets the criteria established under this subsection. The Department of
24 Fish and Game may by regulation establish procedures to be used in applying for
25 certification, and may require submission of plans for approval before construction of
26 an improvement as a condition of certification.

Questions about the Riparian Tax Incentive Program

1. Will public access be required if I sign a Riparian Management agreement? **NO.** The program is designed for Riparian maintenance and enhancement — not public use.
2. Can all my land be exempt from taxes? **NO,** only land up to 100 feet landward from the stream is eligible for tax exemption.
3. Can this program work in conjunction with federal Cost-Share land improvement programs? **YES.** ASCS, SCS, SWCD programs may provide funding for improvement projects and the tax exemption may be a further benefit to landowners if provisions of a Management Plan can be agreed upon.
4. If I sell my land will the new owner be responsible for the Management Plan? New owners are not liable; however, they may renew the agreement if they so desire.
5. Will I be liable for back taxes if I sell my property? **NO,** but if you withdraw from the program while you still own the property, or you are found in violation of the terms of the agreement, up to 5 years back taxes can be assessed.
6. Are livestock grazing and timber harvest allowed? The management agreement may specify terms of grazing and timber removal as long as the objectives of the management agreement are met and Riparian protection is assured.

OREGON RIPARIAN TAX INCENTIVE PROGRAM



Riparian Tax Incentive
Oregon Department of Fish and Wildlife
P.O. Box 3503
Portland, Oregon 97208

To:



Oregon Department of Fish and Wildlife

Lower taxes — while helping to improve Oregon's natural resources.

The Department of Fish and Wildlife has a program that offers complete property tax exemption for improving or maintaining qualifying Riparian lands. Streamside lands (riparian) up to 100 feet from a stream can be included in this tax exemption program.

Riparian zones declared important.

When the Riparian Tax Incentive law was passed in 1981, the Oregon Legislative Assembly declared 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."

Healthy Riparian zones are important to the resource by providing:

- increased water during summer low flow periods
- erosion control by stabilizing streambanks with protective vegetation
- flood control
- more and better varieties of habitats for wildlife
- cooler water due to shading resulting in better habitat for salmon, trout and steelhead



Requirements of landowner in this program.

The landowner and the Department of Fish and Wildlife must agree to a management plan. This agreement for a riparian area must detail protection measures that could include:

- fencing the area from livestock
- instituting beneficial livestock grazing systems
- providing an uncultivated "leave strip" next to a stream
- accomplishing improved fish passage
- plans to minimize effects of such activities as timber removal, stream crossings, culverts, irrigation check dams, etc.

If a riparian area is already in good shape it may qualify for property tax exemption by an agreement to maintain the area in its present condition. Withdrawal from the program or violation of the terms of the riparian management plan can result in a penalty of up to 5 years back taxes being assessed.

Instream habitat improvements are eligible for a State Income Tax Credit.

If instream improvements are required in the Riparian Management Plan, the landowner may receive a state income tax credit for 25% of personal out-of-pocket project costs. Qualifying projects and improvements could include:

- fencing
- gabions
- rock jetties/deflectors
- streambank or habitat plantings
- bank stabilization work

Application for preliminary project certification from a local Department of Fish and Wildlife office is required as the first step in receiving the income tax credit.

BENEFITS ... for landowners and the resource.

Landowners benefit initially by a reduction in the property taxes. All lands included in the management plan for the riparian area are excluded from the landowners taxable land base.

Stabilization of the streambanks prevents the loss of valuable cropland, and reduces maintenance costs.

Improved riparian habitat helps many wildlife species while providing higher quality spawning and rearing areas for fish.

How You Can Become Involved

First, your land must be zoned Agriculture, Range or Forest in your LCDC acknowledged County Land Use Plan. If your land is eligible, then get a copy of your most recent tax assessment records (for tax lot information) and a plat map or aerial photo of the property.

Then you must develop a management plan in consultation with a Department of Fish and Wildlife biologist. If a plan can be agreed to by both parties, the agreement is signed and the county assessor is then notified of the transaction. The tax exemption will then be in effect starting with the next full year. (Example: Plans filed in 1984 will start receiving tax exemption for the 1985 tax year.)

In order to contact your local Department of Fish and Wildlife biologist, check your phone book under:

OREGON STATE OF...
Fish and Wildlife
Department of
1224 Division St. 999-9999

OFW

(528) 221-5400

Date: _____

Thank you for your interest in Oregon's Riparian Tax Incentive Program!

Included below are explanations of the two features of the program and information on how you can become involved:

PROPERTY TAX EXEMPTION

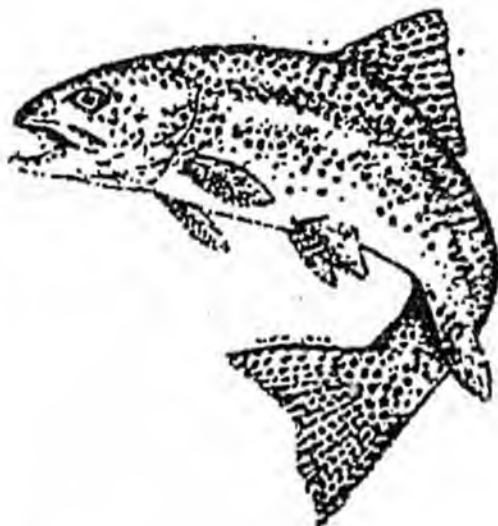
Participation in this part of the program will involve a Riparian Land Management Agreement with the Oregon Department of Fish and Wildlife. This agreement will detail the land to be designated as Riparian which can be up to 100 feet landward of the stream channel. Measures to be taken that will ensure Riparian zone protection and enhancement must then be agreed upon by both parties. Our District Fish and Wildlife Biologist for your area will serve as the Department agent and provide guidance in working out an agreement. Once the agreement is signed, that Riparian land designated in the agreement will receive the property tax exemption. This exemption registered with the County Assessor, will remain in effect as long as terms of the agreement are adhered to.

PERSONAL INCOME TAX CREDIT

Landowners who spend funds on fish habitat improvement projects (i.e., gabions, stream obstruction removal, bank stabilization, etc.) may receive a personal income tax credit totaling 25% of actual project costs. Preliminary project plans and costs must be certified by ODFW District Biologists. Projects must meet fish habitat management goals of the Department. Upon satisfactory completion of the project, final certification by local ODFW biologists will provide for the tax credit. The tax credit may then be applied to the landowners next Oregon State income tax assessment.

YOUR NEXT STEP:

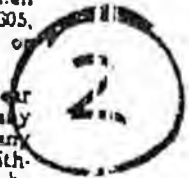
To pursue your interest in Riparian habitat protection and improvement contact at your convenience:



ODFW DISTRICT BIOLOGIST

Phone: _____

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FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES



(2) If any part of sections 1 to 6 of this Act is held unconstitutional:

(a) ORS 316.680 and 316.087 shall remain in effect the same as if this Act had not been enacted. Any Oregon personal income taxes paid by a benefit recipient of the Public Employees' Retirement System on account of a benefit received pursuant to ORS 237.001 to 237.315 shall not be refunded if an additional benefit equal to the taxes paid has been paid under section 5 of this Act or ORS 237.233.

(b) Section 5 of this Act and the amendments to ORS 237.233 by section 5b of this Act shall stand repealed. Any amounts paid to a benefit recipient by the Public Employees' Retirement Board, pursuant to section 5 of this Act or ORS 237.233, shall not be repaid.

(c) If a benefit recipient has paid tax for which the recipient has not received a benefit under section 5 of this Act or ORS 237.233, the member may claim a refund of the tax paid.

(3) Any funds remaining in the Public Employees' Tax Account shall revert to the General Fund.

(4) No refund of income taxes shall be allowed or made under this section unless a claim therefor is filed within 30 days after the determination that the provisions of sections 1 to 5 of this Act are unconstitutional is final.

(5) For the purposes of this section, "benefit" and "benefit recipient" have those meanings given in section 5 of this Act. (1989 c.906 §7)

Sec. 10. Section 5 and the amendments to ORS 237.201, 237.233, 316.087 and 316.680 by sections 2, 3, 5b and 5c of this Act first apply to retirement benefits paid during the 1989 calendar year. (1989 c.206 §10)

Note: Section 82, chapter 625, Oregon Laws 1989, provides:

Sec. 82-(1) Except as provided in subsections (2) to (4) of this section and sections 83 to 92 of this Act, the amendments by this Act apply to transactions or activities occurring on or after January 1, 1989, in tax years beginning on or after January 1, 1989.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Family Support Act of 1988 (P.L. 100-485) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(4) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(5)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1989, and the deficiency, or any portion thereof, is attribut-

able to any retroactive treatment under this Act, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1989, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under this Act, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(c) Any changes required on account of this Act for a tax year beginning prior to January 1, 1989, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1989 return is filed, whichever period expires later. (1989 c.625 §82)

316.077 (1969 c.493 §16; renumbered 316.637)

CREDITS

316.078 Tax credit for employment related expenses. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to a percentage of employment-related expenses allowable pursuant to section 21 of the Internal Revenue Code as of December 31, 1988, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code as of December 31, 1988. The percentage shall be determined on the basis of federal taxable income, as defined in section 63 of the Internal Revenue Code as of December 31, 1988, and as reflected on the federal return, whether or not a joint return, of the taxpayer for the taxable year, in accordance with the following table:

If federal taxable income is:	The percentage is:
Not over \$5,000.....	30%
Over \$5,000 but not over \$10,000.....	15%
Over \$10,000 but not over \$15,000.....	8%
Over \$15,000 but not over \$25,000.....	6%
Over \$25,000 but not over \$35,000.....	5%
Over \$35,000 but not over \$45,000.....	4%
Over \$45,000.....	0%

(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085,



or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. [1973 c.572 §154; 1977 c.872 §3; 1979 c.691 §4; 1983 c.534 §9; 1985 c.307 §4; 1987 c.203 §10; 1989 c.625 §7; 1989 c.1047 §11]

Note: Section 12, chapter 1047, Oregon Laws 1989, provides:

Sec. 12. The amendments to ORS 316.078 by section 11 of this Act apply to tax years beginning on or after January 1, 1989. [1989 c.1047 §12]

316.079 Credit for certain disabilities. A \$50 credit, against income taxes owed, shall be allowed a taxpayer who as of the close of the taxable year has suffered a permanent and complete loss of function of both legs or both arms or one leg and one arm as certified to by a public health officer. The certificate shall be in a form prescribed by the department and shall be filed with the first return in which the credit is claimed. [1973 c.120 §2]

316.080 [1953 c.304 §12; renumbered 316.473]

316.081 [1973 c.503 §13; 1973 c.705 §11; 1981 c.507 §1; renumbered 316.844]

316.082 Credit for taxes paid another state. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, or on an Oregon S corporation of which the individual is a member (to the extent of the pro rata share of the individual of the S corporation), for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and that is also subject to tax under this chapter.

(2) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other taxing jurisdiction bears to the entire adjusted gross income of the taxpayer as modified by this chapter.

(3) The department shall provide by rule the procedure for obtaining credit provided by this section and the proof required.

(4) No credit allowed under this section or ORS 316.292 shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Oregon return.

(5) For purposes of this section, "Oregon S corporation" means a corporation that has elected S corporation status for Oregon exercise and income tax purposes. [1969 c.493 §17; 1981 c.501 §3; 1987 c.647 §11]

Note: See note under 316.042.

316.083 Exception to ORS 316.844. ORS 316.844 shall not apply in any case in which a carryover basis for certain property acquired from a decedent dying after December 31, 1976, is provided by section 1023 of the Internal Revenue Code (Tax Reform Act of 1976). [1977 c.660 §35]

316.084 Credit for fish habitat improvement. (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of a fish habitat improvement project certified under ORS 496.260. The amount of the credit shall be 25 percent of the amount certified.

(2) To qualify for the credit under this section:

(a) The fish habitat improvement project must have been given final certification by the State Department of Fish and Wildlife as provided in ORS 496.260.

(b) The credit must be claimed for the year in which final certification for the project is granted.

(c) The taxpayer who is allowed the credit must be the person who actually expended funds for construction or installation of the project.

(d) The fish habitat improvement project must not be required by existing federal or state statute.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried

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forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

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

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

(9) If the taxpayer is a shareholder of a Subchapter S corporation that has elected to take the credit on behalf of its shareholders as provided in ORS 317.133, the credit shall be computed and afterwards apportioned to each shareholder on the basis of the shareholder's pro rata share of the corporation's cost of the fish habitat improvement project. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(10) The tax claim for tax credit shall be substantiated by submission, with the tax return, of the State Department of Fish and Wildlife notice of final project certification. [1981 c.720 §16; 1983 c.684 §10]

316.085 Personal exemption credit; recomputing credit annually. (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due under this chapter. The credit shall equal \$85 multiplied by the number of personal exemptions allowed under section 151 of the Internal Revenue Code.

(b) In the case of an individual with respect to whom a credit under paragraph (a)

of this subsection is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to such individual for such individual's taxable year is zero.

(2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section computed in the same manner and subject to the same limitations as the credit allowed to a resident of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

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

(3) For each taxable year beginning on or after January 1, 1987, the Department of Revenue shall recompute the dollar amount of the personal exemption credit allowed for state personal income tax purposes. The computation shall be as follows:

(a) Divide the Portland Consumer Price Index for the average of the first six months of the current calendar year by the Portland Consumer Price Index for the average of the first six months of 1986.

(b) Recompute the dollar amount of the personal exemption credit by multiplying \$85 by the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the amount obtained under this paragraph to the nearest \$1.

(4) As used in subsection (3) of this section, "Portland Consumer Price Index" means the Consumer Price Index for All Urban Consumers (Portland - all items) as published by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of this subsection, the revision of the Consumer Price Index which is the most consistent with the Portland Consumer Price Index for 1986 shall be used. [1985 c.345 §12, 3; 1987 c.293 §13]

316.086 Credit for connection to geothermal heating system. (1) As used in this section:

(a) "Cost of connecting to a geothermal heating system" includes, but is not limited to, the cost of acquisition and installation of connecting pipe and other fixtures or equipment within a dwelling or between a dwell-

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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 in five times (or such lesser number of times, corresponding to the number of years of exemption under sections 3 to 13 of this 1981 Act applicable to the property after its most recent change of ownership) the amount of taxes that would have been assessed against the land had it been valued without regard to sections 3 to 13 of this 1981 Act during the preceding tax year. [1981 c.720 §9]

Sec. 8. (1) The amount determined to be due under section 3 of this 1981 Act 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 section 3 of this 1981 Act 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. [1981 c.720 §9]

Sec. 10. (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 sections 3 to 13 of this 1981 Act as to the use of the same. If the owner fails, after 60 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 section 3 of this 1981 Act 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 section 3 of this 1981 Act.

(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 as described in subsection (2) of section 8 of this 1981 Act. [1981 c.720 §10]

Sec. 11. (1) Land that is being assessed under any of the special assessment laws listed under ORS 308.025 (2)(a) to (d) and (f), including ORS 308.370 (1), may be designated as riparian upon application and approval of the application under sections 3 and 5 of this 1981 Act.

(2) Notwithstanding the provisions of any of the special assessment laws listed under ORS 308.025 (2)(a) to (d) and (f), including 308.370 (1), 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. [1981 c.720 §11]

Sec. 12. (1) For the assessment year beginning January 1, 1981, the State Department of Fish and Wildlife shall not approve for designation as riparian land under sections 3 to 13, chapter 720, Oregon Laws 1981, more than 100 miles of private streambank in any county.

(2)(a) For the assessment years beginning on and after January 1, 1984, and prior to January 1, 1995, the department may approve for designation as riparian land not more than 100 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 year and the maximum established under paragraph (a) of this subsection.

(3) If the department receives applications for designation of land as riparian in excess of the maximum established under subsection (2) 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 assessment year. [1981 c.720 §12; 1995 c.924 §2]

Sec. 13. The Department of Revenue and the State Department of Fish and Wildlife shall make such rules consistent with sections 3 to 13 of this 1981 Act as may be necessary or desirable to permit its effective administration. [1981 c.720 §13]

Sec. 13a. Sections 1 to 13, chapter 720, Oregon Laws 1981, are repealed on December 31, 1997. [1997 c.720 §13a; 1996 c.921 §7]

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ation of 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 sections 3 to 13 of this Act to so provide. (1981 c.720 §1)

Sec. 2. Sections 3 to 13 of this Act are added to and made a part of ORS chapter 305. (1981 c.720 §2)

Sec. 3. As used in sections 3 to 13 of this 1981 Act:

(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 vendor under a recorded contract.

(2) "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 non-aquatic vegetation, which are privately owned and which qualify for exemption under sections 3 to 13 of this 1981 Act.

(3) "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 197.351 or an urban growth boundary that has been adopted by a metropolitan service district council under ORS 263.300 (3). (1981 c.720 §3)

Sec. 4. An owner of land desiring designation and exemption of that land from ad valorem taxation as riparian land under sections 3 to 13 of this 1981 Act 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 sections 3 to 13 of this 1981 Act with a verification of the truth thereof. Applications shall be made on or before December 31, 1982 for designation for the assessment year commencing January 1, 1983, and thereafter applications to the county assessor shall be made during the calendar year preceding the first assessment 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 sections 3 to 13 of this 1981 Act 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 penalty prescribed by subsection (2) of section 3 of this 1981 Act. (1981 c.720 §4)

Sec. 5. (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 section 1 of this 1981 Act. Standards and criteria to be used to determine consistency with the intent of sections 3 to 13 of this 1981 Act shall be developed by the department by July 1, 1982, and shall be reviewed by the department annually. These criteria shall be in addition to the following provisions limiting participation under sections 3 to 13 of this 1981 Act.

(a) Only lands planned and zoned as forest or agricultural lands, including rangeland, in compliance

with the state-wide planning goals adopted under ORS 197.210 and outside adopted urban growth boundaries shall qualify, and

(b) Land management activities permitted within designated riparian lands shall be consistent with the intent of sections 3 to 13 of this 1981 Act.

(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 sections 3 to 13 of this 1981 Act 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. (1981 c.720 §5)

Sec. 6. (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 the mileage limitation of section 12 of this 1981 Act, 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 section 5 of this 1981 Act.

(2) When the department approves land for designation as riparian under section 5 of this 1981 Act, 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.

(3) On approval of an application filed under section 4 of this 1981 Act, for each year of designation the assessor shall indicate on the tax roll that the property is exempt from taxation as riparian land and is subject to potential additional taxes as provided by section 3 of this 1981 Act, by adding the notation "designated riparian land (potential add'l tax)."

(4) Any owner whose application for designation has been denied may appeal to the department under the provisions of ORS 143.310 to 153.350 governing contested cases. (1981 c.720 §6)

Sec. 7. (1) When land has once been designated as riparian under sections 3 to 13 of this 1981 Act, 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 sections 3 to 13 of this 1981 Act 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. (1981 c.720 §7)

Sec. 8. (1) When land that has been designated as exempt from taxation under sections 3 to 13 of this 1981 Act as riparian is applied to some use other than that compatible with riparian use, as defined in the management plan, except through compliance with subsection (2) of section 7 of this 1981 Act, or except as a result of the exercise of the power of eminent domain,

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shall apply uniform depreciation or trending factors, if necessary to arrive at the true cash value of manufactured dwellings of a like class. (1971 c.329 §13)

308.890 Refund of taxes paid on certain manufactured dwellings moved to other states. Whenever a manufactured dwelling is moved to a state which does not honor the registration of the manufactured dwelling as evidence of payment of manufactured dwelling registration fees for the duration of the registration period, the taxpayer to whom the manufactured dwelling is registered may apply for a refund under ORS 311.806. Application shall be made to the county court of the county in which the manufactured dwelling had situs. The refund shall be in the amount of taxes paid, reduced by the taxes which were paid on the manufactured dwelling for the number of whole months that the manufactured dwelling was in the State of Oregon. (1973 c.31 §8; 1953 c.311 §2; 1963 c.339 §909; 1935 c.16 §475)

Note: See note under 308.663.

308.905 Special assessment on manufactured dwelling; collection; use. (1) A special assessment is levied upon each manufactured dwelling that is assessed for ad valorem property tax purposes as personal property. The amount of the assessment is \$5.

(2) The county assessor shall determine and list the manufactured dwellings in the county that are assessed for the current assessment year as personal property. Upon making a determination and list, the county assessor shall cause the special assessment levied under subsection (1) of this section to be entered on the general assessment and tax roll prepared for the current assessment year as a charge against each mobile home so listed. Upon entry, the special assessment shall become a lien, be assessed and be collected in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state.

(3) Any amounts of special assessment collected pursuant to subsection (2) of this section shall be deposited in the county treasury, shall be paid over by the county treasurer to the State Treasury and shall be credited to the Mobile-Home Parks Purchase Account to be used exclusively for the purposes described in ORS 456.582. (1989 c.919 §3)

Note: See note under 308.663.

PENALTIES

308.910 Penalties. (1) Violation of ORS 308.720 (3) or of ORS 308.330 is a misdemeanor. The judgment of conviction of any assessor for such a violation shall of it-

self work a forfeiture of the office of the assessor.

(2) Any taxpayer or managing officer thereof who fails to furnish, after written demand so to do by the assessor or the county board of equalization having jurisdiction or the Department of Revenue, any information or, upon like demand, fails to produce any books, records, papers or documents required by ORS 308.285 or 308.330 to be furnished by the taxpayer or managing officer to the county assessor, the county board of equalization or the Department of Revenue, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$25 nor more than \$1,000. Circuit courts shall have jurisdiction in the trial of such offenses.

(3) Any person, firm, association or corporation, or agent or managing officer thereof, who presents or furnishes to the Director of the Department of Revenue any statement, required by ORS 308.335, or required by the director under the authority of ORS 308.335, which statement is willfully false or fraudulent, is liable to a penalty of not less than \$100 nor more than \$1,000. The penalty shall be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction.

(4) Any person who wilfully presents or furnishes to the director any statement, required by ORS 308.505 to 308.660 or 308.705 to 308.730 which statement is false or fraudulent is guilty of perjury and, upon conviction, shall be punished as otherwise provided by law for such crime.

(5) Any wilful violation of ORS 308.413 or of any rules adopted under ORS 308.413 is punishable, upon conviction, by a fine not exceeding \$10,000, or by imprisonment in the county jail for not more than one year, or by both. (Subsections (3) and (4) of 1959 Replacement Part enacted as 1955 c.468 §2; subsections (3) and (4) of 1959 Replacement Part renumbered as part of 1991, subsection (7) enacted as 1969 c.605 §5; 1971 c.537 §33; 1977 c.834 §11; subsection (5) enacted as 1991 c.131 §4)

RIPARIAN HABITAT

Note: Sections 1 to 13a, chapter 729, Oregon Laws 1951, as amended by chapter 924, Oregon Laws 1959, provide:

Sec. 1. 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 these lands for purposes of property tax.

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(2) The Commission may attach such terms and conditions to project approval as it deems necessary, including but not limited to:

(a) No project may commence without prior written approval by the Commission;

(b) The project sponsor shall agree to complete the project as approved by the Commission and within the time frame specified in the Grant Agreement;

(c) The project sponsor shall obtain all necessary water rights, access agreements, easements, use permits or any other permits needed to undertake the project. Copies shall be provided to the Commission prior to commencing the project;

(d) The project sponsor shall file a written request for permission to amend or expand the project construction or the construction time schedule including the rationale for the requested change. Proposed modifications shall be submitted to and approved by the Board and Commission prior to the beginning of any work proposed in the modification;

(e) The project sponsor shall submit a project report at the completion of the project describing the work done;

(f) The project sponsor shall monitor and report, as determined by the Commission, the long-term effectiveness of the project;

(g) The project sponsor shall allow Commission or Board members, or their designated representatives, access to the project to monitor and/or evaluate the project;

(h) The project sponsor shall account for funds distributed by the Department, using project expense forms provided by the Department;

(i) The project sponsor shall maintain the project for a period of time as deemed appropriate by the Commission.

Stat. Auth.: ORS Ch.
Hist.: FWC 86-1989, f. 8-31-89, cert. of. 9-1-89

Revocation of Project Approval

635-09-235 (1) The Commission may revoke its approval of a project if, after consultation with the Board, it determines that:

(a) Implementation of the project has exceeded or is inconsistent with the approved project proposal; or

(b) The project sponsor has violated any term or condition imposed on the project; or

(c) Continued operation of the project may adversely affect fish populations in, above, or below the project site; or

(d) The project does not meet its proposed objectives; or

(e) The project is inconsistent with current Department goals, policies or management plans.

(2) Proceedings to revoke approval of a project shall be conducted in accordance with ORS 183.413 to 183.550.

(3) The revocation of a project's approval shall automatically invalidate any Department permits issued for such project as of the date of revocation.

(4) Revocation of approval for a project is in addition to, and not in lieu of, other penalties provided by law.

Stat. Auth.: ORS Ch.

(May, 1991)

Hist.: FWC 86-1989, f. 8-31-89, cert. of. 9-1-89

Grant Agreement

635-09-240 (1) Project sponsors, other than the Department, shall enter into a Grant Agreement with the Department prior to undertaking the project.

(2) No funds shall be disbursed under a Grant Agreement until the Department receives satisfactory evidence that necessary permits and licenses have been granted and required documents submitted.

(3) Advance funds may be released upon presentation of a detailed estimate of expenses for a time period specified in the Grant Agreement. No additional funds will be released until all receipts for expenditures of a previous fund release are submitted.

(4) Funds may be released upon presentation of a completed Fund Release Request Form accompanied by proof of completion of specific work elements of the project as identified in the Grant Agreement. Proof of completion may be made through presentation of paid receipts of invoices for materials of contracted labor, or inspection reports.

(5) Except for grants of less than \$2,000, the Department shall retain 10 percent of project funds until the report required in OAR 635-09-230(2)(c) has been submitted and the project has been evaluated for completion and compliance with the Grant Agreement.

Stat. Auth.: ORS Ch.
Hist.: FWC 86-1989, f. 8-31-89, cert. of. 9-1-89

Riparian Lands Tax Incentive Program

Purpose

635-09-300 In accordance with Chapter 723, Oregon Laws 1981, the intent of this program is to protect or restore healthy riparian habitat on private lands adjacent to perennial and intermittent streams.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Eligibility

635-09-305 The following rules shall establish the eligibility criteria for riparian lands for tax exemption purposes.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Definitions

635-09-310 For the purpose of OAR 635-09-300 through 635-09-360:

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

(2) "Stream" means the natural drainage of water from uplands to lower elevations and ultimately the ocean in a well defined channel.

(3) "Perennial Stream" means a natural waterway that ordinarily has running water on a year-around basis.

(4) "Intermittent Stream" means any natural waterway which flows during a portion of every year and which provides, or with restoration would

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provide spawning, rearing or food-producing areas for food and game fish.

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

(6) "Vegetation Restoration Potential" means the physical potential of a specific site to become revegetated if provided adequate protection and management.

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

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

(9) "Riparian Vegetation" means the aquatic and nonaquatic vegetation adjacent to streams which is dependent upon freely available water or is at least water-tolerant.

(10) "Riparian Management Plan/Agreement" means a written plan which specifically describes a segment of stream corridor and protection or restoration measures required to meet the requirements of the riparian lands program.

(11) "Riparian Habitat/Land" means the zone of riparian vegetation and the adjacent lands necessary for conservation or management measures identified in the riparian management plan.

(12) "Critically Eroding Stream Bank" means stream banks and/or streambeds actively eroding to the extent that the erosion limits the ability of the area to meet the objectives of the program.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Eligibility Criteria

635-09-315 Streams and the associated riparian lands up to 100 feet landward (horizontal measurement) from the line of non-aquatic vegetation adjacent to the stream, or an area not exceeding 25 acres of riparian lands per mile of stream are eligible for the program, provided:

(1) The stream and associated riparian land is outside adopted urban growth boundaries and is zoned Agriculture (including Rangeland) or Forestry in a county with a land use plan acknowledged by the Land Conservation and Development Commission.

(2) The width of the riparian land proposed for tax exemption is sufficient to provide long-term stream bank stability, erosion control, water quality and fish and wildlife habitat protection or improvement.

(3) Streamside lands physically lacking adequate riparian vegetation having significant vegetation restoration potential within five years.

(4) The landowner has implemented measures, as approved by the Department, for the protection or restoration of riparian lands.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Tax Credit for Fish Habitat Improvement Projects

Purpose

635-09-316 In accordance with Chapter 720, Oregon Laws 1981 Section (22), the following criteria shall be used to evaluate fish habitat improvement projects. A Project Must:

(1) Be on streams as defined in OAR 635-09-310 of the Riparian Lands Tax Incentive Program.

(2) Be consistent with stream management plans as determined by ODFW.

(3) Be consistent with priorities of the Riparian Habitat Tax Incentive Program.

(4) Result in improved fish habitat in terms of:

- (a) Pool/riffle ratio;
- (b) Water temperature;
- (c) Fish passage;
- (d) Fish spawning/rearing habitat;
- (e) Streambank stabilization.

Stat. Auth.: ORS Ch. 183 & 720
Hist.: FWC 18-1983, f. & ef. 5-20-83

Application for Project Certification

635-09-317 Application for project certification under Sections (16) - (24), Oregon Laws 1981, shall be in accordance with Oregon Department of Fish and Wildlife form number BS 1084 "Instream Habitat Improvement-Tax Credit".

Stat. Auth.: ORS Ch. 183 & 720
Hist.: FWC 18-1983, f. & ef. 5-20-83

Limitations on Designation of Riparian Lands

635-09-320 Department designation of riparian lands for inclusion in the program is subject to the following provisions:

(1) No more than 100 miles of private stream bank in any county shall be approved for designation as riparian land for the assessment year beginning January 1, 1983.

(2) No more than 100 miles of private stream bank per year in any county may be approved for designation as riparian lands for the assessment years beginning on and after January 1, 1984 and prior to January 1, 1990.

(3) 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 year and the maximum allowed under section (2) of this rule.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Factors For Determining Width of Riparian Lands

635-09-325 The following factors will be utilized by the Department in determining the width necessary to achieve erosion control, long-term stream bank stability, water quality and fish and wildlife habitat protection or restoration:

- (1) Stream size at various flows;
- (2) Vegetation restoration potential;
- (3) Stream bank slope;

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- (4) Adjacent land uses;
- (5) Stream channel orientation; and
- (6) Protection of riparian management structures.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Healthy Riparian Habitat

635-09-330 The Department shall consider the following as criteria for healthy riparian habitat on private lands adjacent to streams:

- (1) Stream banks shall have 80 percent or more of their lineal distance in a stable, non-eroding condition, and shall have no areas of critically eroding stream bank.
- (2) Vegetative cover shall be adequate to achieve and maintain stream bank stability.
- (3) Stream surface shading; on small to medium-sized streams, up to 50 feet in width, should have 60 to 100 percent of the stream surface shaded between the hours of 10 a.m. to 4 p.m. from June through September, except on those streams where the Department may determine that such level of shading was not a natural condition and cannot be reasonably achieved.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Applications/Management Plans

635-09-335 (1) Applications for enrollment in the riparian lands tax incentive program shall include a riparian management plan. The management plan shall contain:

- (a) Map with a scale of 4-inch per mile or 8-inch per mile, which includes the following information:
 - (A) Legal description:
 - (i) Township;
 - (ii) Range;
 - (iii) Section;
 - (iv) Tax lot(s) number(s).
 - (B) Boundaries of proposed riparian lands;
 - (C) Stream name and location;
 - (D) Conservation or management measures implemented;
 - (E) Land use on area adjacent to the riparian lands;
 - (F) Property boundary and adjacent land owners.
 - (b) Acreage within the proposed riparian area;
 - (c) Inventory of existing vegetation;
 - (d) Soils description;
 - (e) Feet of unstable, eroding stream bank;
 - (f) Proposed and existing uses within riparian land;
 - (g) Vegetative objectives to be achieved.

(2) Applicants may wish to seek technical assistance for the development of the riparian management plan and implementation of management practices from the local Soil and Water Conservation District.

(3) Management plans developed by the applicant, which meet all eligibility requirements and contain adequate provisions (as determined by the Department) for the protection or restoration of riparian lands shall be approved for designation as riparian.

(4) The riparian management plan shall be considered approved and the party eligible for tax

exempt status only at such time as the plan is signed by the landowner, Department, and any other participating party.

(5) The Department shall notify the county assessor and the applicant of its approval or disapproval of an application.

(6) An order of approval shall be filed with the county assessor within 10 days of Department approval of the completed plan.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Activities Generally Compatible with Riparian Lands

635-09-340 The following activities are generally compatible with the intent of the riparian lands tax incentive program when they are a part of an approved riparian lands management plan and agreement:

- (1) Livestock watering and crossing areas when located at defined points.
- (2) All existing irrigation and utility developments, including powerlines, water lines, pipelines, irrigation diversion dams, pump stations, pump intakes, irrigation ditches and other similar developments.
- (3) New irrigation and utility developments, including powerlines, water lines, pipelines, irrigation diversion dams, pump stations, pump intakes, irrigation ditches and other similar developments.

(4) Stream bank stabilization and fish habitat restoration projects, when consistent with — valid Division of State Lands fill/removal permit, if required.

(5) Tree removal:

- (a) When a tree threatens stream bank stability; and/or
- (b) Threatens to obstruct streamflow in a manner that would cause erosion or be detrimental to irrigation systems, bridges, fishery resources, or other existing development.

(6) Debris removal:

- (a) When organic debris threatens bank stability; and/or
- (b) Threatens to obstruct streamflow in a manner that would result in stream bank erosion or be detrimental to irrigation systems, bridges, fishery resources, or other existing development.

(7) Equipment or vehicle crossings at fords and bridges.

(8) Recreational facilities (i.e., trails, boat ramps, and primitive camp sites).

(9) Timber harvest, when consistent with program objectives of tree, shrub, grass, and forb cover.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Activities Generally Incompatible with Riparian Lands Program

635-09-345 The following activities are generally incompatible with the protection or restoration of riparian lands. However, these activities may be conditional uses if specifically described and approved in the riparian lands management plan or plan amendment.

- (1) Regular cultivation, seeding, and harvesting

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of crops or other farming activities which preclude the development of permanent vegetative cover.

(2) Livestock grazing or feeding areas except at defined watering points or crossings, when the activity reduces the vegetative cover below the program objective level.

(3) Burning resulting from other than natural or accidental origin.

(4) Herbicide spraying, except for the spot control of noxious weeds.

(5) Channel or stream bank alterations other than those determined by the Department to be necessary for irrigation diversions or withdrawal and stabilization of critically eroding stream banks.

(6) Construction or relocation of buildings, other than irrigation related.

(7) Gravel, mineral or soil removal.

(8) Land clearing (vegetative removal).

Stat. Auth.: ORS Ch. 720

Hist.: FWC 40-1982, f. & ef. 6-29-82

Natural Disasters

635-09-350 Acts of nature (i.e., floods, fire, wind and other natural disasters) that destroy or reduce the effectiveness of conservation measures necessary for participation in the program, as defined in the riparian management plan do not constitute a violation of the management plan and agreement if:

(1) The landowner notifies the Department within 30 days of occurrence; and

(2) The landowner or his representative and Department personnel tour the area and the Department personnel determine remedial or new conservation measures are required.

(3) If the Department determines that remedial or new conservation measures are needed:

(a) The landowner must revise or amend the riparian management plan and obtain Department concurrence; and

(b) The landowner must complete remedial measures consistent with the revised or amended management plan within 90 days of plan revision or amendment, or any extension thereof granted by the Department.

Stat. Auth.: ORS Ch. 720

Hist.: FWC 40-1982, f. & ef. 6-29-82

Sale or Transfer of Exempted Riparian Lands

635-09-355 The purchaser of lands in the riparian lands tax incentive program has 120 days after recording of the land sale to retain the property tax exemption or withdraw from the program without penalty.

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

(a) Agree to management provisions in the previous owners riparian management plan; or

(b) Amend the previous riparian management plan in a manner consistent with the program as approved by the Department; and

(c) Sign a riparian management agreement consistent with the program.

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

Stat. Auth.: ORS Ch. 720

Hist.: FWC 40-1982, f. & ef. 6-29-82

Program Compatibility With Existing Laws or Ordinances

635-09-360 The Department approval of land use activities compatible with the riparian lands tax incentive program shall not exempt any proposed activity from state or federal law, or local ordinance.

Stat. Auth.: ORS Ch. 720

Hist.: FWC 40-1982, f. & ef. 6-29-82

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