

# Special Provisions Chapter

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<b>1. Governmental Exchanges</b> .....	6-3
<b>2. Properties with Timber Under Short Rotation</b> .....	6-3
<b>3. Land Supporting Juniper Trees</b> .....	6-3
<b>4. Conservation Easements</b> .....	6-4
A. Legislative Declarations .....	6-4
B. Definition .....	6-4
C. Easement with Public vs. Private Entity .....	6-4
D. Language of Easement .....	6-4
<b>5. Specially Assessed Homesites</b> .....	6-5
A. Qualification .....	6-5
B. Definitions .....	6-6
1. ORS 215.010 Definitions for County Planning .....	6-6
2. ORS 92.017 Lawfully Created Lots and Parcels .....	6-7
C. Valuation .....	6-9
D. Disqualification .....	6-10
<b>6. Non-Forest Related Homesites</b> .....	6-10
<b>7. Non-Farm Dwellings in an Exclusive Farm Use (EFU) Zone</b> .....	6-12
<b>8. Land Supporting Christmas Trees</b> .....	6-12
<b>9. Forested Land That May Be Assessed in Other Ways</b> .....	6-13



# Special Provisions

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## 1. Governmental Exchanges (ORS 308A.706(1)(b) and ORS 308A.730)

Land acquired by a government entity as the result of an exchange of land of approximately equal value is not subject to additional taxes being imposed or deferred. (See ORS 308A.730(4)). If the property is not of approximately equal value, this section does not apply.

When forestland is exchanged with a government entity, remove the special assessment and the potential tax liability on the land acquired by the government. If the land acquired from the government is not farmland in an EFU zone or 'highest and best use' forestland, the owner may make application for special valuation as farm or forest land in the manner provided under ORS 308A.077 (farm), 321.358 (western Oregon forestland), 321.706 (Small Tract Forestland) or 321.839 (eastern Oregon forestland), whichever is applicable.

If the exchange takes place prior to July 1, the owner shall file the application on or before August 1. If the exchange takes place on or after July 1, the owner shall make application on or before April 1 of the following year.

If the owner of the acquired land does not file an application as required under ORS 308A.730 or the land does not meet the qualification for special assessment for which the application is made then a disqualification will result in an additional tax. The amount of additional taxes imposed will be equal to the amount imposed against the land transferred to the government entity. The additional tax must be paid, and may not be deferred under ORS 308A.706(1)(b).

## 2. Properties With Timber Under Short Rotation

### (ORS 321.267(3) and ORS 321.824(3))

Land used for growing hardwood timber under certain criteria is not eligible for forestland special assessment. The hardwood species includes but is not limited to hybrid cottonwood/poplar. Land is ineligible for forestland special assessment if the following four conditions are met:

- 1) The land is prepared using intensive cultivation methods and is cleared of competing vegetation for at least three years after planting;
- 2) The timber is of a species marketable as fiber for inclusion in the manufacturing of paper products;
- 3) The timber is harvested on a rotation cycle within 12 years after planting; **and**
- 4) The land and timber are subject to intensive agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

Properties that fit this short rotation hardwood production may be considered for a farm use special assessment (see ORS 308A.056(2)). See the Farm Use Assessment Procedures for additional details.

## 3. Land Supporting Juniper Trees

"Forestland means land...that is being held or used for the predominant purpose of growing and harvesting trees of a marketable species and that has been designated as forestland...or the highest and best use of which is the growing and harvesting of such trees." The marketable species are described in the rules OAR 150-321.358(4), 150-321.839(4), and 629-610-0050.

Land that solely supports stands of juniper trees is not considered to be forestland for the purpose of special assessment programs. Tree species are acceptable for reforestation and for residual stand stocking measurements if all of the following criteria are met:

- (1) The species must be ecologically suited to the planting site;
- (2) Be capable of producing logs, fiber, or other wood products suitable in size and quantity for the production of lumber, sheeting, pulp or other commercial forest products; and
- (3) Must be marketable in the foreseeable future.

Juniper is not marketable in the foreseeable future and therefore does not qualify for forestland special assessment.

## 4. Conservation Easements

**ORS 308A.740, ORS 308A.743, ORS 271.715 through ORS 271.795**

### 4A. Legislative Declarations

The Legislature has allowed for conservation easements to overlay specially assessed resource lands such as farmland and forestland. Conservation easements are agreements between a landowner and a second party that memorialize the landowner's intent to manage all or a portion of their property in a manner agreed upon between the parties. The law provides for these easements in ORS 308A.740-743 (easements with private entities) and ORS 271.715-795 (easements with public entities).

Neither of these statutes directs the Department of Revenue or county tax administrators to intervene in the development of the easement by requiring specific elements in the agreement.

The legislative findings and declarations under ORS 308A.740 encourage private lands to be managed in a sustainable manner, intend to use tax policy to encourage this use, intend to not impose additional taxes on property if conservation issues are applied, and define conservation. "Conservation" is the management of land, water, and natural resources for the purpose of meeting human and ecological needs in a sustainable manner.

The existence of the conservation easement or deed restriction may not, in it itself, cause disqualification from special assessment. It will also not preclude disqualification for some other reason (ORS 308A.743).

### 4B. Definition

ORS 271.715(1) defines "Conservation easement" as a non-possessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

### 4C. Easement with Public vs. Private Entity

The statutes provide for different tax applications following the recording of a conservation easement depending if the easement is with a public or private entity. A conservation easement between a landowner and a public entity is taxed at real market value minus any reduction in value caused by the conservation easement, (see ORS 271.785). A conservation easement between a landowner and a private entity allows the property to stay in a special assessment as long as the requirements for the special assessment continue to be met. (See Appendix F, Lane County v. Richard Briggs).

ORS 308A.743(3) requires that the conservation easement be recorded in the records of the clerk of the county in which the land is located and a copy of the conservation easement, deed restriction or Wildlife Habitat conservation and management plan with the property tax account number must be sent to the county assessor.

### 4D. Language of Easement

The wording of the easement is very critical in interpretation of the use of the land. This interpretation will determine the appraisal and assessment of the property for tax purposes.

The land cannot be disqualified from its current forestland special assessment as long as the conservation easement does not interfere with the land meeting the requirements of the special assessment program. These easements may restrict growing and/or harvesting of trees. The language of the easement needs to be carefully reviewed to assure compliance with the provisions of the special assessment can be maintained.

A common question about maintaining the special assessment as forestland on property subject to a conservation easement centers on an acceptable level of harvesting. If a conservation easement on forestland limits timber harvesting on a property, at what level of harvest reduction is acceptable before the assessor must conclude that the land no longer meets the qualification criteria for forest use special assessment? A decision must be made whether or not the land is being held or used for the predominant purpose of growing and harvesting trees of a marketable species. If the easement lists details that encum-

ber the use of a property for typical forest management activities and lacks a plan that details the selective cutting described in the purpose statement of a conservation easement, this may lead to the conclusion to disqualify the property from special assessment. Each property is unique and conservation easements are written to a specific piece of property. This requires detailed review and decision making on a case-by-case basis.

There is not any statutory authority for property tax administrators to require anything to be put into a conservation easement. However, there must be enough information contained in the conservation easement for the assessor to determine that the qualifications of special assessment will continue to be met.

**Example:** A conservation easement allows select-cutting harvesting practices and also states a purpose of the easement is the preservation of green space. Would the definition of forestland be met?

The term “preservation of green space” means that the owners will maintain the land in a state that is close to the natural vegetation. A “forestland” special assessment can be considered as green space as long as the predominant purpose of growing and harvesting trees of a marketable species and other qualification requirements are met. Select cut harvesting practices are allowed. If a conservation easement refers to selective cutting as described in the management plan, make sure to request a copy of the management plan as part of a review process. If you find the management activities are described only for a short period (such as five years) and do not identify levels of harvesting in terms of percent of cut, volume or acreage, then this could be reason to disqualify the special assessment.

It is reasonable to expect a management plan to specify how and when harvesting will occur and provide detail about the quantities to be harvested. Details on how the harvest will be performed are also a reasonable expectation to find in a management plan. Is the harvest going to be done with a ground machines, cable systems, horses, helicopter, or by some other means? If there are no specific long range plans (20, 40, 50, 75, or 100 years, etc.) for the management of the forestland, this may lead to a conclusion that the

landowner is not meeting the definition of forestland for growing and harvesting trees.

## 5. Specially Assessed Forest Homesites

### 5A. Qualification

Homesites used in conjunction with a parcel of greater than 10 acres of qualifying forestland receive a special assessment for the land under the dwelling as long as the dwelling use criterion in ORS 308A.253(5) are met. The homesite must be located on a parcel of land that is zoned in the comprehensive plan as exclusive farm use (EFU), forest use, or farm and forest use per OAR 150-308A.253. Land qualifies for special assessment under ORS 308A.256 (maximum assessed value and assessed value of homesites) if it is under dwellings that are used in conjunction with activities customarily done in the management and operation of forestland or it is held or used for the predominant purpose of growing and harvesting trees of a marketable species.

No owner application is required to receive the forest homesite special assessment, see OAR 150-308A.253.

ORS 308A.253(5) states that the use of the dwelling includes, but is not limited to being:

- Owned and occupied by a person who is engaged in the forest operation,
- Occupied by an employee of the owner of the forestland, **or**
- Occupied by a person who is involved in the forest operation, **or**
- Owned and occupied by a person who is no longer engaged in the forest operation, but:
  1. Has the harvest of timber from the forestland as their principle source of income,
  2. Was engaged in the forest operation, during the five consecutive years before the tax year in which engagement in the forest operation ended, **and**
  3. Owned and occupied the dwelling continuously during the period since engagement in the forest operation ended. “Continuous” in this paragraph 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.

## **B. Definitions**

### **ORS 308A.250, OAR 150-308A.250**

**“Forestland,”** for the purpose of the homesite statutes (ORS 308A.250 to 308A.259), means land that is assessed as one of the three items below, **and** 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.

1. Highest and Best Use Forestland
2. Designated Forestland (ORS 321.257-321.390 or ORS 321.805-321.855)
3. Small Tract Forestland (ORS 321.700 to 321.754)

**“Homesite”** means land under the dwelling and all tangible improvements to the land under and adjacent to a dwelling and other structures that are customarily provided in conjunction with dwelling. According to OAR 150-308A.250, “homesite” also includes site developments. Site developments are improvements to the land that become so intertwined with the land as to become inseparable.

**“On-site developments”** (OSD) are land improvements within the site that support the buildings or other property uses. (OAR 150-307.010(1) (2)(a)(A)(ii))

See OAR 150-307.010(1) for detailed descriptions of site developments.

**“Owner(s)”** 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 non-exclusive 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.

**“Parcel”** for homesite purposes is defined under OAR 150-308A.256(1)(a) as 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.

While a parcel may consist of one or more tax lots, tax lots are not legal divisions of land. Tax lots are administrative divisions of land created by the assessor’s office to accommodate property taxation.

Appraisers should be aware of what their local planning department considers a “legal parcel.” If there is a question or concern that a parcel is not a legal division of land it should be verified with the local planning department.

Only the local planning department has authority to approve legal divisions of land.

ORS 92.010 defines:

1. “Lot” as a single unit of land that is created by a subdivision of land.
2. “Parcel” as a single unit of land that is created by a partition of land.

**“Site developments”** are improvements to the land that become so intertwined with the land as to become inseparable. Site development is synonymous with land improvement. Examples are fill, grading and leveling, utility facilities (sewer, water, gas, electric). See OAR 150-307.010(1) (2)(a)(A).

### **5B1. ORS 215.010 Definitions for County Planning**

As used in this chapter:

- (1) The terms defined in ORS 92.010 shall have the meanings given therein, except that “parcel”:
  - (a) Includes a unit of land created:
    - (A) By partitioning land as defined in ORS 92.010;

(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(b) Does not include a unit of land created solely to establish a separate tax account.

“Discrete Lot or Parcel” is defined under ORS 92.017. This statute requires that parcels cannot be lawfully changed unless parcel lines are legally vacated (combining of parcels or lot line adjustments) or further divided. The local planning department has the authority to legally approve a change in a lot or parcel, otherwise the lot or parcel must remain discrete.

### **5B2. ORS 92.017 Lawfully Created Lots and Parcels**

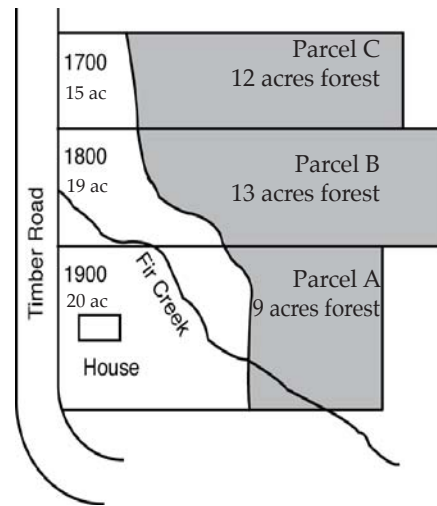
A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law.

Government lots in the United States Geological Survey (USGS) are not discrete and saleable “lots” or “parcels” as those terms are defined in ORS 92.010 and 215.010.

Government lots are not subject to the provisions of ORS 92.017. Government lots are simply survey units, like townships and sections. Reference: Department of Justice File No. 660-001-GN0326-97 (October 18, 1997).

Qualification of a homesite under ORS 308A.253 is subject to the definition of “owner” or “owners” in ORS 308A.250(5). Only the owner (or authorized representative) of a parcel in fee simple or a life estate can qualify the homesite for special assessment. Recorded Warranty Deeds, Trust Deeds, Bargain and Sale Deeds, Contract of Sale or other legal instruments of ownership transfer in fee simple or life estate can be used to verify the ownership and legal description of the parcel on which the homesite is located.

The following examples are intended to illustrate how property could be considered a “legal parcel.” They are not intended to set or change land use policy.



### **Examples**

The above tax lots 1700 (15 acres with 12 acres forestland), 1800 (19 acres with 13 acres forestland), and 1900 (20 acres with 9 acres) could be described as legal parcels in the following examples.

#### **Example 1: Parcels A and B not legally divided**

When reviewing deeds or other legal instruments of ownership transfer the legal description may include any number of descriptions which only describes one legal parcel. The following Warranty Deed from Brown to Jones states:

#### **Parcel 1 is described as follows:**

**Parcel A:** S ½ of the SW ¼ of the SW ¼ of Section 1, Township 7 South, Range 3 West, Willamette Meridian. (TL 1900, 20 Ac, with 9 Ac Forestland)

**Parcel B:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 660 feet to the point of beginning. From the point of beginning proceed north 500 feet, east 1655 feet, south 500 feet, west 1655 feet to the point of beginning. (TL 1800, 19 Ac, with 13 Ac Forestland)

#### **Parcel 2 is described as follows:**

**Parcel C:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 1160 feet to the point of beginning. From the point of beginning proceed north 436 feet, east 1499 feet, south 436 feet, west 1499 feet to the point of beginning. (TL 1700, 15 Ac, with 12 Ac Forestland)

In this case, even though the legal description in the deed separately describes Parcel A and Parcel B, the legal ownership for the two descriptions is only one parcel, because the land has never been legally divided. **(TL 1900 and 1800, 39 Ac with 21 Ac Forestland)**. Parcel C is a separate legal parcel. **(TL 1700, 15 Ac with 12 Ac Forestland)**.

In example 1, the forestland on the 39 acres is a total of 21 acres. This exceeds 10 acres so the **homesite qualifies** under ORS 308A.250(2) and 308A.253(1). When calculating the homesite value under ORS 308A.256, you would also include parcel 2 (described as parcel C), because it is under the same ownership and is contiguous to the homesite parcel.

*Example 2: Parcels A and B legally divided*

In the following example, Jones partitioned parcel A and B with the local planning department and has sold to Smith. The Warranty Deed Jones to Smith states:

**Parcel A:** S ½ of the SW ¼ of the SW ¼ of Section 1, Township 7 South, Range 3 West, Willamette Meridian. **(TL 1900, 20 Ac, with 9 Ac Forestland)**

**Parcel B:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 660 feet to the point of beginning. From the point of beginning proceed north 500 feet, east 1655 feet, south 500 feet, west 1655 feet to the point of beginning. **(TL 1800, 19 Ac, with 13 Ac Forestland)**

**Parcel C:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 1160 feet to the point of beginning. From the point of beginning proceed north 436 feet, east 1499 feet, south 436 feet, west 1499 feet to the point of beginning. **(TL 1700, 15 Ac, with 12 Ac Forestland)**

In this case, the legal description within the deed describes two separate legal parcels, because parcels A and B have been divided (partitioned) and are now two legal parcels of record. Parcel C remained a separate legal parcel of record.

In example 1, the homesite qualified, now that the land has been partitioned in example 2, the **homesite no longer qualifies**, because the forestland on Parcel A is less than 10 acres and no longer meets the homesite definition of ORS

308A.250(2). If a homesite is ever constructed on parcel B, it would qualify for forestland homesite assessment as long as parcel B continues to exceed 10 acres of forestland.

*Example 3: Parcels B and C legally combined*

The following Warranty Deed from Smith to Green states:

**Parcel 1 is described as follows:**

**Parcel A:** S ½ of the SW ¼ of the SW ¼ of Section 1, Township 7 South, Range 3 West, Willamette Meridian. **(TL 1900, 20 Ac, with 9 Ac Forestland)**

**Parcel 2 is described as follows:**

**Parcel B:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 660 feet to the point of beginning. From the point of beginning proceed north 500 feet, east 1655 feet, south 500 feet, west 1655 feet to the point of beginning. **(TL 1800, 19 Ac, with 13 Ac Forestland)**

**Parcel C:** From the SW corner of section 1, Township 7 South, Range 3 West, Willamette Meridian proceed north 1160 feet to the point of beginning. From the point of beginning proceed north 436 feet, east 1499 feet, south 436 feet, west 1499 feet to the point of beginning. **(TL 1700, 15 Ac, with 12 Ac Forestland)**

In this case, parcels A, B, and C as demonstrated in example 2 were owned by Smith as three separate parcels and in the conveyance of title, Smith has combined parcel B with parcel C as specified in ORS 92.017 to create a new legal parcel 2 of record. **(TL 1800 and 1700, 34 Ac with 25 Ac Forestland)**

Parcel 1 (Parcel A in the legal description) remains a separate legal parcel of record **(TL 1900, 20 Ac, with 9 Ac Forestland)** and has less than 10 acres of forestland so the homesite continues to not qualify under ORS 308A.250(2).

If Green develops a homesite on parcel 2 (Parcels B and C in the legal description) it would qualify for forestland homesite special assessment under ORS 308A.250(2) and 308A.253(1) as long as parcel 2 continues to exceed 10 acres of forestland.

The above examples demonstrate that land may be partitioned, subdivided, or combined at any

time to form different legal lots or parcels. It is important to carefully read recorded instruments of conveyance and if there is any doubt concerning legal parcels it is recommended you verify your information with the local planning department.

### **5C. Valuation**

#### **OAR 150-308A.256**

##### **1) Definitions:**

**“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 a direct connecting access, such as an underpass, for property separated by an interstate freeway.

**“Same ownership”** is when separate land accounts (tax lots) have a common name in the title. Example: A parcel of land is owned by a wife in her name and she jointly owns another parcel with her husband. These two parcels would be considered to be in the same ownership. Properties would not be in 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 husband and wife own the corporation. The reference to this definition is OAR 150-308A.256(1)(e).

Homesites associated with forestland special assessments are valued separately from the forestland acreage. The homesite value is based on the value of 1 acre regardless of the actual ‘footprint’ of the homesite. Land other than the homesite that is under forest-related buildings is specially assessed as forestland, the same as other qualified specially assessed forestland on the parcel.

##### **2). Determine the value:**

The steps used to determine the value of a qualified homesite are outlined in OAR 150-308A.256 in paragraph (3). The details that need to be determined are as follows:

1. Identify the total number of acres of the parcel and contiguous acres under the same ownership.

2. Calculate the bare land average per acre real market value (RMV) of the parcel.
  - a.) Determine the total bare land RMV for the parcel and contiguous under the same ownership on which the homesite is located.
  - b.) Divide the total bare land RMV by the total acres of the parcel and contiguous acres under the same ownership. The result is the average RMV for 1 acre of the parcel and the contiguous acres under the same ownership.
3. Find the specially assessed value (SAV) of the land improvements. The SAV of the 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.
4. The average RMV of 1 acre of the land plus the land improvement SAV equals the total homesite SAV. The land improvement must be carried as a separate item on the land record as specified in OAR 150-307.010(1) paragraph (2)(a)(B).
5. Refer to OAR 150-308A.256 paragraph 4 for calculation of a homesite MSAV (maximum specially assessed value).
  - a) For the 1997-98 tax year and subsequent tax years, the MSAV on homesites qualified for the 1995-96 tax year and before, equals the 1995-96 SAV reduced by 10 percent.
  - b) For 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.
  - c) Once the MSAV of a homesite has been established by the two previous steps, the MSAV increases 3 percent each year thereafter.

The assessed value of a qualified farm or forest homesite equals the lesser of the homesite SAV or the homesite MSAV. See paragraph 5 in OAR 150-308A.256.

## **5D. Disqualification**

When establishing a homesite on designated forestland or small tract forestland, a disqualification action occurs. Land taken out of forest production to create a forest related dwelling homesite transfers the land from one special assessment to another special assessment. This disqualification would be processed under ORS 308.156(4)(b) and would not be an exception under Measure 50.

At any point in time that the county discovers that the qualification criteria no longer applies to a specially assessed homesite a disqualification can be initiated. The county needs to verify the owner and occupant of the dwelling to determine if the criteria of ORS 308A.253(5) continues to be met. A forest-related homesite is disqualified if the dwelling is vacant (except for ORS 308A.253(5)(b)(C)). This reference states that the dwelling is not considered "vacant" if the dwelling was unoccupied due to health, vacation, or other reason if during the period the dwelling was not in use it was not leased or rented to another person. While occupied, the dwelling must have been by a person: A) whose principal source of income is derived from the harvest of timber from forestland on which the dwelling is located; B) who owned and occupied the dwelling for five consecutive years before the operation ended.

Support of a disqualification action for the forest related homesite not being used in conjunction with the management and operation of the forestland is found in ORS 308A.259(1)(a). ORS 308A.259(1)(b) states that vacancy will not be considered a change in use, however this portion of the statute is only applicable to farm related homesites, not forest homesites. No additional tax will be imposed following this disqualification (ORS 308A.259(2)). The disqualification action on the homesite will not affect the remaining qualifying portion of the parcel in a forestland special assessment.

When a partition or lot line adjustment occurs on a forestland parcel, landowners as well as property tax administrators should be aware of the impact the change will have on the special assessment of the property. If the partition or lot line adjustment reduces the qualified forestland on the parcel to 10 acres or less, the county must

disqualify the homesite on the parcel from special assessment.

## **6. Non-Forest Related Homesites**

Forestland taken out of production to develop a non-forest related homesite is disqualified as forestland that is "no longer in use." If the disqualified land was designated forestland, all additional taxes will be calculated and advanced for collection when the homesite is created. This disqualification of designated forestland results in a Measure 50 exception as described under ORS 308.156(4)(a). H&BU forestland used for the homesite is declassified; refer to ORS 308A.718(2). There is no additional tax on the declassified H&BU homesite.

The area of the homesite will be valued at a market value. It will not be specially assessed. The remaining acres of qualified forestland will continue to be specially assessed.

A non-forest related homesite may be any size; it could be over an acre or under an acre. All land associated with the dwelling is assessed at a market value. If there are forest-related buildings on the property (some may be near the home), then the land associated with the forest-related buildings are assessed at the value per acre of the qualified forestland special assessment program approved on the account.

Non-qualifying homesites are valued and assessed based on rural land appraisal concepts under OAR 150-308.205-(A)(2)(h), the same as any other rural homesite. The rural homesite value is a component of the parcel where the homesite is located, and an adjustment for utility should be made to the homesite value for amenities such as view or river frontage. This differs from the assessment of a qualifying specially assessed homesite, which requires any added value for homesite amenities to be divided as an average with all of the contiguous common ownership acres and parcels.

OAR 150-308.205-(A)(2)(h) states: The real [market] value for rural lands shall be based on an average price per acre for each size of parcel. Adjustments to the value shall be made to those acres with more or less utility. For improved parcels the value of the site developments as defined by 150-307.010(1)(2)(a)(A) must be added.

Under this rule, the value of a homesite is calculated as the **average** market value per acre for the parcel, plus the value of onsite development with no limitation. However, if the homesite has additional utility or inutility features such as a river front, view, poor access, etc., the homesite value can be adjusted for such features. However, the value of the homesite is not considered a utility adjustment. The utility value of the homesite is to be calculated as part of the average market value per acre for the parcel.

If zoning allows greater utility such as land divisions, then land schedules can be developed to reflect typical land division sizes occurring in the market area.

Both the qualifying and non-qualifying homesite procedures require an average market value for the homesite acre. A difference in value and procedure is recognized when it is necessary to make an adjustment for utility, zoning, or contiguous acres of common ownership. Where EFU or qualifying non-EFU has a \$4,000 OSD (on-site development) value limit, rural residential is assessed based on market value and does not have an OSD limit.

**Example:** An owner of 9 acres of land wishes to create a 1-acre homesite on the property. The current special assessment on the entire 9 acres is designated forestland. The property is approved by the county planning department for placement of a home on the property (i.e., template test). The 1-acre area used for the homesite would be disqualified from the forestland program. No option would be extended to the owner for any other special assessment. Calculate the additional tax and prepare the amount due for collection. The homesite would be assessed at a market value. The remaining 8 acres of specially assessed land remain unaffected by this disqualification action.

**Example:** An owner of 11 acres of Small Tract Forestland (STF) wishes to create a 1-acre homesite on the property. The current special assessment on the entire 11 acres is STF. The county planning department has approved the placement of a home on the property. The 1-acre area used for the homesite would be disqualified from the STF program. The homesite area would not qualify for a forest homesite special assessment since 'forestland' defined for home-

site purposes is "more than 10 acres...zoned in the comprehensive plan...for forest use" and "is assessed as small tract forestland..." Calculate the additional taxes (two calculations; see ORS 308A.707) and prepare the amount due for collection. The homesite would be assessed at a market value. The remaining 10 acres of specially assessed land remains in the STF program unaffected by the creation of the homesite. (The STF program has a 10-acre minimum to qualify for the program.)

**Example:** The actual footprint of the homesite is less than 1 acre and the total parcel size is 2.5 acres. Total physical area of the homesite may be less than 1 acre when determining the assessment of a qualified forest homesite or a non-forest related homesite.

The total area utilized for the actual homesite is between 0.28 and 0.42 acres. The assessor, excluding a "standard" 1 acre for the homesite, disqualified the remaining property for special assessment since it was below the required 2-acre minimum. The landowner appealed for reinstatement of the subject property, less the homesite to the special forestland designation.

ISSUE: Is the standard practice proper? (The assessor excluding a rigid 1-acre homesite to obtain net acreage, which is then used to determine acreage eligibility requirements for special assessment.)

DISCUSSION: No. The assessor relied upon the Departments Opinion and Order VL 79-147 for excluding his "standard" 1 acre for a homesite on property classified as designated forestland. However, the Opinion and Order relied upon clearly held that the utilization of "the assessor's office standardization of homesite size at one (1) acre" was incorrect when the taxpayer was able to show that the actual "homesite" area was less than 1 acre.

In the present case, the evidence showed that the homesite was less than 1 acre, and in fact, less than 0.69 acres which would allow petitioner to satisfy the minimum acreage requirements of OAR 150-321.358(4) paragraph 3.

ORDER: Petition granted [OF 2398-V; O&O No. VL 81-578; 6-30-81.]

The 2.00-acre minimum of designated forestland continues and the 0.69 acre homesite is valued at a 1.00-acre value.

## **7. Non-Farm Dwellings in an Exclusive Farm Use (EFU) Zone**

### **ORS 215.236**

Designated and Small Tract Forestlands sometimes exist in EFU zones. ORS 215.236 requires any designated or STF forestland, EFU farm use land and land under open-space special assessment to be disqualified and additional taxes paid prior to final approval for the establishment of a non-farm dwelling on a lot or parcel. (No additional taxes are due if the land was H&BU acreage). The lot or parcel may not requalify for special assessment unless it is combined with another contiguous lot or parcel. The combined properties will then be considered a qualifying parcel for a special assessment program. A lot or parcel subject to ORS 215.236 may qualify for Wildlife Habitat special assessment following disqualification and avoid additional taxes. (The Wildlife Habitat special assessment is available only in counties that offer the program).

See the Disqualification Section of the *Farm Use Assessment Procedures* manual (DOR Publication 150-303-422) for additional discussion of disqualification criteria of ORS 215.236. Also, see the appendix for notification and sample disqualification letters, Group B, for language about the establishment of a non-farm dwelling in an exclusive farm use zone.

## **8. Land Supporting Christmas Trees**

### **ORS 308A.056(2), ORS 321.267(2), ORS 321.824(2)**

In ORS 308A.056(2), the term “farm use” includes cultured Christmas trees as a land use that qualifies for a farm use special assessment. ORS 321.267(2) says that land may not be assessed as western Oregon designated forestland if the land is prepared using intensive cultivation and tilling and all unwanted plant growth is controlled continuously for the exclusive purpose of growing Christmas trees. The reference for this same issue in eastern Oregon is ORS 321.824(2) and states “Land used exclusively for growing cul-

tured Christmas trees may not be assessed under ORS 321.805 to 321.855.” A detailed definition of “cultured Christmas trees” is found under ORS 321.805(1) for eastern Oregon.

A common problem with the assessment of land supporting Christmas trees involves stands of trees that the owner has stopped cultivating for the Christmas tree market and has allowed to grow beyond maturity for potential timber production. This places the county assessor’s staff in the position of deciding when to disqualify from a farm use assessment. An option upon disqualification from farm use special assessment is to place the previously cultured Christmas tree acreage into a farm woodlot category. This could be done on acreages up to 20 acres (the maximum for a woodlot, per ORS 308A.056(3)(h)). This change would not change the value per acre that was used on the land under Christmas tree production since the productivity and the potential use of the soil have not changed.

When periodic maintenance practices common for care of cultured Christmas trees are no longer evident, then the county may initiate a disqualification of the farm use special assessment if the land is not placed into the farm woodlot category. Practices to look for are: plowing or disking the ground, high density planting (at numbers per acre not typical for reforestation standards), shearing of the trees, weed and brush control, basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation and irrigating. If culturing practices are absent to the point that the trees are growing in a size or quality that are not marketable for the Christmas tree market, then the county may initiate a disqualification action.

In the process of notification for disqualification of farm use special assessment (ORS 308A.718), the option to apply for special assessment as forestland is presented (ORS 308A.724). It is the responsibility of the landowner to submit an application for a forestland program. The land will be reviewed and examined by the county staff to determine if the acreage meets the qualification criteria for the forestland special assessment program.

Some tree species that are suitable for Christmas trees are not ecologically suited for forestland production on certain planting sites. Noble

firs can be grown for Christmas trees at lower elevations, but are not suitable for timber production at lower elevations. However, Noble fir is an acceptable species for timber production at higher elevations. When trying to determine if former Christmas tree plantations can be qualified under special assessment for forestland, appraisers may need to consult with local forestry expertise to determine if the qualifications for specially assessed forestland are met. If the landowner does not apply for another special assessment after the farm use disqualification, then the land would be assessed at a market value.

Not all counties in Oregon offer the Wildlife Habitat special assessment as an option to landowners, (ORS 308A.415).

## **9. Forested Land That May Be Assessed in Other Ways**

There are properties that may be forested that do not have a special assessment as 'forestland' for tax purposes. Examples include:

- Tract land assessment; Property classification code 4-0-0

Tract land involves parcels of unimproved acreage where the highest and best use is for development to a suburban or rural homesite; however the land has not been divided into lots. The classification is placed on a property due to an appraisal decision by the county assessor staff.

This assessment is at a market value on the land. The landowner has not applied for a special assessment by choice or by not understanding the options available. Land assessed as tract land may support stands of timber or be lightly stocked with trees and associated native plants.

Land under the following special assessments may support natural vegetation that is below or at stocking standards for designated forestland or Small Tract Forestland.

- Open Space Lands  
References: ORS 308A.300 through 308A.330
- Riparian Habitat Exemption  
References: ORS 308A.350 through 308A.383
- Wildlife Habitat  
References: ORS 308A.400 through 308A.430.

