

# PRIVATE FOREST ACCORD

An In-progress Guidebook for Family Forest Landowners\*



As of February 15, 2022

\*This guidebook is comprised of notes used during PFA negotiations on Small Forest Landowner outcomes (see disclaimer below).

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*Disclaimer: The information in this guidebook represents the agreements contained in the Private Forest Accord used to write the legislation. It does not represent the final legislation or amendments. It is also written prior to the rulemaking process and does not contain all the details of final implementation.*

## **Chapter 1 - New Terminology and Structures of the Private Forest Accord (PFA) for Small Forest Landowners**

### **Small Forestland Owner (SFO):**

For the purposes of the PFA, "Small Forestland Owner" means an owner who:

1. Owns less than 5,000 acres of forestland.
2. At the time of submitting a harvest notification, has harvested no more than an average timber volume of two million board feet per year from their own forestlands in Oregon during the three years prior to submitting the required documentation.
3. And certifies that they do not expect to exceed that average timber volume for ten years after the Oregon Department of Forestry receives the required documentation.

*Emergency Exception:* Any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forestland owner" if he or she establishes to the Department of Forestry's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for a compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses.

### **Harvesting Options Definitions:**

The following three options to manage timber harvest around riparian areas are available to SFOs only:

- **Standard Practice Option:** SFOs may choose to follow the Standard Practice used by large forest owners to manage timber harvest around riparian areas established under Chapters 3 and 4 of this Report.
- **SFO Minimum Option:** SFOs may choose to manage to alternative minimum rules as defined in buffer rules. This shall be known as the Small Forestland Owner Minimum Option (SFO Minimum Option).
- **Forest Investment Credit Option:** SFOs may choose to follow the Standard Practice used by large forest owners and claim a tax credit for some of the value committed to conservation. This shall be known as the Forest Investment Credit Option (FIC Option).

### **Forest Investment Credit (FIC):**

The Forest Investment Credit (FIC) is established to incentivize SFOs to adopt Standard Practice prescriptions. When an SFO adopts the Standard Practice instead of the SFO Minimum Option, the SFO becomes eligible to receive a Forest Investment Credit equal to the Stumpage Value, of the additional timber that is retained in the Forest Investment Credit Area by adopting the Standard Practice.

### **Forest Investment Credit (FIC) Option Credit Area:**

The area that may be eligible for the tax credit under the FIC Option is termed the FIC Credit Area. The width of the FIC Option Credit Area is the difference between the outermost edge of

the Standard Practice Width and the outermost edge of the SFO Minimum Option Width. For all stream types except for small Type N streams, the length of the FIC Option Credit Area is the length of frontage of the harvest unit on that stream type segment. For small Type N streams, the length of the FIC Option Credit Area follows the same lengths as the Standard Practice Option.

### **Road Condition Assessments (RCAs):**

SFOs will fill out a Road Condition Assessment (RCA) worksheet when they submit a notification to ODF for a timber harvest that will result in the SFOs using a road to haul timber. SFOs may voluntarily elect to complete an RCA without a planned timber harvest but are not required to do so. The RCA worksheet will be a form that is crafted and approved by ODF with stakeholder input. Notifications for activities other than timber harvest will not require an RCA.

The RCA will include all roads in the SFO's parcel where the harvest will take place. RCAs will indicate the condition of the roads specific to: 1) active or potential delivery of sediment to waters of the state and 2) the status of water crossings. ODF will assist SFOs in completing the RCA, if needed.

RCAs will also indicate potential fish passage barriers on fish streams (Type F and Type SSBT) and Abandoned roads that may qualify for state funding. Potential fish passage barriers on fish streams (Type F and Type SSBT), Abandoned roads, and roads with a perched fill with probability of delivering sediment to waters of the state, identified in RCAs that may qualify for state funding will be reviewed by ODF in consultation with the Oregon Department of Fish and Wildlife (ODFW).

### **Small Forestland Owner (SFO) Assistance Office:**

ODF currently supports several programs for SFOs including the Partnership for Forestry Education, forest management planning, partnership development and program funding, outreach and education through stewardship foresters, and the Committee for Family Forestlands. The Private Forest Accord will add many new ODF responsibilities to assist SFOs on a variety of new PFA requirements. This will require a new ODF internal organization called the SFO Assistance Office that will exist to assist SFOs. The SFO Assistance Office will be 100% funded by the state. It will be responsible to maintain the many functions needed to ensure the PFA requirements related to SFOs can be implemented, maintained, and monitored.

### **Purpose of the SFO Assistance Office**

The primary focus of the SFO Assistance Office will be to implement the financial incentives and technical assistance programs that support the Private Forest Accord and Habitat Conservation Plan.

### **Supporting Services**

ODF already supports several programs for SFOs. These existing programs will be housed within the new SFO Assistance Office and will be leveraged to support programs associated with SFO requirements and programs in the PFA associated with the HCP. New services will include: 1) Validating whether a forest owners qualifies to be a SFO, 2) Assisting SFOs in understanding and

implementing new FPA rules, 3) Assisting SFOs in completing Road Assessment Conditions (RCAs) as needed, 4) Implementing and maintaining the new SFISH program for SFOs, 5) Assist SFOs when requesting a Forest Investment Credit (FIC) by reviewing and approving Stumpage Values for the credit, tracking FICs in FERNS, and providing SFOs with documentation to provide to Counties to register restrictions related to the FIC and to provide to the Department of Revenue to validate the FIC, 6) Track and report the use of the SFO Minimum Option by Fifth Field Watershed and when needed track requests to use the SFO Minimum Option if and when the threshold for using the SFO Minimum Option by Fifth Field Watershed has been met, 7) Building and maintaining a data base of SFOs, their ownerships, road conditions, and fish streams to support above programs, and 8) Address other PFA issues related to SFOs.

### **Small Forestland Investment in Stream Habitat (SFISH) Program:**

The SFISH Program will be managed by the Small Forestland Owner (SFO) Assistance Office, in consultation with the Oregon Department of Fish and Wildlife (ODFW). State funding will be made available to assist SFOs to 1) replace fish stream culverts (Type F and Type SSBT) that are no longer functioning or still functioning but are not designed consistent with the new Forest Practice Act (FPA) rules, 2) repair of Abandoned roads, and 3) reconstructing, vacating, or relocation of roads with a perched fill with probability of delivering sediment to waters of the state.

SFISH projects will be 100% funded by the state at the rate of \$10 million per year. If state funding is not available, SFOs will have no obligation to make such repairs on their forestland until funding is available or unless the obligation predates the PFA.

RCA submittals will automatically make SFOs eligible for participation in the SFISH program.

### **Adaptive Management Program Structure:**

Oregon's adaptive management program will rely on an Adaptive Management Program Committee (AMPC) and an Independent Research and Science Team (IRST) to monitor effectiveness of PFA to achieve HCP outcomes.

### **Adaptive Management Program Committee (AMPC):**

The AMPC will fulfill the following primary roles:

- Set the research agenda, including budget and priorities, for the IRST and guide the overall adaptive management process.
- Assess the scientific outcomes reported by the IRST and prepare a report for the Board that identifies alternatives (including no action) that could address identified problems.
- Help the Board in the ongoing process of identifying and modifying resource objectives; and
- Review CMP and enforcement reports and prepare any recommendations to the Board for rule adjustment, guidance, or training.

The AMPC will set the scientific agenda but will play no part in designing actual research projects, carrying out the inquiry, or the IRST's report of findings to the Board and AMPC.

The AMPC will consist of one representative from each of the following interest areas (and perhaps others) nominated by stakeholder caucuses:

- The industrial forest landowner community
- A timber operator
- Small forestland owner community
- Conservation landowner (ie: land trust)
- Tribal representative
- Conservation community
- Commercial or recreational angling community
- County government
- Oregon Department of Forestry (ex officio)
- Oregon Department of Fish and Wildlife
- Oregon Department of Environmental Quality
- NOAA Fisheries (ex officio)
- USFWS (ex officio)

**Independent Research Science Team (IRST):**

Designated research team to analyze the effectiveness of PFA rules to meet desired outcomes.

**Private Forest Accord Mitigation Advisory Committee (MAC):**

The Private Forest Accord Mitigation Advisory Committee (MAC) is established as an advisory committee to the Oregon Fish & Wildlife Commission to make recommendations to the Commission regarding grants utilizing funds in the Private Forest Accord Mitigation Subaccount (PFAMS). The MAC shall be organized in accordance with the following

*Purpose:* The purpose of the MAC is to assure that funds are invested in the projects that will generate the highest degree of mitigation for timber practices. Funds may also be used to conduct active outreach to landowners of fish passage barriers to meet fish passage targets, and other landowners who may participate in the mitigation efforts of the PFMF.

*Membership:* The MAC consists of seven voting members, appointed by the Governor, and may only be removed for cause. Three members of the MAC will be appointed from non-governmental organizations that promote conservation of freshwater aquatic habitat. Three members of the MAC will be appointed from the timber industry. One member of the MAC will be appointed by the OCRF from among its members. Ex officio members may include a representative from NOAA, USFWS, ODF, OWEB, and ODFW.

*MAC Duties:*

- The MAC shall solicit on regular intervals applications for grant funding to support projects that will further the purpose described above.
- The MAC will proactively identify and target investment opportunities in areas it identifies as important in furthering the purposes described above.

- o All applications to the PFAMS received by public solicitation by the MAC shall be ranked or scored under criteria developed by members of the MAC no more than one year after the enacting legislation and prior to soliciting the first round of applications to the PFAMS.
- o The MAC shall ensure that funds are invested in the projects that will generate the highest degree of mitigation for aquatic species covered by the Private Forest HCP. Funds may also be used to conduct active outreach to landowners of fish passage barriers to meet fish passage targets, and other landowners who may participate in the mitigation efforts of the PFAMS.
- o The PFAMS is eligible for matching to the main OCRF if matching funds are necessary to fully implement the proposed project are required.
- o The MAC shall receive and consider recommendations from the OCRF Advisory Committee.
- o The MAC shall seek out and identify opportunities to leverage funds in the PFAMS to obtain additional or matching funding for conservation efforts qualifying under this chapter. Such additional or matching funds may be managed within the PFAMS.

**Private Forest Accord Mitigation Subaccount (PFAMS):**

The Oregon Conservation and Recreation Fund (OCRF) was established by the Oregon Legislature in 2019 and is administered by the Oregon Department of Fish and Wildlife (ODFW). The OCRF Advisory Committee advises the Oregon Fish and Wildlife Commission on the disbursement of funds from the OCRF.

As part of the PFA, a subaccount entitled the Private Forest Accord Mitigation Subaccount (PFAMS) shall be created in the OCRF to receive and dispense funds for the purposes of the PFA mitigation commitments. The PFA establishes that industry will provide \$5 million per year in mitigation funding for the 50-year term of the Incidental Take Permit (ITP).

The \$10 million per year in mitigation funding provided by the State will also be deposited into the PFAMS beginning on January 1, 2023.

**Compliance Monitoring Program (CMP):**

**Outcomes for the compliance monitoring program (CMP):**

- a. Report on the implementation of HCP-identified forest practice rules on the ground.
- b. Identify opportunities to improve compliance as needed through education for landowners, regulators, consultants, and operators as suggested by non-compliance rates.
- c. Provide information that revises rules and technical guidance, when appropriate.
- d. Provide the report to federal services assessing compliance with the HCP.

**Process for administration of the compliance monitoring program (CMP):**

The CMP administration is led by ODF personnel. Specific monitoring field work can be conducted by ODF personnel, through hired contractors, or some mix of both.

- a. ODF should hire an external, qualified statistician to aid in developing sample selection and evaluation criteria to ensure a high level of confidence in the statistical modeling and final reported compliance numbers.

- b. The CMP is supported by a stakeholder group comprised of representatives that have expertise in the purpose for and implementation of the rules that are being monitored, including but not limited to agency staff, landowners, and operators.
- c. Funding needs for the CMP will be influenced by the number of rules evaluated, acceptable statistical precision, and frequency of reporting.



## **Chapter 2 - Statewide Riparian Prescriptions**

General riparian prescriptions that apply statewide to both Western and Eastern Oregon. Riparian prescriptions apply to all Type 1, 2, or 3 timber harvests (Seed tree, Shelterwood, and Clearcuts) that include a riparian area.

The use of the SFO Minimum Option, by each category of riparian area, will be limited to 5% of the horizontal lineal feet of those types of streams owned by SFOs, over a five-year rolling average, in a defined Fifth Field Watershed.

SFOs who select the FIC Option must follow the same prescriptions as the Standard Practice, but can apply for a Forest Investment Credit for 100% of the Stumpage Value of merchantable timber retained in the Standard Practice in excess to what would be retained in the SFO Minimum Option.

Undesignated harvests are not eligible to claim a Forest Investment Credit. There will be no limit on the use of an Undesignated harvest within a Fifth Field Watershed.

### **Measuring Riparian Prescriptions Statewide (See Riparian Buffer Tables below)**

#### **Riparian Buffer Widths:**

All measurements of riparian buffer widths shall be made using slope distance and shall be measured from the edge of the active channel or channel migration zone (CMZ) if present. Buffer width shall be measured separately on each side of the stream.

#### **Riparian Buffer Lengths:**

The measurements of riparian buffer lengths, for perennial non-fish streams, are made from the confluence with the Type F or Type SSBT junction they are tributary to.

### **Westside Oregon Non-Fish Stream Buffers for SFOs**

#### **Type N Perennial Streams and All Type N Seasonal Streams:**

Originally, whether and where a stream is defined as “perennial” will be determined using observation if there is stream flow during the dry time of year (July 15<sup>th</sup> – first rain in September). Eventually, there will be a model that predicts perennially. Once the model is in use, observation will continue to be an option for the landowner. For sections of perennial streams not requiring buffers, upstream of the above identified buffers and for seasonal streams, SFOs will follow the Standard Practice for Equipment Limitation Zones.

#### **Seeps or Springs Found in Riparian Buffers:**

The Standard Option for seeps and springs found within riparian buffers will be a minimum of a 30 foot no harvest buffer. SFOs may follow different prescriptions for seeps and springs found within riparian buffers under the SFO Minimum Option. The SFO Minimum Option requires

that, if a seep or spring occurs within a riparian buffer area, then the buffer will be extended for 15 feet beyond the seep or spring, if the riparian buffer is not already 15 feet beyond the seep or spring. To utilize this option, SFOs will provide a notice to ODF with the harvest notification. No Fifth Field Watershed Tracking of this buffer if needed.

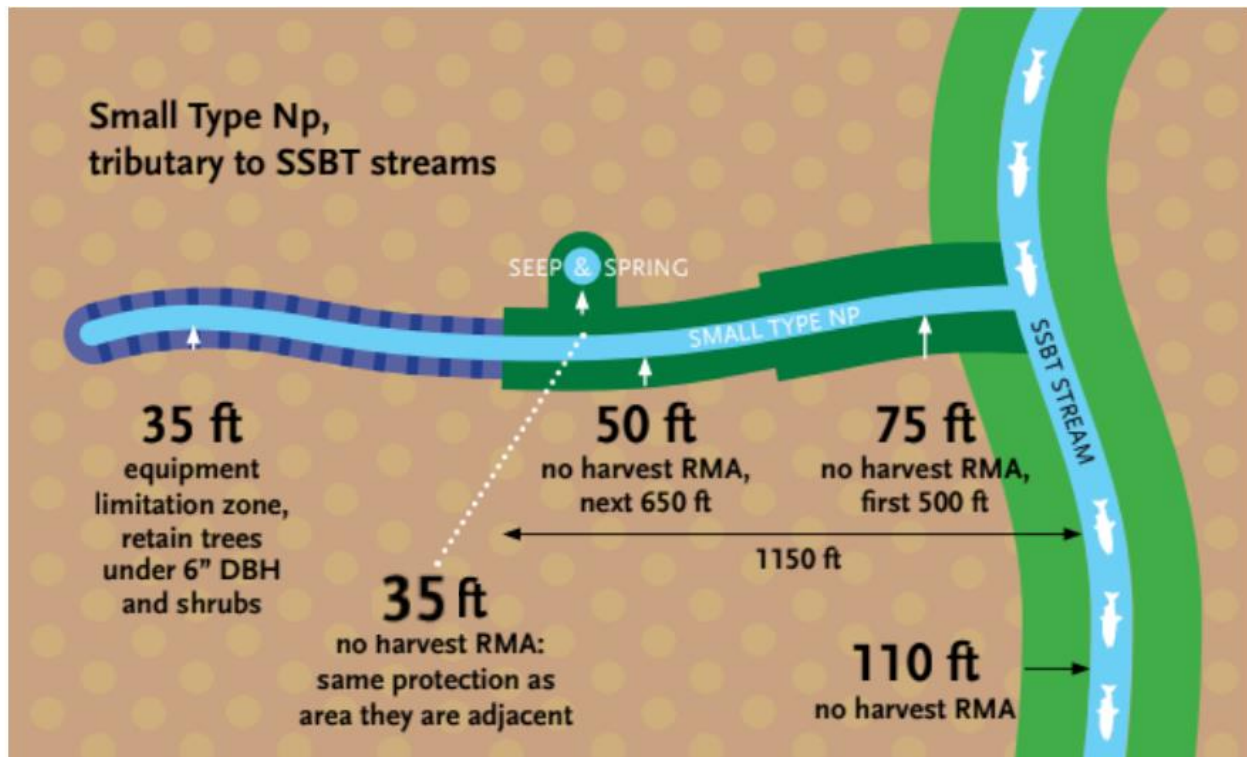
### Eastern Oregon Non-Fish Stream Buffers for SFOs

#### Type N Perennial Streams and All Type N Seasonal Streams:

Originally, whether and where a stream is defined as “perennial” will be determined using observation if there is stream flow during the dry time of year (July 15<sup>th</sup> – first rain in September). Eventually, there will be a model that predicts perennially. Once the model is in use, observation will continue to be an option for the landowner. Eastside Prescriptions draws a distinction between laterals and terminal Small Type N streams. For sections of perennial streams not requiring buffers, upstream of the above identified buffers and for seasonal streams, SFOs will follow the Standard Practice for Equipment Limitation Zones.

#### Seeps or Springs Found in Riparian Buffers:

The Standard Option for seeps and springs found within riparian buffers will be a minimum of a 30 foot no harvest buffer. SFOs may follow different prescriptions for seeps and springs found within riparian buffers under the SFO Minimum Option. The SFO Minimum Option requires that, if a seep or spring occurs within a riparian buffer area, then the buffer will be extended for 15 feet beyond the seep or spring, if the riparian buffer is not already 15 feet beyond the seep or spring. To utilize this option, SFOs will provide a notice to ODF with the harvest notification. No Fifth Field Watershed Tracking of this buffer if needed.



Western Oregon Riparian Buffer Requirements			
Stream Type	Standard Practice Width	SFO Minimum Option Width	FIC Option Credit Area
Large SSBT	110 feet no harvest	100 feet no harvest	Area between 100 and 110'
Medium SSBT	110 feet no harvest	80 feet no harvest	Area between 80 and 110'
Small SSBT	100 feet no harvest	60 feet no harvest	Area between 60 and 100'
Large Type F	110 feet no harvest	100 feet no harvest	Area between 100 and 110'
Medium Type F	110 feet no harvest	70 feet no harvest	Area between 70 and 110'
Small Type F	100 feet no harvest	50 feet no harvest	Area between 50 and 100'
Large Type N	75 feet no harvest	70 feet no harvest	Area between 70 and 75'
Medium Type N	75 feet no harvest	50 feet no harvest	Area between 50 and 75'
Small Type N, Perennial, and Tributary to SSBT	75 feet no harvest buffer width on first 500 feet, then 50 feet wide no harvest buffer on the next 650 feet length. The total length from the junction with the SSBT stream is 1,150 feet.	35 feet no harvest buffer on first 500 feet, then 35 feet no harvest buffer on next 650 feet. The total length from the junction with the SSBT stream is 1,150 feet.	<b>Width:</b> Area between 35 feet and the outside edge of the Standard Option (either 50 or 75 feet). <b>Length:</b> Will follow same lengths as the Standard Practice Option.
	From 1,150 feet to the end of the Type N perennial stream, 35-foot equipment limitation zone. Within 35-foot buffer, retain trees under 6 inches DBH and all shrubs.	From 1,150 feet to the end of the Type N perennial stream, 35-foot equipment limitation zone. Within 35-foot buffer, retain trees under 6 inches DBH and all shrubs.	
Small Type N, Perennial, and Tributary to Type F	75 feet no harvest buffer width on first 600 feet length.	35 feet no harvest buffer for 600 feet length.	<b>Width:</b> Area between 35 feet and the outside edge of the Standard Option. <b>Length:</b> Will follow same lengths as the Standard Practice Option.
	From 600 feet to the end of the Type N perennial stream, 35-foot equipment limitation zone. Within 35-foot buffer, retain trees under 6 inches DBH and all shrubs.	From 600 feet to the end of the Type N perennial stream, 35-foot equipment limitation zone. Within 35-foot buffer, retain trees under 6 inches DBH and all shrubs.	
Small Type N, Seasonal	35 feet equipment limitation zone.	35 feet equipment limitation zone.	None

Eastern Oregon Riparian Buffers			
Stream Type	Standard Practice Width	SFO Minimum Option Width	FIC Option Credit Area
Large Type F and SSBT	30 feet no harvest and 70 feet managed area (100 feet total)	30 feet no harvest and 70 feet managed area (100 feet total)	None
Medium Type F and SSBT	30 feet no harvest and 70 feet managed area (100 feet total)	30 feet no harvest and 50 feet managed area (80 feet total)	Difference between 50 feet and 70 feet managed zone
Small Type F and SSBT	30 feet no cut and 45 feet managed area (75 feet total)	30 feet no harvest and 30 feet managed area (60 feet total)	Difference between 30 feet and 45 feet managed zone
Large Type N	30 feet no harvest and 45 feet managed area (75 feet total)	30 feet no harvest and 45 feet managed area (75 feet total)	None
Medium Type N	30 feet no harvest and 45 feet managed area (75 feet total)	30 feet no harvest and 30 feet managed area (60 feet total)	Difference between 30 feet and 45 feet managed zone
Small Type N, Perennial, Terminal	30 feet no harvest and 30 feet managed area, for first 500 feet above junction with Type F or SSBT.	20 feet no harvest with 20 feet managed area, for first 500 feet above junction with Type F or SSBT.	None
	From 500 feet to the end of the Type N perennial stream, 30 feet equipment limitation zone. Within 30-foot buffer, retain trees under 6 inches DBH and all shrubs.	From 500 feet to the end of the Type N perennial stream, 30 feet equipment limitation zone. Within 30-foot buffer, retain trees under 6 inches DBH and all shrubs.	
Small Type N, Perennial, Lateral	30 feet no harvest for the first 250 feet above junction with Type F or SSBT. From 250 feet to end of the Type N perennial stream, 30 feet equipment limitation zone. Within 30-foot buffer, retain trees under 6 inches DBH and all shrubs where possible.	20 feet no harvest for the first 250 feet above junction with Type F or SSBT. From 250 feet to end of the Type N perennial stream, 30 feet equipment limitation zone. Within 30-foot buffer, retain trees under 6 inches DBH and all shrubs where possible.	None
Small Type N, Seasonal	30 feet equipment limitation zone. Within 30-foot buffer, retain shrubs and trees under 6 inches DBH where possible.	30 feet equipment limitation zone. Within 30-foot buffer, retain shrubs and trees under 6 inches DBH where possible.	None

## Chapter 3 - SFO Forest Roads

SFOs will comply with the most current Oregon Forest Practice Rules for forest roads and the requirements for forest roads established in the PFA except for the following: ng exceptions:

- 1) The Forest Road Inventory Assessment (FRIA) program will not apply to SFOs. Instead, SFOs will fill out a Road Condition Assessment (RCA) specific for SFOs, approved by Oregon Department of Forestry (ODF).
- 2) The timelines for replacing or maintaining road infrastructure to the standards will not apply to SFOs. Instead, SFOs will ensure their roads are maintained to the requirements for forest roads for any roads used for harvests. Like new standards, culvert replacements will be addressed at end of life for the culvert and/or when assistance funding is available. Nothing in this exception changes existing maintenance obligations of SFOs under the most current Oregon Forest Practice Rules.

All new construction related to roads must satisfy the same standards that apply to all landowners.

### **Road Condition Assessments (RCAs):**

SFOs will fill out a Road Condition Assessment (RCA) worksheet when they submit a notification to ODF for a timber harvest that will result in the SFOs using a road to haul timber. SFOs may voluntarily elect to complete an RCA without a planned timber harvest but are not required to do so. The RCA worksheet will be a form that is crafted and approved by ODF with stakeholder input. Notifications for activities other than timber harvest will not require an RCA.

The RCA will include all roads in the SFO's parcel where the harvest will take place. RCAs will indicate the condition of the roads specific to: 1) active or potential delivery of sediment to waters of the state and 2) the status of water crossings. ODF will assist SFOs in completing the RCA, if needed.

RCAs will also indicate potential fish passage barriers on fish streams (Type F and Type SSBT) and Abandoned roads that may qualify for state funding. Potential fish passage barriers on fish streams (Type F and Type SSBT), Abandoned roads, and roads with a perched fill with probability of delivering sediment to waters of the state, identified in RCAs that may qualify for state funding will be reviewed by ODF in consultation with the Oregon Department of Fish and Wildlife (ODFW).

### **Road Condition Improvements:**

General road conditions will meet normal requirements for using a forest road when the road is used to haul timber except for three types of road improvements funded by the state. State funding can be available to

- 1) replace fish stream culverts (Type F and Type SSBT),
- 2) repair of Abandoned roads, and
- 3) reconstructing, vacating, or relocation of roads with a perched fill with probability of delivering sediment to waters of the state.

These projects will be 100% funded by the state and will be coordinated through a new Small Forestland Investment in Stream Habitat (SFISH) Program.

The timing of the above three types of projects will be dependent on the state's ability to fund and prioritize them. If the state fails to fund eligible and approved projects on an SFO's road under the SFISH Program, that will not preclude the SFO from using the road if

- 1) the road is not used to haul timber,
- 2) the road is not in a condition with active delivery of sediment to waters of the state, and
- 3) the road does not have a culvert(s) with an imminent risk of failure.

If an RCA identifies necessary road repairs, there is no time limit in which the SFO must complete those repairs unless required to do so under current law.

## Chapter 4 - Timber Harvest on Steep Slopes

Timber Harvest on Steep Slopes for the Standard Practice will be identified by modeling (Side Note, the model is scheduled to be completed by March 1, 2023) using the threshold of likelihood of a failure agreed to in the PFA process. There are three types of steep slopes prescriptions.

1. Designated Debris Torrent Traversal Area – area of debris flow on a landslide prone slope
2. Designated Sediment Source Area – area of active stream scouring in channel
3. Stream Adjacent Unstable Slopes – area of active slumping into streams

### **Westside SFO Minimum Option for Designated Debris Torrent Traversal Areas:**

For Type 1, 2, or 3 Harvests, the SFO Minimum Option will require buffering of 50% of the length of the Designated Debris Torrent Traversal Area protected under the Standard Practice. The width of the Debris Flow Traversal buffer will be the same as the Standard Practice, fifty feet wide. This restriction applies at the harvest unit level.

ODF will determine if an SFO has areas in a planned harvest identified for protection in the Steep Slopes Model. ODF will assist SFOs in determining what areas need retained. The SFO Minimum Option is specific to each individual SFO, meaning that should a single modeled Designated Debris Torrent Traversal Area extend to a second SFO's property, each SFO would protect half of the traversal path on their property if they select the SFO Minimum Option.

There will be no Forest Investment Credit available if a SFO chooses to use the requirements in the Standard Practice for Designated Debris Torrent Traversal Area.

There will be no Designated Debris Torrent Traversal Area requirements for SFOs who have an Undesignated Harvest.

### **Westside SFO Minimum Option for Designated Sediment Source Areas:**

The SFO Minimum Option has no requirements to buffer any Designated Sediment Source Areas.

### **Eastside SFO Minimum Option for Designated Debris Torrent Traversal Areas and Designated Sediment Source Areas:**

There are no Steep Slope models or rules for Designated Debris Torrent Traversal Areas or Designated Sediment Source Areas in Eastern Oregon. If Steep Slope rules are developed sometime in the future, SFOs will have a voice in what the SFO Minimum Option will be.

### **Statewide SFO Minimum Option for Stream Adjacent Unstable Slopes:**

Where a Stream Adjacent Unstable Slope is identified, an SFO will extend the stream buffer thirty feet or to a width that fully buffers the Active Failure, whichever is less.

ODF may assist SFOs in determining what areas need to buffer as required.

No tracking by fifth field watershed required.

## **Chapter 5 - Forest Investment Credit**

The Forest Practice Act regulations to be adopted as part of the Private Forest Accord (PFA) include a Standard Practice for large forestland owners and a Small Forest Owner (SFO) Minimum Option which regulates timber harvests in subject riparian areas. These forest practices will be incorporated into a Habitat Conservation Plan (HCP) which will grant regulatory stability and assurance to forest landowners for a period of 50 years.

To incentivize SFOs to adopt the Standard Practice, when a SFO adopts the Standard Practice instead of the SFO Minimum Option, the SFO becomes eligible to receive a Retention Tax Credit (Credit) equal to the Stumpage Value (See “**Stumpage Value**” below) of the additional timber that is retained in the Retention Tax Credit Area by adopting the Standard Practice.

### **Duration of the Forest Investment Credit:**

The tax credits identified herein will be available beginning on the date these rules go into effect and will be continuously available until the termination of the envisioned 50-year HCP. The Forest Investment Credit will not have a sunset date. If a future legislature cancels the Forest Investment Credit and does not replace it with a similar compensation option for SFOs, all existing Credits held by taxpayers will be retained by them and may still be used. Similarly, if the FIC program is cancelled, all restrictions on using the SFO Minimum Option within a fifth field watershed will be removed for riparian areas where a Credit has not been issued, though the frequency of harvests under the SFO Minimum Option will continue to be tracked. A future legislature could reinstate the Forest Investment Credit and the system would be renewed.

### **Requirements and Limitations on Use of SFO Minimum Option**

#### **Reporting Requirements:**

When using the SFO Minimum Option, a notice will be given to ODF when making a harvest notification. The notice will identify the horizontal lineal feet of riparian area in the harvest unit and whether the horizontal lineal distance is a two-sided harvest or a one-sided harvest. Within three months after the completion of the timber harvest, SFOs will report to ODF the actual horizontal lineal feet of riparian area where the SFO Minimum Option was used.

#### **Fifth Field Watershed Cap:**

The use of the SFO Minimum Option, by each category of riparian area (fish and non-fish), will be limited to 5% of the horizontal lineal feet of those types of streams owned by SFOs, over a five-year rolling average, in a defined fifth field watershed. ODF will track the actual horizontal lineal feet of riparian area managed using the SFO Minimum Option, in any fifth field watershed. By rolling average it is intended that harvests occurring more than 5 years before are not used to calculate whether the cap has been reached, but instead harvests of that age will roll off the cap calculation.

#### **SFO Minimum Option Tracking Distance and Reporting:**

Lineal feet will be the horizontal length of the center of a stream. Lineal feet will be tracked using each side of a stream such that a one-sided buffer will count as half the lineal feet of a

stream segment. ODF will annually track and report the rolling average of fish (Type F and Type SSBT) and non-fish (Type N) streams managed using the SFO Minimum Option for each Fifth Field Watershed.

**Implications of Cap Being Reached:**

Should the 5% threshold for the SFO Minimum Option in a fifth field watershed be reached, two options will exist for SFOs:

1. For an SFO that wants to utilize the SFO Minimum Option, they may elect to be placed on a waiting list to use the SFO Minimum Option in that fifth field watershed when the rolling 5-year threshold has lowered below 5%. This list will be maintained and updated by ODF on a first come, first serve basis. SFOs will be notified by ODF when the opportunity to use the SFO Minimum Option becomes available. SFOs on the list will have priority to use the SFO Minimum Option before other SFOs, but once an SFO on the list is notified of the availability to use the option, they must elect to harvest or otherwise let other SFOs utilize the option.
2. The SFO can choose the FIC Option and receive a tax credit for 125% of the value that the SFO would have otherwise received utilizing the FIC Option.

**Process to Request and Receive a Retention Tax Credit:**

1. To become eligible for the Retention Tax Credit (Credit), a SFO must file a Notification of Operation (Notice) with the Oregon Department of Forestry (ODF) to conduct an eligible Type 1, 2, or 3 timber harvest (as defined under the Forest Practices Act) adjacent to a qualifying riparian area. To be eligible, the harvest area outside the riparian area must be equal in size or larger than the size of the adjacent Retention Tax Credit Area (as defined under the Forest Practices Act. In the Notice the SFO must include their intent to adopt the Standard Practice for the Retention Tax Credit Area in lieu of the SFO Minimum Option.
2. An eligible SFO must request the Credit when filing the Notice. The SFO must provide ODF with adequate documentation of the Stumpage Value of the Timber retained in the Retention Tax Credit Area (Stumpage Value). The Stumpage Value documentation and related costs under this section can be submitted by the SFO to ODF anytime between the date of Notice and three months after the timber harvest has been completed. The effective date of the Stumpage Value is to be the date of the Notice. The SFO is responsible for providing documentation of the Stumpage Value and related costs to the ODF in a timely fashion.
3. If the SFO hires a professional forester to determine Stumpage Value, the cost of the appraisal may be submitted by the SFO to ODF to add to the Credit. If the appraisal costs are added to the Credit amount, they may not be deducted for income tax purposes.
4. ODF will timely evaluate and approve the Stumpage Value, add any related landowner costs as provided in this section, issue the resulting Credit to the SFO, and notify the Oregon Department of Revenue of the existence and amount of the Credit issued to the SFO. The effective date of the Credit is to be the date on which the Notice is filed.



5. Once a Credit has been issued for a particular riparian area, the SFO and any future owners must adopt the Standard Practice in that riparian area for a period of 50 years from the date the Notice is filed. To avoid the necessity of obtaining surveys of the affected areas, details of the area subject to the harvest restriction shall be maintained by ODF in the FERNS system and are not required to be included in any deed restriction except to note that there is a restriction on harvests for the affected property.
6. ODF will provide the SFO a standardized document suitable for filing with the County noting the harvest restrictions for the riparian area earning the Credit, the amount of the Credit received that creates the harvest restriction, and the expiration date of the restriction. The SFO is responsible for filing this document with the Counties where the affected areas are located. Once filed, this restriction will re-zone the area of the riparian buffers into "FX" becoming property tax exempt.
7. The fee for recording the deed restriction with the County will be paid by the SFO but may be submitted by the SFO to ODF to add to Credit amount. If the recording fees are added to the Credit amount, they may not be deducted for income tax purposes. The restriction will remain with the property if and when ownership is transferred to another.
8. Once issued, the Credit will be a permanent multi-year carry forward tax credit until completely used up by taxpayer or their heirs.
9. If the SFO is taxed as a trust, partnership or S corporation, the entity can distribute the Credit to its owners/beneficiaries as appropriate.
10. The Credit may be used by any taxpayer holding the Credit to offset Oregon Income and Estate Taxes. Any unused Credit becomes part of the taxpayer's estate and is transferrable to the taxpayer's heirs.
11. The taxpayer can apply the Credit to their tax liability in the normal way tax credits are used when filing taxes. It is the SFO's obligation to keep a record of the original Credit, the amount of Credit applied in prior tax years, the amount of Credit being applied on the current return, and the amount carried forward to future years. The taxpayer must retain these records as part of their permanent files and provide these records to the Oregon Department of Revenue upon request.
12. The taxpayer is not required to use the Credit against their tax liability in any given year.
13. The Retention Tax Credit program will not be included in the Sunset Clause for other state tax credits. This is to be a permanent tax credit available to SFO's for the duration of the Habitat Conservation Plan.

14. If a future legislature cancels the Retention Tax Credit and does not replace it with a similar compensation option for SFOs, all existing Credits held by taxpayers and the related deed restrictions will be retained. All restrictions on SFOs on using the SFO Minimum Option will be removed for riparian areas where a Credit has not been issued. ODF will continue to track use of the SFO Minimum Option without restrictions of its use. A future legislature could reinstate the Retention Tax Credit and the system would be renewed.
15. If the SFO who originally applied for and received a Credit wishes to use the SFO Minimum Option or remove the restriction on the property deed for the area receiving the Credit the taxpayer must repay the state any Credit that has been deducted from their tax liability, with interest from the due date of the original return(s) where the Credit was taken and will forfeit any unused Credit. The interest rate shall be the underpayment rate. The repayment amount could be paid directly to the state or be added to the taxpayer's income tax liability. To make payment to the state, a form specifically for the purpose of repaying the state for the Credit and the official notice to ODF and appropriate County that the restriction can be removed will be used by the SFO. Once the repayment has been made, the SFO will inform Oregon Department of Forestry the harvest restriction related to the Credit has been removed. ODF will modify the information in FERNs to reflect there is no longer a restriction on that particular riparian area. ODF will provide SFO with a document to be presented to the appropriate County to remove the restriction. SFO will contact County with the document and the restriction will be removed. SFO will pay recording fees.
16. If a subsequent SFO owner wishes to use the SFO Minimum Option or remove the County restriction from the deed in a riparian area because of a previous owner's actions, the SFO must repay the state for the original amount of Credit received by previous owner with interest from the date of acquisition of the property. The interest rate shall be the underpayment rate. The repayment amount could be paid directly to the state or be added to the taxpayer's income tax liability. To make payment to the state, a form specifically for the purpose of repaying the state and the official notice to ODF and appropriate County that the restriction can be removed will be used by the SFO. Once the repayment has been made, the SFO will inform Oregon Department of Forestry the harvest restriction related to the Credit has been removed. ODF will modify the information in FERNs to reflect there is no longer a restriction on that particular riparian area. ODF will provide SFO with a document to be presented to the appropriate County to remove the restriction. SFO will contact County with the document and the restriction will be removed. SFO will pay recording fees.
17. Should a SFO intentionally harvest in a riparian area where a Credit has been issued and a deed restriction prohibits such harvest, the SFO would be in violation of the Forest Practices Act (FPA) and vulnerable to penalties for such FPA violation. If the SFO originally requested and received the Credits and some Credits have already been used, the SFO must repay the state any Credit that has been deducted from their tax liability from the due date of the original return(s) where the Credit was taken and will forfeit any unused Credit. The interest rate shall be the underpayment rate. If the SFO acquired the property with the deed restriction identifying the Credit value and restricting harvest in the relevant riparian area, the SFO must

repay the state for the original amount of Credit received by previous owner from the date of acquisition of the property. The interest rate shall be the underpayment rate. To make payment to the state, a form specifically for the purpose of repaying the state and the official notice to ODF and appropriate County that the restriction can be removed will be used by the SFO. Once the repayment has been made and the SFO has paid any penalties for violating the FPA, the SFO will inform Oregon Department of Forestry the harvest restriction related to the Credit has been removed. ODF will modify the information in FERNs to reflect there is no longer a restriction on that particular riparian area. ODF will provide SFO with a document to be presented to the appropriate County to remove the restriction. SFO will contact County with the document and the restriction will be removed. SFO will pay recording fees.

### **Determining Stumpage Value:**

Stumpage Value is the value of standing timber based on the value that would be received if those trees were harvested and delivered to mills minus the costs of delivering those logs to those mills. The SFO will determine the Stumpage Value of timber not harvested when using the Standard Practice instead of the SFO Minimum Option. First, the SFO will determine the volume, by species and log grade for the timber to be credited for the Retention Tax Credit using standard methods used by professional foresters. Professional forester is defined in ORS 674.100 (2)(f).

Once the volume of timber by species and log grades is determined the SFO will determine the stumpage value using methods used by professional foresters such as the Conversion Return Stumpage Value Method, the Actual Comparative Stumpage Value Method, or Cash Flow Model Method.

***Conversion Return Stumpage Value Method*** – Conversion Return Stumpage Value Method begins with the volume of timber to be retained is determined by species and log grades using standard measuring techniques and procedures used by professional foresters. Then to determine Stumpage Value take the delivered log value by species and log grades from current log price information for the area in which the timber is ordinarily sold and deducting the total costs of marketing and delivering the logs to the mills. This will determine the Stumpage Value of the standing timber to be retained.

***Actual Comparison Stumpage Value Method*** – The Actual Comparison Stumpage Value Method can be used when the timber being retained is similar to the timber being harvested in the timber harvest associated with the Retention Tax Credit request. It begins with determining the volume of timber to be retained by species and log grades using standard measuring techniques and procedures used by professional foresters. The Stumpage Value is then calculated using the actual average revenues minus costs of logs sold by species and grade from the adjacent harvest area.

***Cash Flow Modeling Method*** – Determining the Value of standing timber by measuring the projected volume of the stand over a harvest rotation based on species and site class,

determining the stumpage value of the stand at harvest age then discounted that value to the present with an appropriate interest rate.