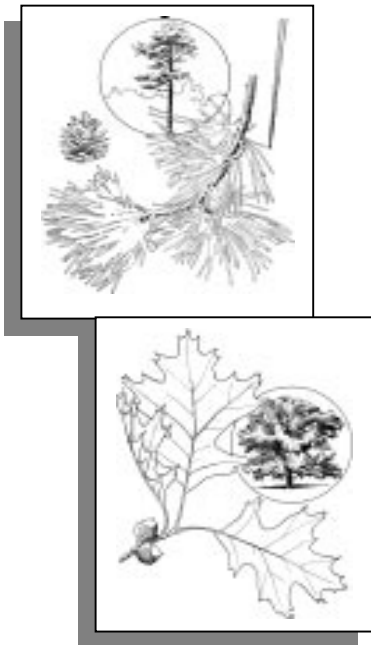


A Guide to the Timberland Property Tax Incentive Program

Recommended Reforestation Incentive Eligibility Guidelines and Forest Zone Determination Rules

Related to Texas Reforestation and Conservation Act of 1999



Effective September 1, 1999, the Texas Reforestation and Conservation Act of 1999 (Senate Bill 977) provides important timberland property tax incentives. The act permits a reduced special appraisal (or restricted-use timberland appraisal) for qualified forest zones and regenerated timberland to encourage reforestation and preservation of non-timber forest values (such as water quality and critical wildlife habitat protection). This special appraisal is effective on January 1, 2000.

The act assigns most appraisal responsibilities to the chief appraiser. However, in cases of the forest zones, the chief appraiser or the taxing unit is required by the act to seek a zone determination letter from the Texas Forest Service (TFS) before the eligibility of a timberland may be denied. TFS determination is conclusive and shall be accepted by the chief appraiser or the appraisal review board. To govern the zone determination, the TFS adopted official forest zone determination rules to be part of the Texas Administrative Code. Full details of this rule and the regeneration incentive eligibility guidelines recommended by the TFS are described inside.

Reforestation

1. **Special appraisal.** The appraised land value is reduced by 50 percent for the first 10 years following harvest if the land has been *regenerated* for timber production to the degree of intensity generally accepted in the area for commercial timberland and with intent to produce income; and the harvest was in a year in which the land was under timber-use appraisal.

Land ceases to qualify for this special appraisal on the *10th anniversary of the date of harvest*. However, land may continue to qualify under a forest zone requirement.

2. **Recommended eligibility guidelines.** The landowner's application claiming regeneration tax incentives is determined solely by the chief appraiser and the appraisal review board, according to the act. The TFS is not involved in determination of regenerated land (only zones). Consequently, the eligibility guidelines listed here are the TFS's **recommendations only**.

1) TFS recommends that harvest be defined as *final* harvest to qualify for regeneration tax incentives. This may include clear-cuts, seed-tree, and shelter-wood harvests and excludes partial harvests, thinning to reduce stocking, or single-tree selection.

2) The timberland should be either planted using tree seedlings, or managed for natural regeneration after harvest.

3) TFS recommends that land qualifies when the landowner makes substantial efforts to begin the reforestation process (such as completion of site prep, purchase of trees, and hiring contractors) as opposed to when trees are finally established. This allows prudent landowners opportunity to get the full 10-year special appraisal since the expiration date is calculated from the date of harvest.

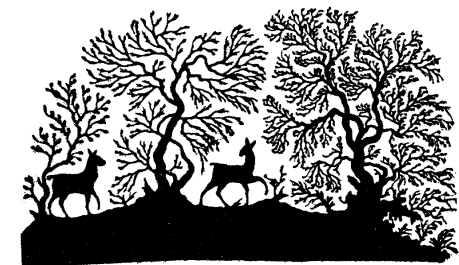
4) TFS recommends that at least 300 desirable tree seedlings per acre that are free-to-grow and well distributed over the stand are present within two years of being granted the special appraisal (or *300 tree criteria*). However, we recommend that land qualifies even if the 300 tree criteria is not met due to natural forces such as severe drought if the landowner takes substantial effort to regenerate again.

Upland Site Regeneration

1) The *300 tree criteria* is recommended.

2) Natural regeneration is recommended to be accomplished by leaving a minimum of eight well-spaced pine trees per acre having a minimum diameter at breast height of 16 inches.

3) Chemical or mechanical site preparation or chemical release is recommended. Site preparation may be waived on areas where the previous stand was pines with limited competing vegetation.



Bottomland Site Regeneration

- 1) The land is recommended to be naturally regenerated to hardwoods by cutting all residual standing trees. Desirable hardwoods include oaks, sweetgum, and ash.
- 2) The *300 tree criteria* is recommended.
- 3) Planted hardwoods or pines are an option depending on site conditions.

Forest Zones: Appraisal and Definitions

1. **Special appraisal.** The appraised land value is reduced by 50 percent for AMZ, CWHZ, and SMZ.
2. **Aesthetic management zone** (or AMZ) is timberland on which timber harvesting is restricted for aesthetic or conservation purposes, including: 1) maintaining standing timber adjacent to public rights-of-way, also referred to as “AMZ–public rights-of-way”; and 2) preserving an area in a forest that is designated by the Director of the TFS as special or unique because of the area’s natural beauty, topography, or historical significance, also referred to as “AMZ–special or unique area”.
3. **Critical wildlife habitat zone** (or CWHZ) is timberland on which the landowner restricts timber harvesting so as to provide at least three of the following seven benefits for the protection of an animal or plant that is listed as endangered or threatened under the Endangered Species Act of 1973 and its subsequent amendments, or as endangered under Texas Parks and Wildlife Code: 1. habitat control, 2. erosion control, 3. predator control, 4. providing supplemental supplies of water, 5. providing supplemental supplies of food, 6. providing shelters, and 7. making census counts to determine population.
4. **Streamside management zone** (or SMZ) is timberland on which timber harvesting is restricted in accordance with a management plan consistent with best management practices (or BMP) to: (A) protect water quality, or (B) preserve a waterway or waterbodies.
5. **Management plan** is a written plan or a collection of written directives governing

management of an applicant’s timberland that the landowner has developed, written, and implemented, with or without professional assistance. The plan must use the forestry BMPs and address harvest restrictions.

6. **Public rights-of-way** include United States highways, county roads, farm-to-market roads, other public maintained roads, and public use areas such as public parks, schools, lakes, cemeteries, and churches.

7. **Basal area** is the cross-sectional area of a tree, in square feet, measured at 4 ½ feet above the ground.

TFS Determination Criteria: AMZ–Public Rights-of-Way

- 1) An AMZ must be a strip of trees at least 10 years old or 35 feet tall.
- 2) The width of the AMZ must be between 100 and 200 feet from the edge of the public rights-of-way.
- 3) A management plan must be provided that addresses harvest restrictions to ensure the continued aesthetic value of the zone. The landowner must comply with the parts of the plan that relate to the zone in order to qualify.
- 4) Harvesting is restricted to the extent that an average 50 square feet per acre of residual basal area must be retained in trees evenly distributed within the AMZ.

TFS Designation Criteria: AMZ–Special or Unique Area

To qualify for an AMZ—special or unique area, the applicant must apply with the Director of the TFS first (not the appraisal office) for *designation* of a land as a special or unique area because of its natural beauty, topography, or historical significance.

- 1) Qualified area must possess special or unique attributes such as:
 - (a) archeological sites, including historic and pre-historic sites (*e.g.*, Native American sites, early settlement sites);

- (b) rare geological formations, (*e.g.* waterfall, overlook);
- (c) unique scenic beauty;
- (d) unique plant or animal communities, (*e.g.* old growth forests, pitcher plant bogs); or
- (e) other attributes that suggest a special importance to society.

2) The historical/archeological area must be recorded with the Texas Archeological Research Lab, the University of Texas at Austin, the state official depository for archeological site records, with a site number assigned.

3) The area is recommended by a specialist whose findings prove the area has features that are unique or special and worthy of preservation. Minimum qualifications of the specialist include an advanced degree in the area of claimed expertise, experience in identifying and preserving sites in the area of expertise, and/or current employment by an organization engaged in identifying and preserving such sites. A letter stating the specialist’s qualifications and experience must be submitted with the application.

4) Compliance with harvest restrictions is required:

- (a) Harvesting may be totally restricted if necessary to protect the special features that make this site unique;

- (b) A management plan addressing restricted timber harvesting as to the extent and frequency developed with inputs from the appropriate specialists must be provided. The landowner must comply with the parts of the plan that relate to the zone in order to qualify the land for AMZ-special or unique area;

- (c) If harvesting is permitted, an average of 50 square feet per acre of residual basal area must be retained in trees evenly distributed within the AMZ; and

- (d) Special or unique areas may be regenerated using different methods. However, the specialist assisting with the management plan must address how the special features will *not* be adversely affected.

5) The land is under timber-use appraisal.

TFS Determination Criteria: CWHZ

1) The presence of a qualified endangered or threatened animal or plant in the zone and the existence of a plan to protect it must be evidenced by a memorandum of understanding, conservation agreements, or other documentation pertaining to the protection of this species with a federal, state, or private organization with recognized responsibility for protecting this species.

2) The animal or plant must be a qualified endangered or threatened species, including but not necessarily limited to:

- (a) Bald eagle—*Haliaeetus leucophalus*;
- (b) Red-cockaded woodpecker—*Picooides borealis*;
- (c) Houston toad—*Bufo houstonensis*;
- (d) Texas trailing phlox—*Plox nivalis* ssp. *texensis*;
- (e) White bladderpod—*Lesquerella pallida*;
- (f) Navasota ladies'-tresses—*Spiranthes parksii*.

This list is subject to change. A current listing can be obtained from the Texas Parks and Wildlife Department.



Red-cockaded woodpecker

3) A management plan developed with inputs from an endangered species specialist that addresses federal and state critical habitat requirements by species must be provided. The plan must also address harvesting restrictions and how the landowner provides at least three of the seven enumerated benefits. The landowner must comply with the parts of the plan that relate to the zone in order to qualify a land for CWHZ.

TFS Determination Criteria: SMZ

1) SMZ includes forested buffers adjacent to streams or waterbodies, including intermittent and perennial streams, rivers, lakes, sloughs, ponds, reservoirs, watersheds, or wetlands (ephemeral streams are excluded).

2) The minimum width of an SMZ on each side of the streams or adjacent to waterbodies should be 50 feet from each bank. However, with sufficient evidence and justification shown, the width can be extended to no more than 200 feet depending on the slope, soil, cover type, and proximity to municipal water supply.

3) Total SMZ width is the sum of the width of the average stream channel plus that of the buffer.

4) If the SMZ boundary is not self-evident (*e.g.*, a clear-cut or young plantation may indicate a self-evident boundary) and *not at a uniform width*, the boundaries must be marked with paint or signs. Boundary marks can be no further than 100 feet apart.

5) Newly established SMZs must have trees that average 10 years of age or more with a minimum of 300 well-spaced trees per acre, or an average 50 square feet per acre of basal area in trees evenly distributed within the zone.

6) A management plan must be provided addressing BMPs for the SMZ consistent with the silvicultural nonpoint source pollution management program developed by the Texas State Soil and Water Conservation Board. These guidelines are available from the TFS or Texas Forestry Association. The landowner must comply with the parts of the plan that relate to the zone in order to qualify a land for an SMZ.

7) Harvesting is restricted to the extent that a minimum of 50 square feet per acre, on average, of residual basal area is retained in trees evenly distributed within SMZ.



Rollback Taxes and Penalty

1. **Rollback taxes.** If the use of land that has been appraised under this special appraisal changes back to timber use appraisal, rollback taxes are imposed for up to 5 previous years that equal the sum of the difference between the taxes imposed under the special appraisal and the taxes that would have been imposed under timber use appraisal, plus interest at an annual rate of 7 percent. If the use of the qualified land under this special appraisal changes to a use that does not qualify the land for timber use appraisal, rollback taxes are imposed for up to 5 previous years that equal the sum of the difference between the taxes imposed under the special appraisal and the taxes that would have been imposed on the basis of the land's market value plus interest at an annual rate of 7 percent.

2. **Penalty.** If a person fails to notify the appraisal office in writing before May 1 after eligibility of the land ends, a penalty is imposed that equals to 10 percent of the difference between the taxes imposed under the special appraisal for each previous year and the taxes that would otherwise have been imposed.

Administrative Procedures

1. **Application.** In order to qualify for appraisal of restricted-use timberland (including regenerated land and forest zones), the landowner must file application with the local chief appraiser no later than April 30 (which may be extended to not more than 15 days with good causes shown upon approval by the chief appraiser).

2. **Zone Determination Request.** If the chief appraiser or taxing unit in which the subject land is located disputes an application claiming an *AMZ-public rights-of-way*, *CWHZ*, or *SMZ*, the chief appraiser or taxing unit must first seek a zone determination letter from the TFS before an application may be denied. The chief appraiser or the appraisal review board shall accept the determination made by TFS as final with regard to existence, type, location, and size of the zone. A zone determination request must be made by the chief appraiser in writing



no later than 30 days after the date of receipt of an application for restricted-use timberland appraisal if on or prior to April 1 or 15 days after receipt of the application if after April 1. The deadline for the taxing unit to request a zone determination is 15 days after the appraisal records are submitted to the appraisal review board. If the chief appraiser or the taxing unit fails to request a zone determination within the specified deadline, the TFS may not consider the request for that year.

3. Submission of Information or Evidence to the TFS. The chief appraiser or the taxing unit must notify the applicant of the zone determination request. The applicant may respond to the request by submitting information or evidence to the TFS before the TFS makes a final determination. Instructions for submitting information or evidences to the TFS must also be delivered to the applicant by the zone determination requesting party.

4. Required information or evidence by the TFS. A management plan must be submitted by the landowner to the TFS for each type of zone. In addition, the following information must be submitted:

AMZ—Public Rights-of-Way

- 1) the age or the height of trees in the zone, if contested;
- 2) the width or the acreage of the zone, if contested; also a map showing tract location and a map of tract showing zone location;
- 3) average residual basal area in the zone, if contested;

CWHZ

- 1) conservation agreement, if the existence of the zone is contested;
- 2) the type of species in the zone, if the qualification of the species is contested;

3) a map showing tract location and a map of tract showing zone location, if acreage or location is contested;

SMZ

- 1) the status of the waterway or waterbody, if contested;
- 2) the width and the acreage of the zone, if contested; in addition, (a) if an SMZ is 50-foot minimum width, submit a map that shows the centerline of the stream or waterbody, length or perimeter, and computed acreage of the SMZ; (b) if an SMZ exceeds the 50-foot minimum width and has *uniform* width, submit a topographic map and show the centerline of the stream; (c) if an SMZ exceeds the 50-foot width and has *variable* width, submit a topographic map and boundaries must be mapped and acreage computed to the agency's satisfaction.
- 3) average residual basal area per acre, if contested;

Any other information or evidence considered necessary can also be submitted. The chief appraiser and taxing unit shall follow the same guidelines as those for the landowner when attaching information or evidence with the request for zone determination.

5. Deadlines for submitting information to the TFS. In case of a zone determination request made by a chief appraiser, the applicant and the taxing unit in which the land is located must submit the information or evidence to the Director no later than **30** days after the date of receipt of the notice of zone determination request from the chief appraiser **if on or prior to April 1** or **15** days after receipt of the request notice **if after April 1**. If the taxing unit submits information to the TFS, the taxing unit must deliver a copy of the submitted information to the applicant. The applicant must submit additional information to the TFS Director in response to the taxing unit information within 15 days after receipt from taxing unit.

In case of a zone determination request made by a taxing unit, the applicant and the chief appraiser must submit information to the Director within 15 days after receipt of notice from the taxing unit.

6. TFS determination deadline. The TFS shall make the zone determination based on the written information submitted by each party according to the prescribed criteria. Failure to provide the required information or evidence to the TFS may result in an adverse determination for that party. A determination letter shall be delivered to each involved party no later than June 30, or as soon thereafter as practicable.

7. AMZ-special or unique area. The landowner must first apply for such a designation with the TFS by completing an application form. If the timberland qualifies, the Director of the TFS will issue a designation letter to the applicant within 60 days of receipt of the application or by April 15, whichever is later, for that year. The landowner then uses the designation letter from the TFS to file an application for the special appraisal to the chief appraiser. An AMZ-special or unique area is not subject to a zone determination by the TFS once it is properly designated by the TFS.

8. Recognized date of filing or delivery. A document may be delivered in person, by certified mail with return receipt requested, or courier mail. The dates shown on the proper receipts are the conclusive evidence for deadline calculation.

For more information on the act, a complete copy of the official TFS zone determination rules and recommended regeneration eligibility guidelines, and application or determination forms, visit <http://txforestservicetamu.edu/tfshome/assist/legisltn/tax.htm>. The official TFS zone determination rules can be also found in Texas Administrative Code, Title 4 Agriculture, Chapter 215.

Disclaimer: The reforestation incentive eligibility guidelines described inside are only **recommendations** from the TFS. Please refer to the act for law requirements.

