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November 2, 2006 Board of Forestry Meeting Minutes

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Items listed in order heard

Attachments (hard copy)

- (1) Public Comment, Bob Ragon, Agenda Item 1A
- (2) Public Comment, John Session, Agenda Item 1A
- (3) Handout, Ronald S. Yockim, Agenda Item 1A
- (4) Presentation - Oregon Indicators of Sustainable Forest Management, Agenda Item 2
- (5) Public Comment, Dick Posekany, Agenda Item 2
- (6) Illustrations, Agenda Item 3
- (7) Written Comment, Nancy Nichols, Agenda Item 3
- (8) Written Comment, Ron Cease, Agenda Item 4
- (9) Staff Presentation - Invasive Species, Agenda Item 5
- (10) Written Comments - The Nature Conservancy, Agenda Item 5
- (11) Counties Legal Memorandum - Schwabe, Williamson & Wyatt, Agenda Item 6

OREGON STATE BOARD OF FORESTRY
November 2, 2006 Meeting Minutes

In accordance with the provisions of ORS 526.016, a meeting of the Oregon Board of Forestry was held at the State Forester's Headquarters, 2600 State Street, Salem, Oregon.

Chair Hobbs called the public meeting to order at 8:01 a.m.

Board Members Present:

Steve Hobbs, Chair	Larry Giustina	Diane Snyder	Chris Heffernan
Jennifer Phillippi	Barbara Craig	Bill Hutchison	

Others Present:

Carson Bowler, Schwabe, Williamson & Wyatt
Tim Butler, Oregon Department of Agriculture
Wylda and Steve Cafferata
Mike Dykzeul, Oregon Forest Industries Council
Christiane Fife, Schwabe, Williamson & Wyatt
Eric Geyer, Roseburg Forest Products
Kevin Godbout, Weyerhaeuser
Craig Hanneman, Oregon Forest Industries Council
David Ivanoff, Hampton Affiliates
Chris Jarmer, Oregon Forest Industries Council
Barry Jones, Pacific Rivers Council
Tim Josi, Forest Trust Land Advisory Committee
Scott Keep, Seneca Lumber Co.
Rod Krahmer, Oregon Department of Fish and Wildlife
Paul Levesque, Tillamook County
Michele Logan, Department of Justice
Ian Madin, Department of Geology and Mineral Industries
Mike McArthur, Association of Oregon Counties
Greg Miller, Weyerhaeuser
David Moskowitz, Wild Salmon Center
Hitesh Panehh, Marion County
Dick Posekany, Frank Lumber Co.
Mike Propes, Polk County Commissioner
Bob Ragon, Douglas Timber Operators
Gil Riddell, CFTLC
Ralph Saperstein, Boise Cascade
John Session, Oregon State University
Sean Smith, Douglas Timber Operators
Gary Springer, Starker Forests
Rex Storm, Associated Oregon Loggers
Ray Wilkeson, Oregon Forest Industries Council
Marvin Brown, State Forester
Gayle Birch, Board Support
Clark Seely, Associate State Forester
Pam Stroebel Valencia

Rob Nichols, Agency Affairs
Jeff Foreman
Jeri Chase
Arlene Whalen
Jim Paul, ASF Forest Mgt
Lisa DeBruyckere
Jeff Brandt
Nancy Hirsch
Barbara Lee
Pam Overhulser
David Wilson
Rob Nall
Patty Cate
Keith Mills

David Morman, Resources Planning
Paul Bell, ASF Protection
Ted Lorensen, ASF Resources
Bob Young
Lanny Quackenbush
Marganne Allen
Brad Knotts
Mike Cafferata
David Morman
Mike Bordelon, NWOA Director
Tom Savage
Gregg Cline
Ross Holloway
Steve Laam
Ole Buch

The consent agenda was approved in one block.

Consent Agenda

A. MINUTES – SEPTEMBER 6, 2006 BOARD MEETING

Approved by consent.

The minutes of the September 6, 2006 Board meeting are approved.

B. WILDFIRE RISK MANAGEMENT – ISSUE 7

Objective 1 – National Fire Plan Implementation – Update

Status report on revised criteria and processes associated with National Fire Plan Implementation.

Information item.

C. QUALITY ASSURANCE PROGRAM ANNUAL UPDATE

FY 2006 Quality Assurance Program activities update.

Information item.

D. FOREST REGULATION – ISSUE 6
Objective 3 – Voluntary Methods - Stewardship Agreements - OAR Adoption

Approved by consent.

Stewardship Agreements OAR 629-021-0100, 629-021-0200, 629-021-0300, 629-021-0400, 629-021-0500, 629-021-0600, 629-021-0700, 629-021-0800, 629-021-0900, 6210-21-1000 and 629-021-1100 are adopted.

OAR 629-606-0000, 629-606-0010, 629-606-0100, 629-606-0200, 629-606-0300, 629-606-0400, 629-606-0500, 629-606-0600, 629-606-0700, 629-606-0800, 629-606-0900, 629-606-1000 are repealed.

E. STATE GOVERNMENT INVOLVEMENT IN FOREST CERTIFICATION
Pending New Work Plan - Recent Developments

Status report on forest certification developments.

Information item.

F. STATE FORESTS MANAGEMENT – ISSUE 2
Objective 3 – Systematic Evidence Review

Update on pilot project development

Information item.

G. LEGISLATIVE EMERGENCY BOARD APPEARANCE –
PROTECTION FROM FIRE

The State Forester's appearance before the Legislative Emergency Board to: report on the 2006 fire season; request severity cost reimbursement of approximately \$1.4 million; request funding for payment of the anticipated 2007 fire season catastrophic insurance premium of \$645,313; request funding for the Fire Program 2005-07 Employee Compensation Plan of approximately \$611,000; and, to report on work with the insurance industry as required by Legislative budget note, is approved.

H. REGIONAL FOREST PRACTICES COMMITTEES - NOMINATIONS

The following nominations for appointment and reappointment to the respective Regional Forest Practices Committee are approved:

Northwest Regional Committee:

reappoint	Chris Jarmer	term expiring September 2009
reappoint	Jon Stewart	term expiring September 2009
reappoint	Mark Trenholm	term expiring September 2009

Southwest Regional Committee

reappoint	Nancy Cole	term expiring September 2009
reappoint	Dale Cuyler	term expiring September 2009
reappoint	Brian Schlaefli	term expiring September 2009
appoint	Dana Kjos	term expiring September 2008

Eastern Oregon Regional Committee

reappoint	Tim Bell	term expiring September 2009
reappoint	Bob Messinger	term expiring September 2009
reappoint	Irene Jerome	term expiring September 2009

I. FOREST REGULATION – ISSUE 6
Objective 3 – Voluntary Methods and The Oregon Plan

The proposed timeline revision for Objective 3 is approved.

Action and Information:

1. STATE FORESTER AND BOARD MEMBER COMMENTS

There were no comments from Board Members. State Forester Marvin Brown relinquished his time to Bob Ragon, Douglas Timber Operators.

1A. PUBLIC COMMENTS

Bob Ragon, Douglas Timber Operators described the establishment of a baseline from which the economic outputs of various strategies on the Elliott State Forests could be measured (Attachment 1).

Dr. John Sessions, Oregon State University discussed three scenarios that would illustrate the timber production potential for Elliott State Forest (Attachment 2). Costs, if any, to mitigate a Habitat Conservation Plan [HCP] were not included in the analysis.

Unless there was evidence of the take of a species, there would not be any mitigation costs. Marbled murrelet take avoidance was not factored in the analysis.

Dr. Sessions provided a copy of a letter from Ronald S. Yockim, Attorney at Law that investigated the ability of the State to terminate the Elliott State Forest HCP, and the penalties or obligations the State would incur (Attachment 3).

2. FORESTRY PROGRAM FOR OREGON - ISSUE 1

David Morman, Forest Resources Planning Program Director discussed the staff recommendations for initial desired trend statements for the Oregon Indicators of Sustainable Forest Management proposed by the Board's advisory committee, and specific proposed targets for certain indicators (Attachment 4).

Dick Posekany, Frank Lumber Co. urged the Board to develop a beneficial rural forest economic plan to reverse the declining rural forest economy (Attachment 5).

Responding to Larry Giustina's concern, Mr. Morman stated indicators were a necessary step in the feedback loop in determining achievement of the *Forestry Program for Oregon* goals, and preparation for the 2011 *Forestry Program for Oregon*.

Jennifer Phillippi cautioned against too much detail in the indicators, and expressed concern over the cost of data collection.

Marvin Brown noted the indicators were intended to inform the discussion around the Board's policy objectives established in the *Forestry Program for Oregon*. He added the intent was to make use of the existing data, and agreed with Mr. Morman that an intent statement would be beneficial.

3. FOREST REGULATION - ISSUE 6
Objective 4 - Landslides and Public Safety

Mike Cafferata, Private Forests Policy Unit Manager, and Jason Hinkle, Geotechnical Specialist, discussed the shared responsibility of citizens, landowners, and governments to reduce the risk to public safety from shallow, rapidly moving landslides. Shared responsibility was established in 1999 by Senate Bill 12 (SB 12).

SB 12 also established areas where further site specific review should occur before land management or building activities began. The Department of Geology and Mineral Industries (DOGAMI) was charged with the development of Further Review Area (FRA) Maps to identify areas at risk of damage from shallow, rapidly moving landslides. Despite efforts and funding, reliable maps have not been developed, and the counties lack a necessary tool. In the meantime, new construction in slide prone areas has continued (Attachment 6).

The National Weather Service, the Office of Emergency Management, Oregon Department of transportation, DOGAMI, the United State Geological Survey (USGS) and the Department of Forestry are working to improve Oregon's Debris Flow Warning System and to assign appropriate responsibilities.

Public education, and the associated resources, on the hazards and risks associated with rapidly moving landslides were identified as critical components of the agencies' shared responsibility.

OAR 629-623-0500 Timber Harvesting - Intermediate Downslope Public Safety Risk controls the amount or timing of harvest on such areas. Statistical analysis of the current rule showed the risk was not reduced and could be increased in certain scenarios.

Ian Madin, Department of Geology and Mineral Industries Chief Scientist reported DOGAMI was pursuing funding for LIDAR, a detailed mapping technique, and also had a one-year pilot study underway in Oregon City. He urged the Board to support DOGAMI's Legislative Program Option Package to secure funding to produce reliable and accurate FRA maps.

Nancy Nichols submitted written comment supporting the amendment of OAR 629-623-0500 (Attachment 7).

Larry Giustina suggested the Governor's Natural Resource Office take a stronger leadership role in addressing the issues associated with landslides and public safety.

With Board consensus, Chair Hobbs ordered:

The importance of shared responsibility when it comes to protecting public safety from shallow, rapidly moving landslides is reaffirmed.

The Department is directed to partner with the Department of Geology and Mineral Industries and local governments to work with the Legislature to support the resources necessary to complete Further Review Area Maps. New technology (LIDAR) is available to greatly improve the data that can be used to generate these maps. The Department should work with DOGAMI to move its policy package for LIDAR forward with the Governor's office, legislators, and local governances.

The Department is directed to establish a collaborative process including the Office of Emergency Management, Oregon Emergency Response System, Oregon Department of Transportation, DOGAMI, National Weather Service, and United State Geological Survey to complete the debris flow warning system, appropriately assign roles and management responsibility, and to promote education of landslides and public safety.

The Department is directed to work with appropriate partners to review OAR ch. 629 Division 623 Shallow, Rapidly Moving Landslides and Public Safety and develop proposed amendments to improve the intermediate risk rules and to improve the overall clarity, efficiency and effectiveness of the division rules for future rulemaking consideration.

4. FOREST REGULATION - ISSUE 6
Objective 4 - Special Resource Sites

Mike Cafferata, Private Forests Policy Unit Manager summarized the two alternatives to implement the special resource site work, as contained in the agenda. Alternative 1 suggested the formation of a Committee and Review Board to assist the Department in the further refinement of the Issue Paper. Alternative 2 proposed building upon the strategies in the *Forestry Program for Oregon* by developing a comprehensive wildlife plan, using a coordinate, statewide approach, which would include special resource sites.

Ron Cease, Committee for Family Forestlands Chair, submitted written comments supporting Alternative 2, development of a comprehensive wildlife plan consistent with the existing direction in the *Forestry Program for Oregon* (Attachment 8).

Following a brief discussion and with Board consensus, Chair Hobbs ordered:

The Department is directed address special resource sites by building upon the actions and strategies in the *Forestry Program for Oregon* and exploring the opportunities to develop a comprehensive wildlife plan using a coordinated, statewide approach.

5. INVASIVE SPECIES - PROPOSED NEW WORK PLAN

Brad Knotts, Private Forests Resource Analyst, and Jim Cathcart, Forest Resource Trust Manager described a new work plan to address the issue of Invasive Species (Attachment 9). Mr. Knotts discussed the background of the issue, focusing on current policies, programs, actions, and legal authorities addressing invasive species. Following a description of the elements of an Invasive Species Management Plan and possible actions, Mr. Knotts summarized the Department's recommendation to increase coordination and interagency cooperation through the development of a Board Work Plan.

Steven Buttrick, The Nature Conservancy submitted written comments supporting the development of Early Detection and Rapid Response strategies (Attachment 10).

With Board consensus, Chair Hobbs ordered:

The Department is directed to develop a Work Plan to address Invasive Species.

6. **THE EXISTENCE AND NATURE OF A FIDUCIARY RELATIONSHIP BETWEEN FORESTRY AND THE COUNTIES WITH RESPECT TO CONVEYED FOREST LANDS**

Jas. Adams, Department of Justice, Natural Resource Section discussed two questions: (1) Was there any source of authority that established a fiduciary relationship between the Board of Forestry, the State Forester and the Counties with respect to conveyed forest lands?, and (2) If there were such a basis, would the nature of such duties dictate how the conveyed forest lands should be managed? Mr. Adams' full legal memorandum (October 16, 2006) was contained in the agenda item.

Reviewing the points of the legal advice, Mr. Adams stated (1) there were no sources of authority that established a fiduciary relationship: and (2) a fiduciary relationship would not dictate the management of conveyed lands.

Referring to the Counties' legal counsel's memorandum prepared by Schwabe, Williamson & Wyatt and sent to the Board (Attachment 11), Mr. Adams stated the Department of Justice set the legal policy of the State of Oregon within the legal framework of governing statutes and administrative rules. Legal advice from the Department of Justice was definitive for the Board and State Forester.

In conclusion, Mr. Adams stated the management of the conveyed forestlands was not a legal question dependent upon fiduciary duty, but rather a policy question for the Board and State Forester.

Prior to engaging in discussion, Chair Hobbs called for public comment.

Tim Josi, Tillamook County Commissioner introduced Carson Bowler, Schwabe, Williamson & Wyatt. Mr. Bowler discussed the legal landscape, the Board's decision space, and recommendations, summarizing the firm's opinion contained in Attachment 11.

Responding to Mr. Hutchison's observation the root issue from the Counties' perspective was that harvest levels were too low, Mr. Bowler agreed and added there was also a primacy issue.

David Moskowitz, Wild Salmon Center commented that harvest levels had risen from 60 MMBF from the Clatsop and Tillamook State Forests in 1995, to 223 MMBF in 2005, and added the Board must primarily secure the greatest permanent value from the State's forestlands.

Following public comment, Mr. Adams rejoined the Board noting the intent of the legal opinion was to bring the issue of fiduciary relationship to closure.

7. FORESTRY PROGRAM FOR OREGON - ISSUE 1
Objectives 4 & 5 - Annual Board of Forestry Work Plan Status Report

Clark Seely, Associate State Forester summarized the status report of the Board's Work Plans, reporting that in 18 months, 48% of the planned milestones had been met and that the work plans were 42% complete. Additional information regarding work plan accomplishment and refinement would be presented at future meetings. The Board's biennial Issue Scan, due next in November 2007, serves as the formal checkpoint.

8. FORESTRY PROGRAM FOR OREGON - ISSUE 1
Objectives 4 & 5 - Annual Key Performance Measure Progress Report

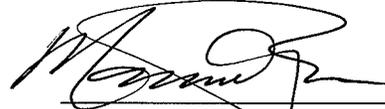
Clark Seely, Associate State Forester joined by David Morman, Resources Planning Program Director, and Pam Stroebel Valencia, Quality Assurance Director summarized the Department's annual Key Performance Measure Report for 2006. The measures are linked to the agency's core business functions, the Board's seven strategies in the *Forestry Program for Oregon*, and, where applicable, the Oregon Benchmarks established by the Oregon Progress Board.

Mr. Seely led the Board's discussion of the established targets, results and status of the key performance measures, capacity, and possible target refinements. The intent of measurement was to work toward linking strategic planning, budgeting, and performance measures.

Responding to the Larry Giustina's request, Marvin Brown described the Department's limitations regarding fund transfers and revenue streams. Generally, funds derived from timber harvest on state lands could only be used on those lands and could not be intermixed. Additionally, the Legislature has established biennial fund expenditure limitations. Mike Bordelon, Northwest Oregon Area Director discussed the challenges faced with annual reforestation performance measures, and also described the investment in forest road systems in the context of timber sale contract project work.

With no further business before the Board, Chair Hobbs adjourned the public meeting at 3:54 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marvin Brown', written over a horizontal line.

Marvin Brown, State Forester and
Secretary to the Board

GB