

# Proposed Revisions to Administrative Rules

## FOREST RESOURCE TRUST

### 629-022-0040

#### Definitions

As used in the Forest Resource Trust rules, unless the context requires otherwise:

- (1) "Adequately stocked" means the number and size of the trees growing within a forest stand meet the standards determined by the State Forester in OAR 629-022-0390.
- (2) "Contract" means the Forest Resource Trust Contract that is signed by the State Forester and the landowner.
- (3) "Conversion" means an operation conducted on underproducing forestland with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products and establishing an adequately stocked, free to grow forest stand.
- (4) "Environmental restoration" means a practice that protects, restores or improves natural resources. For example, an environmental restoration practice may enhance wildlife habitat for a sensitive species such as the osprey or a threatened species such as the bald eagle; improve water quality, reduce water temperature, or provide large woody debris to a stream in a watershed enhancement area; improve the health of an insect damaged or diseased forest; or protect soils from erosion or degradation.
- (5) "Final harvest" means forest products are removed from the stand to create a Harvest Type 1, 2 or 3 condition, described as:
  - (a) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.
  - (b) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:
    - (A) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;
    - (B) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or
    - (C) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.
  - (c) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.
- (6) "Forestland" means land zoned in a county comprehensive plan for forest or farm use that is capable of producing commercial hardwood or softwood timber, regardless of the vegetation currently on the land.
- (7) "Forest products" include, but are not limited to, logs, poles and pilings, lumber, chips, and pulp.
- (8) "Forest stand" means the aggregation of all trees within the project boundary described in the contract.

- (9) "Free to grow" means the State Forester has determined that a forest stand has well distributed trees, of acceptable species and of good form and has a high probability of remaining or becoming vigorous, healthy and dominant over undesired competing vegetation.
- (10) "Harvest" means the forest products in a forest stand are cut, severed, removed or sold.
- (11) "Landowner" means the person or persons who are eligible to apply for or receive trust funds, or are subject to a Forest Resource Trust Contract.
- (12) "Low site forestland" means forestland which is capable of annual wood production between 20 and 119 cubic feet per acre per year at culmination of mean annual increment (Cubic Foot Site Class IV, V and VI).
- (13) "Nonindustrial private forestland owner" means:
- (a) Any forest landowner who has not owned a forest product manufacturing facility within the past 6 months that employed more than 6 people; and
  - (b) Is not owned or partially owned, or controlled, by any person who has owned a forest products manufacturing facility within the past 6 months, that employed more than 6 people.
- (14) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.
- (15) "Person" means an individual, partnership, corporation, limited liability company, trustee, business or other entity.
- (16) "Practice" means the operational activity identified in the project plan, such as site preparation or tree planting.
- (17) "Project" means the practices required to establish an adequately stocked, free to grow forest stand, described in the project plan in OAR 629-022-0130.
- (18) "Resource management professional" means a person who the State Forester recognizes as having the ability to develop landowner plans for managing the biological, economic, and environmental relationships of forest resources, and to identify appropriate activities to manage, protect, or enhance forest resources, and who has:
- (a) A degree in forestry, biology or related sciences, plus at least a year of forestry consulting or employment experience; or
  - (b) An associate degree in forestry, biology or related sciences, plus at least 5 years of forestry consulting or employment experience.
- (19) "Salvage" means harvest of trees that are dead, dying or damaged and deteriorating.
- (20) "State Forester" means the State Forester or the duly authorized representative of the State Forester.
- (21) "Timber" means all logs which can be measured in board feet and other forest products.
- (22) "Trust" means the Forest Resource Trust as authorized in ORS 526.700 through 526.775.
- (23) "Underproducing forestland" means any forestland that is capable of producing at least 20 cubic feet of wood fiber per acre per year at culmination of mean annual increment, but does not currently support the minimum number of free to grow trees required in the reforestation rules under the Forest Practices Act.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0110**

#### **Eligible Landowners and Land**

- (1) Only nonindustrial private forestland owners with less than 5,000 acres of forestland or up to 15,000 acres of low site forestland in Oregon are eligible to receive funds.
  - (2) Eligible forestland must be underproducing forestland that is:
    - (a) At least 10 contiguous acres in size;
    - (b) Zoned for forest or farm use;
    - (c) Located outside urban growth boundaries or residential zones, as identified in the county comprehensive plan;
    - (d) Free from all reforestation requirements under the Forest Practices Act;
    - (e) Free of any "no tree cutting" covenants or encumbrances;
    - (f) Under no current petition before a county requesting a land use change to avoid reforestation under ORS 527.760; and
    - (g) Under no active operation to convert underproducing forestland.
- Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0120**

#### **Applying for Trust Funds**

- (1) Any person may apply for trust funds, certifying on an application provided by the State Forester that:
    - (a) Both the lands and the person meet the requirements of OARs 629-022-0100 and 629-022-0110; and
    - (b) The person requests a suspension of the reforestation requirements under OAR 629-610-0070 when a proposed project includes the harvest of forest products.
  - (2) If the person is a corporation, partnership or limited liability company, the application shall provide the names and addresses of the stockholders, partners, members or any other person having an ownership interest in the entity.
- Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0130**

#### **Project Plan**

- (1) A landowner meeting the requirements of OAR 629-022-0100, 629-022-0110 and 629-022-0120 shall submit a project plan, subject to the State Forester granting a reforestation suspension described in OAR 629 610-0070 if forest products are harvested during the conversion project.
- (2) A landowner may receive technical assistance to develop the project plan from the State Forester, other cooperating state or federal agencies, or a resource management professional.
- (3) The project plan shall include a:
  - (a) Current aerial photograph showing project boundaries;
  - (b) Project map or maps at 4" = 1 mile or larger scale showing a legend, scale, north arrow, property boundary, the project boundary, location of practices, acres, vegetative cover types, soil types within the project boundary, existing or proposed roads, and sensitive resource sites or streams that are protected by the Forest Practices Act; and
  - (c) Description of environmental restoration practices planned within the project boundary and the source of funding for the practices.
- (4) The project plan shall include a description of the following required practices in the project:

- (a) Site preparation to remove grass, brush or trees by mechanical, manual, prescribed fire, or chemical methods to prepare a seedling planting site;
  - (b) Acceptable tree seedlings, specifying appropriate seed zone, elevation, quality control standards, nursery source, availability dates, reservation, transportation, and handling and storage;
  - (c) Planting or interplanting, including the number of seedlings per acre by site class and species, the soil and air temperature limitations during planting, and seedling planting depth and root replacement;
  - (d) Fertilizer application that may be required to enhance seedling growth on low productivity lands;
  - (e) Seedling protection to reduce animal damage to seedlings; and
  - (f) Application of moisture conservation measures by either mechanical, manual or chemical methods.
- (5) The project plan shall also include for each practice described in section (4) of this rule:
- (a) Specifications for the practice;
  - (b) A time schedule for completion;
  - (c) Estimated costs; and
  - (d) A description of any Forest Practices Act rules that need to be followed.
- (6) When the landowner retains a resource management professional to implement a project, the project plan shall include the resource management professional fees described in OAR 629-022-0230.
- (7) The project plan shall include a description of the recommended management practices that ensure the forest stand remains adequately stocked and reaches the free to grow condition.
- Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
 Stats. Implemented: ORS 526.700 - ORS 526.775

**629-022-0150**

**The Trust Contract**

- (1) A landowner receiving project approval for trust funding under OAR 629-022-0140 shall execute a Forest Resource Trust Contract with the State Forester.
  - (2) The contract shall include:
    - (a) The approved project plan;
    - (b) Financial agreements for repayment of trust funds under OAR 629-022-0300 through 629-022-0410; and
    - (c) A security instrument, if required by the State Forester, described in OAR 629-022-0160.
  - (3) No work shall begin on the practices described in the project plan until the contract is signed by all parties.
- Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
 Stats. Implemented: ORS 526.700 - ORS 526.775

**629-022-0160**

**Trust Security Instrument**

- (1) The landowner may be required by the State Forester to provide good and sufficient collateral to secure repayment of all funds paid to the landowner from the trust.
- (2) Collateral shall be in the form of a first mortgage or trust deed on the property within the project boundaries and all improvements, fixtures, crops, trees and timber on the property and

shall not exceed 75% of the sum of the fair market value of the land, trees and timber, plus the actual trust funds advanced under the contract.

(3) If legislation is passed that provides a new security instrument specifically for the trust, the landowner shall be provided the opportunity to substitute the collateral provided under section (2) of this rule with the new security instrument.

(4) Costs and fees related to the collateral and the security instrument, such as title policy premiums and escrow fees, shall be paid from trust funds but shall not be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320. These costs and fees shall be subject to repayment following a breach of contract.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0200**

#### **Implementing the Project Plan; Payments**

(1) The landowner shall implement the practices in the project plan and notify the State Forester when a practice, or a part of a practice, described in the project plan is complete.

(2) The landowner shall submit written invoices for all services and supplies used to complete the practices described in the project plan.

(3) The State Forester shall disburse trust funds to the land owner, payable to both the landowner and the provider of the services or supplies, when the State Forester certifies that a practice is complete to the specifications and within the costs approved in the approved project plan in OAR 629-022-0140.

(4) Actual costs paid from the trust fund shall be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0220**

#### **Project Rates and Costs**

(1) Project costs described in the project plan in OAR 629-022-0130 shall be within written rates determined by the State Forester, based on the prevailing rates and wages in Oregon.

(2) Project costs paid from the trust fund may not exceed the project costs approved in OAR 629-022-0140(2), unless the landowner requests additional trust funds, and provides evidence justifying additional trust funds, prior to the completion of the practice.

(3) The State Forester may approve additional trust funds when:

(a) The requirements of section (2) of this rule are met; and

(b) The landowner agrees to amend the contract and the payback amounts, described in OAR 629-022-0300 through 629-022-0320, to reflect the higher trust fund expenditures.

(4) The trust fund shall not pay for:

(a) The cost of environmental restoration practices described in the project plan;

(b) Purchase of capital or expendable items, such as vehicles, road surfacing, culverts, sprayers, shovels, planting hoes, saws or safety equipment; or

(c) Landowner labor, materials or equipment.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0230**

#### **Resource Management Professional Fees**

(1) Resource management professional fees may be paid from trust funds for field and office work required to write a project plan described in OAR 629-022-0130 and to supervise the implementation and completion of all practices in the project plan described in OAR 629-022-0130(4) and (5).

(2) The fees in section (1) of this rule shall be subject to:

(a) The landowner executing the contract under OAR 629-022-0150 and 629-022-0160; and

(b) The landowner submitting invoices for the professional fees charged.

(3) Trust funds disbursed under this rule shall be payable to both the landowner and the resource management professional.

(4) Fees shall be within rate determined by the State Forester, based on the prevailing resource management professional fees in Oregon.(5) All resource management professional fees paid from the trust fund shall be included in the actual costs to determine final payback amounts described in OAR 629-022-0300 through 629-022- 0320.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0250**

#### **Life of the Contract**

The contract between the landowner and the trust shall be terminated when:

(1) The landowner makes full payment described in OAR 629-022- 0300; or

(2) A catastrophe destroys the entire forest stand, leaving no salvage value; or

(3) Two hundred years, or as otherwise specified in the contract, elapse since the execution of the original contract.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775

### **629-022-0300**

#### **Repaying Trust Funds**

(1) The landowner may terminate the contract at anytime during the life of the contract by repaying all trust funds, including interest.

(2) The State Forester shall calculate the amount due by using the actual costs paid to the landowner to establish the forest stand described in the contract, with annual interest at the rate determined in OAR 629-022-0320. Interest is simple, prorated to the nearest full month, and begins on the date that payment or payments are made to the landowner.

(3) When there is a partial harvest of forest products at any time during the life of the contract, the landowner must make payments of 50 percent of all net receipts, until all the trust funds, including interest are paid.

(4) When there is a final harvest of forest products from the stand described in the contract, the landowner must make full repayment of all the trust funds, including interest.

(5) Repayment of trust funds is first applied to the actual cost paid to the landowner and then to the accumulative interest, until repaying all the trust funds, including interest.

(6) The landowner shall make payments to the State Forester, to be deposited in the trust fund, within 60 days of receiving notice of payment from the State Forester.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
Stats. Implemented: ORS 526.700 - ORS 526.775

#### **629-022-0320**

##### **Interest Rate**

- (1) The interest rate is 4.0 percent, simple interest.
- (2) The interest rate shall be fixed when the contract is executed and shall not change during the life of the contract.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 527.745  
Stats. Implemented: ORS 526.700 - 526.775

#### **629-022-0380**

##### **Catastrophe; Salvage Adjustments**

(1) A catastrophe means an event or circumstance beyond the landowner's control, resulting in all or part of a forest stand being incapable of producing harvest revenues to make repayment of trust funds as described in OAR 629-022- 0300.

(2) A catastrophe may be caused by:

- (a) Insects, diseases, fire or other casualties and accidents; or
- (b) Storms, floods, droughts and other unusual environmental conditions.

(3) When a catastrophe damages individual trees or groups of trees within the forest stand:

- (a) The landowner shall pay the appropriate fixed payback percentage rate on salvaged forest products, as described in OAR 629-022- 0300(3) and (4); and
- (b) The State Forester shall adjust the forest stand boundaries to reflect a forest stand capable of producing harvest revenues. The forest stand boundaries shall not be adjusted to exclude land with unharvested merchantable forest products.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
Stats. Implemented: ORS 526.700 - ORS 526.775

#### **629-022-0390**

##### **Adequately Stocked Forest Stand**

The landowner shall manage forest stands established with trust funds above the reforestation stocking standards in the Forest Practices Act and in OAR 629-610-0020 or as otherwise specified in the contract, until the conditions in OAR 629-022-0250, Life of the Contract, are met.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193  
Stats. Implemented: ORS 526.700 - ORS 526.775

#### **629-022-0410**

##### **Remedies for Breach of Contract**

- (1) The landowner shall pay liquidated damages for a breach of contract by repaying all trust funds, with interest as calculated in OAR 629-022-0300(2).
- (2) At any time forest products are harvested in breach of contract, the landowner shall pay liquidated damages in the form of a breach penalty.
- (3) In addition to any other right as provided by law, the State Forester may assign a liquidated and delinquent account, as defined by the Oregon Accounting Manual, to the Department of Revenue or to a private collection agency.

(4) The breach penalty in section (2) of this rule shall include a reasonable administrative fee to recover the cost of collection services and other related costs, as described in ORS 293.231 through ORS 293.250.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745 & SB 81 & 193

Stats. Implemented: ORS 526.700 - ORS 526.775