

Appendix C

Legal and Policy Mandates

This appendix describes in detail the main legal and policy mandates that affect state forests. It is divided into five sections, listed below.

- **Common School Forest Land** — This section discusses the history, legal mandates, and funding mechanisms for these lands.
- **Board of Forestry Land** — This section discusses the history, legal mandates, and funding mechanisms for these lands.
- **Policies and administrative rules** — This section discusses the key policies and rules that affect the Department of Forestry’s management of Board of Forestry and Common School Forest Lands.
- **Comparison of state and federal legal mandates** — The legal mandates for state forests are very different from the legal mandates for national forests. This section discusses the key differences.
- **Other legal mandates** — This section discusses other legal mandates that affect the state forests, including federal and state Endangered Species Act requirements; Oregon statewide planning goals; and Oregon Forest Practices Act requirements.

Common School Forest Land

History

The history of Common School Forest Lands (CSFL) can be traced to the Land Ordinance of 1785, the creation of the Territory of Oregon in 1848, and the Admission Act of 1859. The federal government’s policy at the time Oregon gained statehood was to grant sections 16 and 36 of every township to the new state for the use of schools. Oregon’s grant included 3.5 million acres of grazing and forest lands. Eventually, all but 130,000 acres of the forest lands was either sold for the benefit of schools or lost through fraudulent land deals.

By the time Oregon gained statehood, Congress had taken steps to define the trust nature of the CSFL grants. This was in response to early abuses of the land grant system as states disposed of their school lands without restraint. As a result, Congress stipulated that the grant lands be managed for the use of schools and not for other public needs. Permanent investment trusts were established to protect the financial principal derived when grant lands were disposed. Lands that were retained were to be managed by the states in accordance with the beneficiary trust interest. These obligations are spelled out in the Oregon Constitution and the Admission Act of 1859.

Legal Mandates

The Oregon Constitution

The Oregon Constitution (Article VIII, Section 5) authorizes the State Land Board to manage CSFL lands. The Land Board is directed to “manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.” This responsibility has been clarified through the 1992 opinion of state Attorney General Charles S. Crookham, which is discussed below.

The Oregon Constitution provides for revenues derived from CSFL lands and other specified sources to be deposited into the Common School Fund. It also authorizes the State Land Board to withdraw money from the Common School Fund to carry out its powers and duties to manage the lands. The State Land Board has implemented its authority through a contract with the Department of Forestry and the Division of State Lands to manage CSFL lands.

Oregon Revised Statutes

Statutes concerning CSFL lands are found in ORS 530.450 through 530.520. Some of the lands under the jurisdiction of the Division of State Lands are suitable for use as state forests. ORS 530.460 and 530.470 describe the process by which the Division of State Lands and the State Board of Forestry may “designate” these lands for the primary purpose of “growing timber and other forest products.” Lands so designated are named “Common School Forest Lands.” Through a similar process, CSFL lands may be reverted to their original status.

Under ORS 530.490, the State Forester is directed to manage Common School Forest Lands so as to “secure the greatest permanent value of the lands to the whole people of the State of Oregon.” Although the statutes again refer to timber production as the dedicated use of the land, much of the statutory language has been found to be inconsistent with constitutional mandates. Oregon’s Attorney General has opined that the land’s various other natural resources must also be considered as long-term sources of revenue. The Attorney General’s opinion is discussed below.

The statutes refer to forest management planning in ORS 526.255, which calls for “long-range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability in each management region.”

Attorney General’s Opinion

Currently, the fullest description of the Oregon Constitution’s mandates for managing Common School Forest Lands is found in a July 24, 1992 opinion of Oregon Attorney General Charles S. Crookham. (46 Op. Atty. Gen. 468 (1992), Opinion No. 8223, July 24, 1992) This opinion addresses the lawful uses of Admission Act lands and the effect of

federal or state regulations on such uses. The issue at hand was the State Land Board's compliance with the federal and state Endangered Species Acts.

Admission Act lands are those lands offered by the federal government to the State of Oregon for the use of schools upon Oregon's admission to the United States in 1859. The Attorney General's opinion discussed the restrictions that Congress intended to impose on Oregon's use of these lands.

According to Crookham, a binding obligation was imposed on Oregon when it accepted the Admission Act lands "for the use of the schools." The Oregon Constitution dedicates the proceeds of Admission Act lands to the Common School Fund and gives the Land Board responsibility to manage these lands in trust for the benefit of the schools. The Land Board has a further constitutional obligation to manage lands under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management." Crookham noted that the "greatest benefit for the people" standard requires the Land Board to use the lands for schools and the production of income for the Common School Fund.

It was Crookham's opinion that the resources of Admission Act lands are not limited to those, such as timber, that are currently recognized as revenue generators for the Common School Fund, but include all of the features of the land that may be of use to schools. Other resources, such as minerals, water, and plant materials that may offer revenue for the fund should be considered.

The Land Board may incur present expenses or take management actions that reduce present income if these actions are intended to maximize income over the long run. Lands may be temporarily set aside for the purpose of "banking" an asset while its economic value appreciates if the Land Board has a rational, non-speculative basis for concluding that such action will maximize economic return to the Common School Fund over the long term.

Neither the Oregon Admission Act nor the Oregon Constitution exempts the Land Board from complying with the federal and state Endangered Species Acts (ESA), in the opinion of the Attorney General.

Crookham felt it is unlikely that the courts would exempt the Land Board from complying with the federal ESA. Even if the grant of Admission Act lands were viewed as a contract or trust arrangement between the state and the federal government, Congress retains the authority to alter the terms of the arrangement by virtue of its sovereign power to legislate.

Because the state ESA does not explicitly require or prohibit any particular action with respect to the management of Admission Act lands, Crookham felt that the state ESA does not restrict the Land Board's exercise of its constitutional powers over the disposition and management of Admission Act lands. The Land Board must comply with the state ESA unless it unduly burdens the Land Board's constitutional responsibility to manage the Admission Act lands. Only if the state ESA fundamentally impaired the Board's ability to

maximize revenue over the long term from the Admission Act lands would there be an undue burden on the Land Board's management and powers.

Finally, the Attorney General said it is not possible to predict whether the application of the federal ESA to Admission Act lands could result in a claim against the federal government for a taking of property. However, the state ESA definitely could not result in a taking because the Land Board would not be required to comply with a law that prevented it from its constitutional responsibility to maximize revenue from Admission Act lands over the long term.

Funding

Receipts from the CSFL lands enter the Common School Fund. The Department of Forestry is reimbursed on a quarterly basis for management expenses incurred on these lands. The Department's budget is subject to authorization by the state legislature. The Common School Forest Lands and Board of Forestry Lands budgets are considered as a whole, and are categorized as "other funds" that are separate from the state's general fund. The Common School Forest Lands and Board of Forestry Lands budgets are accounted for separately within the Department of Forestry.

Board of Forestry Land

History

Board of Forestry Lands (BOFL) were acquired by the Board of Forestry in two ways: (1) through direct purchase; and (2) through transfer of ownership from counties in exchange for a portion of the future revenue produced by these lands. Under the Board of Forestry's supervision, the Department of Forestry manages BOFL lands to produce income for the counties.

Legal Mandates

Forest Management Planning

The statutes refer to forest management planning in ORS 526.255, which calls for "long-range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability in each management region."

Other Key Statutes

Oregon Revised Statutes 530.010 through 530.170 guide the acquisition, management, and development of state forests which are under the jurisdiction of the Board of Forestry. The statutes are discussed below.

1. ORS 530.010 authorizes the Board of Forestry, in the name of the State of Oregon, to acquire lands which are chiefly valuable for forest crop production, watershed protection and development, erosion control, grazing, recreation, or forest administrative purposes.

The lands may be acquired by purchase, donation, devise, or exchange from any public, quasi-public, or private landowner. All land acquisitions are subject to the prior approval of the county commissioners of the county in which the lands are located. The lands so acquired are designated as “state forests.”

2. ORS 530.030 deals with the conveyance of county forest lands to the state. This statute recognizes that BOFL lands are managed to produce income for the counties.

Most of these lands were originally acquired by the counties through foreclosure of tax liens. Under county ownership, the lands provided revenue to the counties. The statute maintains this revenue source by allowing ownership to be conveyed to the state “in consideration of the payment to such county of the percentage of revenue derived from such lands.” The percentage distribution of revenue between counties and the state is addressed in ORS 530.110.

3. ORS 530.050 directs that BOFL lands shall be managed so as “to secure the greatest permanent value of such lands to the state.” To this end, the State Forester, under the authority and direction of the State Board of Forestry, is given the latitude to:

- Sell forest products.
- Reforest and protect from fire.
- Execute mining leases and contracts.
- Sell rock, sand, gravel, pumice, etc.
- Produce minor forest products.
- Grant easements, and charge fees for road use.
- Permit the lands to be used for other purposes (e.g. fish and wildlife environment, landscape effect, flood and erosion protection, recreation, domestic livestock, and water supplies), provided such uses are “not detrimental to the best interest of the state” in the opinion of the Board of Forestry.
- Do all things necessary for the “management, protection, utilization, and conservation of the lands.”

Analysis of Legal Mandates

The Board of Forestry’s legal mandates for managing BOFL lands include the dual obligations of sharing income with the counties (ORS 530.030) and conserving, protecting, and using a variety of natural resources (ORS 530.050). The statutes do not specify how to balance these needs. Answers to this question are found in rulings of the Oregon Supreme Court and appellate courts, as well as in opinions of the Attorney General’s office.

The various rulings and opinions are summarized by Assistant Attorney General Melinda L. Bruce in an analysis prepared for Martha O. Pagel, Governor's Assistant for Natural Resources and Environment. ("Management Options for Board of Forestry Lands Obtained from Counties Under ORS 530.030," July 17, 1991) The highlights of the analysis are:

1. The Oregon Supreme Court found it unnecessary to describe the arrangement between counties and the state in contract or trust terms. Rather, the arrangement is adequately described in the statutes.
2. The Board of Forestry has a statutory obligation to share revenues produced from BOFL lands with the counties, but the statutes do not guarantee that any particular level of harvest or revenue will be maintained. Also, the counties may not expect that BOFL lands will be exclusively managed for timber harvest because ORS 530.050 authorizes the Board of Forestry to use the lands for a variety of other needs.

Throughout the history of legislation allowing the counties to convey forest lands to the Board of Forestry, "the counties' statutory expectations have only been that one of the purposes of managing the lands would be timber production and that when timber revenues flowed from such production, the counties would be entitled to a certain percentage of the revenues."

The Attorney General's office has characterized the counties' expectations as "analogous to 'output' or 'production' contracts under which the state must pay the counties a percentage of revenues from the forest lands only if revenues are realized. In such production contracts, there is no implied promise to maintain output absent an expression to that effect in the contract."

3. The Board of Forestry may not manage BOFL lands under ORS 530.050 in such a manner as to deny all output from the lands. The court has so ruled with regard to exchanging revenue-producing lands for non-revenue-producing lands. Similarly, in the opinion of the Attorney General's office, this could apply to permanently setting aside lands from production in order to conserve or preserve wildlife habitat.
4. In managing the lands, the Board of Forestry retains discretion to balance a variety of needs against timber production so that the state may secure the "greatest permanent value" of the lands. However, it is not known exactly how far the Board may deviate from producing maximum harvest returns before breaching its statutory obligation to the counties.
5. The term "greatest permanent value" has not been defined through appellate court decisions or opinions of the Attorney General's office. Nevertheless, it is not likely that an interpretation of the term would be limited to economic values.

Funding

36¹/₄% of the revenues derived from BOFL lands is used by the Department of Forestry to pay for the management and protection of the land. The Department's budget is subject to the authorization of the state legislature. The BOFL and CSFL budgets are considered as a whole, and are categorized as "other funds" that are separate from the state's general fund.

Policies and Administrative Rules

Legal mandates for the management of state forests are set by legislative statute and the Oregon Constitution. Additional guidance may be given in the form of policies and administrative rules.

The Forestry Program for Oregon

The Board of Forestry provides overall policy guidance for the Department of Forestry. The Forestry Program for Oregon (FPFO) is the Board's umbrella policy. The FPFO describes the Board's guidance to the State Forester, legislature, governor, and to the citizens of Oregon on matters of forest policy that the board considers important. It guides the actions of both the Board of Forestry and the Department of Forestry as they work with the forestry community and the public in implementing sound forest policy (Oregon Board of Forestry 1995a).

To meet its timber growth and harvest objective, the FPFO directs the Department of Forestry to "provide exemplary stewardship on state forests that balances economic, environmental and social values and provides abundant and sustainable timber supplies." (Oregon Board of Forestry 1995a)

The FPFO continues, "The Department will intensively manage State forest lands (Board of Forestry and Common School Lands) in an exemplary fashion for the sustained production of timber in a cost-effective and environmentally sound manner. Such intensive management is designed to generate revenue for the beneficiaries of the land, including county government, local taxing districts and the Common School Fund. In carrying out this program, the Department will employ the "Board of Forestry Policy for Practicing Silviculture on State Lands," and will emphasize the long-term compatibility of growing and harvesting timber with other forest uses." (Oregon Board of Forestry 1995a)

Board of Forestry Policy for Practicing Silviculture on State Lands

This policy, adopted on March 8, 1995, provides overall policy direction for the management of State Forest land. It states that "production of timber on a sustained basis is the primary goal, but due consideration is given to all other appropriate forest uses and values." The Department carries out the policy and fulfills its trust responsibilities "by practicing forest management that considers the ecological and biological long-term productivity of the land, along with the silvicultural and economic gains of that management." (Oregon Board of Forestry 1995b)

The Department of Forestry uses this policy to accomplish Forestry Program for Oregon objectives on state forest lands. In particular, the objectives promote the growth and harvest of timber on publicly-owned commercial forest land consistent with statutory direction, encourage opportunities for other forest uses, and promote the maintenance of long-term forest health (Oregon Board of Forestry 1995b).

The policy has twelve Guiding Principles. It calls for landscape-level planning, but with management strategies designed to fit individual sites. The primary role of the state forests is to provide intermediate stand ages and structures. There is an emphasis on structural complexity and age diversity, as well as managing habitats to meet species needs. The policy recognizes long-term soil productivity, genetic and biological diversity, non-commodity forest values, and intensive timber management techniques. The Department is committed to an ongoing monitoring and research program, with adaptive management used to incorporate new information as it becomes available.

Other Current Policies

The State Forester may establish policies that are consistent with direction given by the Board of Forestry. The following policies are currently in place for managing state forests.

- **Policies for Fish and Wildlife Management on State Forest Land** — This policy has been in effect since June 21, 1989. It defines how much emphasis may be given to fish and wildlife habitat, given that timber production is the primary goal for management of Board of Forestry and Common School Forest Lands. It directs forest managers to (a) consider fish and wildlife habitat in making forest management plans; and (b) modify forest management plans to achieve better fish and wildlife habitat where, but only where, such modification does not significantly conflict with the primary goal. As a guideline, “significant” means 5% to 10% of the timber growth and harvest at stake. The policy also addresses the role of biologists in planning, the designation of conservancy lands, and the funding of fish and wildlife enhancements.
- **State Lands Riparian Protection Policy** — As directed by the Board of Forestry, this policy was established on August 5, 1994 to clarify the level of protection that riparian areas should receive on state forest lands. The policy states that riparian protection shall be based on the new Forest Practices Act water protection rules. All state forest lands outside the Elliott State Forest are covered by the policy.
- **Threatened and Endangered Species** — Department of Forestry policies and guidance that pertain to the federal and state Endangered Species Acts are summarized in an internal document, the “T&E Handbook, State Lands Program” (Mannix 1994).

Policies and Rules under Development

The following policies and rules were under development as of spring 1995.

- **Land Acquisition and Exchange Policy** — To provide guidance for the acquisition and exchange of state forest lands. The Board of Forestry's policy is to actively pursue acquisitions and exchanges that meet statutory requirements and which serve the public interest.
- **Marketing Policy** — To identify and implement marketing activities that will lead to enhancing revenue from state lands.
- **Special Forest Products Policy** — To address the marketing of special forest products and the biological capacity of state forests. Will be used as an umbrella policy, allowing districts to develop their own pricing and operational guidelines.
- **Research Policy** — To enable staff to assess new and ongoing projects and to ensure that money spent on research fits with the program mission.
- **Recreation Administrative Rules** — To regulate public use of state forest lands. Will provide for a safe, enjoyable experience for all users, minimize conflicts between various types of uses, and minimize impacts on other resources.

Comparison of State and Federal Management Mandates

Many people are already familiar with the laws that guide the planning and management of the national forests. State forests operate under a completely different set of mandates. This section outlines the fundamental differences between the state and federal requirements.

National Forests (U.S. Forest Service)

National forests must be managed in accordance with multiple use and sustained yield principles. The Multiple-Use Sustained-Yield Act of 1960 calls for renewable surface resources (e.g. outdoor recreation, range, timber, watershed, wildlife, and fish) to be managed in the combination that will best meet the needs of the American people. These resources are to be managed to achieve a perpetually high level of output.

The requirement to develop management plans for national forests comes from the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA). This was later amended through the National Forest Management Act of 1976 (NFMA) and pursuant regulations.

National forest management plans are considered to be major federal actions which significantly affect the quality of the human environment. Therefore, each plan must be accompanied by an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations which implement NEPA.

The Resources Planning Act and National Forest Management Act provide for public participation in national forest planning processes. CEQ regulations provide for public involvement in the NEPA processes. Federal actions which require an EIS have a greater level of public involvement than those which require an environmental assessment (EA).

State Forests

State law (ORS 526.255) calls for “long range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability in each management region.”

Unlike the Forest Service, “multiple use” management is not a legal mandate for either Board of Forestry Lands or Common School Forest Lands. However, the conservation and use of renewable and non-renewable resources must necessarily be factored into state forest management plans. Board of Forestry Lands are managed under statutory direction to produce income for the counties as well as to conserve, protect, and use a variety of natural resources. Common School Forest Lands are managed under the Oregon Constitution with the object of “obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”

Environmental impact statements and environmental assessments are not required for state forest planning unless there is a federal action involved.

There is no legal mandate for public participation in state forest planning. Public involvement in the Eastern Oregon Region management plan reflects the Department of Forestry’s desire to use public comments as a planning resource. Public involvement also furthers understanding, acceptance, and support of the plan.

Other Legal Mandates

Federal Endangered Species Act

The federal Endangered Species Act (ESA) was enacted in 1973 to preserve species which are at risk of becoming extinct. The ESA has been modified several times since 1973. Administration of the ESA falls under the authority of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

The ESA protects species which have been designated as “threatened” or “endangered” (T&E) through a listing process. The federal ESA defines an “endangered” species as one which is in danger of extinction throughout all or a portion of its range. A “threatened” species is likely to become an endangered species within the foreseeable future.

The USFWS maintains two categories of “candidate” species which are not protected under the law. These remain in candidate status because there is not sufficient information to list them or because the listing process has not been completed.

As explained below, various provisions of the ESA may distinguish between federal and non-federal lands, plant and animal species, and species listed as threatened or endangered.

Agencies of the federal government are prohibited from jeopardizing the existence of any T&E species and from destroying or adversely modifying “critical habitat.” The designation of critical habitat occurs at the time a species is listed. Only federal lands are subject to the restrictions pertaining to critical habitat. Another provision of the ESA directs federal agencies to carry out programs for the conservation of T&E species. None of these provisions distinguish between plant and animal species.

The ESA’s prohibition against “take” applies equally to non-federal and federal lands, and specifically to fish and wildlife species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

A significant revision of the ESA occurred in 1982, when provisions allowing for “incidental take” were added. Such taking must be incidental to, and not the main purpose of, the carrying out of an otherwise lawful activity. In order to obtain an incidental take permit, an applicant must submit a conservation plan, sometimes known as a “habitat conservation plan” or HCP. An incidental take permit may be granted if the following conditions are satisfied: (1) the taking will be incidental; (2) the applicant will minimize and mitigate the impacts of taking; (3) there will be adequate funding to implement the conservation plan; and (4) the likelihood of the survival and recovery of the species will not be reduced.

The ESA does not merely protect surviving populations; it directs the Secretary of Interior to develop a “recovery plan” for each T&E species. The objective is to enable each species to recover to the point that protection under the ESA is no longer necessary and it can be taken off the list.

The term “take” does not apply to plant species. The ESA prohibits the removal, damage, or destruction of endangered plants on federal lands. For endangered plants on non-federal land, the ESA prohibits removal or destruction by anyone who in the process of destroying the plants knowingly violates any state law or regulations including criminal trespass laws. The activities prohibited for endangered plants are not automatically prohibited for threatened plants. However, such prohibitions may be established for threatened plants through regulation, if they are found to be “necessary and advisable for the conservation of such species.” (Federal ESA)

State Endangered Species Act

The Oregon laws covering threatened and endangered species of plants and animals are found in Oregon Revised Statutes 496.172 through 496.192 (for wildlife) and ORS 564.010 through 564.994 (for plants). Further legal requirements are given in the Oregon Administrative Rules.

Wildlife Species

Threatened and endangered wildlife species in Oregon are managed under the authority of the State Fish & Wildlife Commission. The 1995 Oregon Legislature made substantial changes to the state Endangered Species Act for wildlife. A summary was not available for publishing in this plan. The law as summarized below will remain in effect until September 9, 1995.

Through administrative rule, the Commission maintains a list of species which are determined to be threatened or endangered in accordance with the statutory definitions of these terms. The Oregon Revised Statutes define an “endangered” species as any native wildlife species (a) in danger of extinction throughout any significant portion of its range within this state; or (b) listed as endangered as of May 15, 1987 pursuant to the federal Endangered Species Act. A “threatened” species is one which is likely to become endangered or has been listed as threatened pursuant to the federal ESA as of May 15, 1987.

The decision to add or remove a species from either list must be based upon documented and verifiable scientific information and other pertinent data.

Protection and conservation programs for T&E species are established by the Commission through administrative rule. The objective of a conservation program is to enable the recovery of a species so that it may be taken off the state T&E list. Priorities for conservation programs may be set according to available funding and the seriousness of the threat to a species.

State agencies such as the Department of Forestry are directed to cooperate with the Department of Fish and Wildlife in furthering conservation programs for T&E species. A consultation with ODFW is required prior to any action on state lands. It must be shown that such actions are consistent with existing state T&E species programs. If no program exists for an affected species, the state agency must follow this procedure: (1) Determine whether such action has the potential to appreciably reduce the likelihood of the survival or recovery of the species. (2) If so, then ODFW must be notified, and within 90 days ODFW must recommend any reasonable alternatives to the proposed action which are consistent with conserving and protecting the affected species. (3) If the state agency chooses not to adopt such recommendations, then it must demonstrate that (a) the potential public benefits of the proposed action outweigh the potential harm from failure to adopt the recommendations; and (b) measures will be taken to minimize the adverse impact on the affected species.

Plant Species

Oregon's threatened and endangered plant species are managed under the authority of the Director of Agriculture, with administrative responsibilities delegated to the Oregon Department of Agriculture (ODA).

The statutes pertaining to listing and conserving T&E plant species are very similar to those described above for wildlife. One difference is that, with respect to plant conservation programs, state agencies must consult not only with the Department of Agriculture, but with any other state agency that has established programs to conserve or protect threatened or endangered species.

State agencies are directed to ascertain the occurrence, or likely occurrence, of any listed species before taking any action on state-owned land. The term "action" has been defined to include activities that disturb the ground or vegetation or suppress plant growth. A sale or exchange of state-owned land, such that a listed species would be removed from state jurisdiction, would also be considered an action.

If it is determined that there is a conflict between a proposed activity and a listed plant, the following procedure is used. A state agency, in consultation with ODA, must determine whether the activity is consistent with ODA's conservation program for the species. If no conservation program is in place, the state agency must determine whether the activity has the potential to "appreciably reduce the likelihood of survival or recovery of any population of any plant species that is listed as threatened or endangered." If so, the state agency must recommend reasonable measures to minimize any potential adverse impacts of the activity. ODA's role is to review the proposal and recommend alternatives if necessary. In deciding whether or not to implement ODA's alternatives, the state agency may weigh the benefits of the proposed activity against the harm from failing to implement the alternatives.

Oregon's Statewide Planning Goals

Since 1973, with the passing of The Oregon Land Use Act, Oregon's land use has been guided by local comprehensive planning under a number of Statewide Planning Goals (ORS 195, 196 and 197; OAR Chapter 660). State forest land management complies with this law by following the Department of Forestry's current State Agency Coordination Program, described in OAR Chapter 629, Division 20, adopted in 1990.

To date, 19 Statewide Planning Goals have been adopted by the Land Conservation and Development Commission (LCDC). These include goals on citizen involvement, the planning process, farm lands, forest lands, natural resources, development and coastal resources (Oregon Department of Land Conservation and Development 1994). These goals are quite detailed and have the force of law. As part of the 1973 law, the Department of Land Conservation and Development (DLCD) was established to implement the policies and goals of the Commission. Later, in 1979, the Legislature created the Land Use Board of Appeals (LUBA) to rule on matters involving land use.

State law requires each city, county, and special district to have a comprehensive plan, as well as the zoning and ordinances needed to put the plan into effect (ORS 197.175). Locally adopted land use plans are reviewed by LCDC to make sure they are consistent with the statewide goals. After LCDC has officially approved a local government's plan, the plan is said to be "acknowledged." An acknowledged local comprehensive plan is the controlling document for land use in the area covered by the plan. Thus, management of state lands must be compatible with local comprehensive plans and land use regulations (ORS 197.180).

In 1978, LCDC approved the Oregon Department of Forestry's State Agency Coordinating Agreement. This agreement, required of all state agencies, describes ODF's rules and programs that affect land use, and spells out how the agency will coordinate its functions with local governments, other state agencies, and federal agencies. In 1987, the Oregon Legislature passed House Bill 3396, which resolved issues between the Forest Practices Act and the land use programs. Specifically, the Statewide Planning Goals do not apply to programs, rules, procedures, decisions, determinations, or activities carried out under the Forest Practices Act (ORS 197.180 and 197.277). The FPA prohibits local governments from regulating, prohibiting, or limiting forest practices in any way on forest lands outside an urban growth boundary unless an acknowledged exception has been taken to a forest land goal (ORS 527.722). In 1991 LCDC certified that the Department of Forestry's new State Agency Coordination Program (OAR 629-20) was compatible with the Statewide Planning Goals.

Goal 4 of the Statewide Planning Goals, "Forest Lands", is "To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound

Key Terms

Acknowledgment — Approval by the Land Conservation and Development Commission (LCDC) of a city or county’s comprehensive plan; acknowledgment of compliance with the Statewide Planning Goals.

Certification — Approval by LCDC of a state agency program found to be consistent with the Statewide Planning Goals.

Department of Land Conservation and Development (DLCD) — State agency that administers Oregon’s statewide planning program and provides professional support to the LCDC.

Land Conservation and Development Commission (LCDC) — A seven-person commission that sets the standards for Oregon’s statewide planning program. Members are volunteers appointed by the Governor and confirmed by the State Senate.

Land Use Board of Appeals (LUBA) — Established in 1979 essentially as a state court that rules on matters involving land use. Appeals from LUBA go to the State Court of Appeals and finally to the Supreme Court.

State Agency Coordination Program — Required under law for each state agency, to establish procedures to assure compliance with statewide land use goals and acknowledged city and county comprehensive plans and land use regulations.

Statewide Planning Goals — Statewide Planning Goals are adopted by the Land Conservation and Development Commission to set standards for local land use planning. They have the force of law.

management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.” (Oregon Department of Land Conservation and Development 1994)

Goal 4 allows the following land uses on forest land: “(1) uses related to and in support of forest operations; (2) uses to conserve soil, water and air quality, and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment; (3) locationally dependent uses; (4) dwellings authorized by law.” In addition, “Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in ORS 527.722 [the Forest Practices Act].” (Oregon Department of Land Conservation and Development 1994)

Two other Statewide Planning Goals are of particular interest. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) is “To conserve open space and protect natural

and scenic resources.” Goal 6 (Air, Water and Land Resources Quality) is “To maintain and improve the quality of the air, water and land resources of the state.”

The Department of Forestry has established procedures under OAR 629-20, its State Agency Coordination Program, to assure that land use programs comply with Statewide Land Use Planning Goals and are compatible with acknowledged city and county comprehensive plans and land use regulations. In the case of a state forest plan, the District Forester will notify local government when a forest plan is being developed, and will request their review and comment on the compatibility of the draft forest plan with the local government’s comprehensive plan. If a conflict is found between the Department’s statutory obligations and land use compatibility, OAR 629-20-050 describes the dispute resolution process to be followed. OAR 629-20 also describes procedures to be followed if land use designations are updated; land is acquired, sold or exchanged; non-forest uses or forest uses not regulated by the Forest Practices Act must be approved; or when block plans, annual operations plans and transportation plans are developed. OAR 629-20-000 states that “it is not the intent of these rules to prevent either the Board of Forestry or the Department of Forestry from carrying out their statutory responsibilities.”

Oregon Forest Practices Act

Activities on lands managed by the Department of Forestry are subject to the Forest Practices Act (FPA), which is found in Chapter 527 of the Oregon Revised Statutes, and the Oregon Administrative Rules pursuant to these statutes.

The FPA declares it public policy to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species consistent with sound management of soil, air, water, fish, and wildlife resources as well as scenic resources within visually sensitive corridors. The Board of Forestry is granted the exclusive authority to develop and enforce rules protecting forest resources and to coordinate with other agencies concerned with the forest environment.

The Forest Practices Act has developed in an evolutionary manner since the original act was passed in 1971. The 1971 law established minimum standards for reforestation, road construction and maintenance, timber harvesting, application of chemicals, and disposal of slash. Subsequently, administrative rules were written to define the “waters of the state” and to protect streams and riparian areas. Rules were adopted to prevent soil damage resulting from logging and to prevent mass soil movement.

The Forest Practices Act was strengthened in 1987 with the passage of House Bill 3396. The concept of sensitive resource sites was introduced, along with the requirement that written plans be approved prior to operating near those sites. Provisions were added which allow interested citizens to review and comment on notifications of operations and written plans.

The 1991 enactment of Senate Bill 1125 added new standards for reforestation, wildlife habitat, and scenic considerations. The new requirements included timeframes and trees per acre standards for reforestation, limits on the size and proximity of clearcuts, visual standards for logging in visually sensitive highway corridors, and specifications for wildlife trees and downed woody debris retained after logging. In addition, the Board of Forestry was directed to reclassify and develop appropriate protection levels for the waters of the state. Subsequently, new water protection rules were adopted in 1994.

The entire set of Forest Practice Administrative Rules (Chapter 629) has been reorganized for ease of use. The new publication contains the general forest practice rules (Division 24), reforestation rules (Division 610), water protection rules (Divisions 635-660), and other rules that were changed during the 1994 rule-making process. The publication also footnotes places where the rules will be further reorganized in the future (Oregon Department of Forestry 1995).