

Appendix J

Legal and Policy Mandates

This appendix describes in detail the main legal and policy mandates that affect the Elliott State Forest. It is divided into four sections, listed below.

- **Common School Forest Land** — This section discusses the history, legal mandates, policy mandates, and funding mechanisms for these lands.
- **Board of Forestry Land** — This section discusses the history, legal mandates, policy mandates, and funding mechanisms for these 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 Elliott State Forest, including a 1992 Attorney General’s opinion on the objective of Common School Forest Land management; federal and state Endangered Species Act requirements; and Oregon Forest Practices Act requirements.

Common School Forest Land

History

The majority of the Elliott State Forest is Common School Forest Land (CSFL). The history of these lands 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.

Governor Oswald West and State Forester Francis Elliott conceived the idea of creating a state forest by consolidating 70,000 acres of remaining grant lands that were located within national forests. A single block of federal ownership was sought that would equal the acreage and value of the grant lands. The process of finding an equivalent tract of federal land lasted from 1912 until 1927. The federal government included 6,800 acres of public and revested Oregon and California Railroad lands to balance the exchange. The Millicoma tract

near Coos Bay was selected, and the final deeds culminating the 70,000 acre exchange were acquired in 1930.

In the 1960s, another 7,700 acres of land owed to the state through school indemnity claims, otherwise known as “lieu lands”, were added to the Elliott State Forest. The federal government offered lieu lands to compensate for grant lands with conflicting claims, such as those which were already settled or occupied by townsites. Lieu lands also compensated for grant lands inside federal ownerships with no likelihood of being surveyed.

Between 1970 and 1990, a series of 29 land exchanges involving mostly remote, scattered parcels enlarged the Elliott State Forest by 7,000 acres. (In the process of equalizing values, 5,000 acres of grant lands in Coos County were found to be worth 7,000 acres in trade.) This addition brought the total CSFL land managed in the Elliott up to the present 84,700 acres.

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 to manage CSFL lands.

Oregon Revised Statutes

Statutes concerning the Elliott State Forest and other CSFL lands are found in ORS 530.450 through 530.520.

ORS 530.450 gives the name “Elliott State Forest” to any lands in the national forests on February 25, 1913 that were patented to the State of Oregon for the purpose of establishing a state forest. Besides the Elliott, there are other lands under the jurisdiction of the Division of State Lands that 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 the Elliott State Forest and 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.

Policy Mandates

Further management direction for Common School Lands is given in the Forestry Program for Oregon, and Board of Forestry, State Forester and State Lands Program policies. These policies are discussed under the section on Board of Forestry Land.

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. The Department advises the State Land Board of the CSFL land management objectives and budget.

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. Of the Elliott State Forest's 8,840 acres of BOFL land, 6,500 acres were tax-delinquent property deeded to the Board by Coos County in 1940. The Douglas County BOFL lands were mostly purchased. Although Douglas County had possessed 140,000 acres of tax delinquent land, nearly all of this property was disposed by selling large tracts to timber companies.

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 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.

Policy Mandates

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 which 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 Department 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."

It 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 Department 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 Department of Forestry 1995b)

This policy provides direction to the Department of Forestry to accomplish Forestry Program for Oregon objectives on state forest lands. 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.

The policy has twelve Guiding Principles. The Department will use landscape-level planning, 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.

Funding

36¼% of the revenues derived from BOF 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.

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.” In the case of the Elliott State Forest, the need for a management plan to address all natural resources was prompted by a December 1991 motion of the State Land Board. Most of the Elliott is Common School Forest Lands, managed by the Department of Forestry under a contract with the State Land Board.

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. The Habitat Conservation Plan for the Elliott State Forest, which must be prepared for an incidental take permit, will be supported by a NEPA-required environmental assessment. This is a federal action because the U.S. Fish and Wildlife Service must approve the application for the permit.

There is no legal mandate for public participation in state forest planning. Public involvement in the Elliott State Forest management plan reflects the Department of Forestry’s desire to utilize public comments as a planning resource. Public involvement also furthers understanding, acceptance, and support of the plan. In developing an environmental assessment for a Habitat Conservation Plan, public participation is a NEPA requirement.

Other Legal Mandates

Objective of Common School Forest Land Management (1992 Attorney General’s Opinion)

The forest management goal of the Elliott State Forest is to maximize all available revenue sources over time, consistent with federal and state laws and good stewardship principles. A formal legal opinion issued by Attorney General Charles Crookham affirmed this policy for Common School Forest Lands.

The Oregon Constitution dedicates the proceeds of CSFL lands to the Common School Fund and gives the State Land Board responsibility to manage these lands for the benefit of the schools. The Land Board has a 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.”

The Attorney General’s opinion reaffirmed that the “greatest benefit for the people” standard means that CSFL lands are to be used for the production of income. The generation of revenue should not be limited to timber, but should include the uses of other resources.

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. The USFWS has broadened the meaning of “harm” to include actual injury or death directly traceable to habitat modifications.

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. Instead, for endangered plants, the ESA prohibits the removal, damage, or destruction of plants on federal lands; and certain other activities on non-federal lands. Prohibited activities on non-federal lands include to remove, cut, dig up, damage, or destroy any endangered plant species in knowing violation of any law or regulation of any state, or in the course of any violation of a state criminal trespass law. 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.

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 nearly identical 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.

By administrative rule, state agencies are directed to ascertain the occurrence, or likely occurrence, of any listed species before taking any action on state-owned land. This may be done by conducting field surveys, consulting with ODA, or consulting with the Oregon Natural Heritage Program. If the determination should be positive, a process that is detailed in the administrative rules must be followed to conserve the species.

The term “action” has been defined by administrative rule to include activities which 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.

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. The Board of Forestry was directed to reclassify and develop appropriate protection levels for the waters of the state.

Oregon Forest Practices Act Changes Since 1987

Management of the Elliott State Forest has been guided since 1987 by the Department of Forestry's "Long Range Timber Management Plan [for] Southern Oregon Region State Forests." The 1987 plan incorporated the provisions of House Bill 3396, which was enacted in the same year. The Forest Practices Act has been significantly revised since the completion of the Southern Oregon Region's 1987 long-range plan. It was most recently revised in 1991 with the passage of Senate Bill 1125.

The following is a summary of key changes in the Forest Practices Act since 1987 that affect the management of the Elliott State Forest.

Definition of "clearcut"

The following definition has been added. In western Oregon, a **clearcut** is defined as "any harvest unit that leaves fewer than 50 trees per acre that are well distributed over the unit and that measure at least 11 inches at DBH or that measure less than 40 square feet of basal area per acre." To be counted as a tree, the top one-third of the bole must support a green, live crown. Trees larger than 20 inches are considered 20-inch trees for the purpose of computing basal area.

Timber Harvesting

Clearcut size — Clearcuts are now limited to 120 acres. The area occupied by riparian management areas or other resource sites within a clearcut boundary does not count as clearcut acreage. The 120 acre limit has no relationship to harvesting on adjacent ownerships.

Clearcut spacing and greenup requirement — Clearcuts must be separated by at least 300 feet if their combined area exceeds 120 acres. A reforested area is considered a clearcut for this purpose until it has at least 200 trees per acre which are four feet tall or four years of age.

Snag and green tree retention — In all clearcuts over 10 acres in size, a minimum of two snags or two green trees per acre must be reserved after harvesting. These must be at least 30 feet in height, 11 inches DBH or larger, and at least 50% must be conifer. A uniform distribution across the clearcut is not required. The selection of snags and green trees is left to the discretion of the operator or landowner.

Downed woody debris — In all clearcuts over 10 acres, a minimum of two downed logs or downed trees per acre must remain after harvesting. These must be at least 12 inches in diameter at the widest point, 16 feet long, and at least 50% must be conifer.

Reforestation

Site preparation and reforestation of clearcut units must commence within 12 months and be completed by the end of the second planting season after the completion of harvesting. By the end of the fifth growing season after planting or seeding, at least 200 healthy conifer or suitable hardwood seedlings must be established per acre. These must be well distributed over the area and “free to grow.”

Previously, the Forest Practices Act called for 100 conifer seedlings to be established per acre after 4 years. Hardwood seedlings were not an option.

Scenic Highways

Special rules now apply to timber harvesting within “visually sensitive corridors” along designated highways. These corridors are defined as “forestland located within the area extending 150 feet measured on the slope from the outermost right of way boundary of a scenic highway.” Harvesting within the corridor must retain at least 50 healthy trees per acre of at least 11 inches DBH, which total at least 40 square feet of basal area per acre. These trees may be removed (a) when the reproduction understory reaches an average of 10 feet in height and has at least 250 trees per acre; or (b) when the timber stand 150 to 300 feet from the corridor has attained 10 feet in height and has at least 200 trees per acre or contains at least 40 square feet of basal area.

This provision will apply to portions of the Elliott State Forest adjacent to State Highway 38, which is designated a “scenic highway.”

Streams and Riparian Areas

New comprehensive riparian protection rules were adopted by the Board of Forestry on September 1, 1994. The new rules focus on improving stream habitat by addressing these critical elements:

- Maintaining live trees and vegetation along streams and other waters to provide biodiversity, cover, shade, sediment reduction, adequate stream temperature levels, snags, downed wood, nutrients and bank protection.
- Development of woody debris to provide stream structure resulting in increased fish habitat. This happens over time as trees mature and fall into streams.
- Maintaining adequate fish passage up and down the length of a stream. Ensuring that fish have opportunities to move along the length of streams is important for spawning, feeding and avoiding reaches of streams with high temperature or low flows.
- Stream and landscape variation. The new classification system creates nine different stream classifications and additional lake and wetland classifications, providing the most appropriate protection to a variety of streams and waters.

All fish-bearing streams will have a riparian management area (RMA) between 50 and 100 feet, that includes vegetative and conifer retention. Within these riparian management areas,

all fish-bearing or domestic use streams, and all other medium and large streams, will require a 20-foot no-harvest buffer on each side of the stream unless stand restoration is needed.

The new classification system contains nine classes compared to two under the old rules. The new system identifies seven geographic regions, distinguishes between streams with fish or domestic use and whether the stream is large, medium or small in size based on water volume.

Rules related to harvest practices, road construction, stream crossings and fish passage have been strengthened considerably.

The volume of conifer trees retained along fish-bearing streams will substantially increase over the old rules to ensure that they provide future opportunities for conifer trees to fall naturally into streams, creating stream structure and fish habitat. The new rules will also provide additional shade to maintain stream temperatures.

The Department of Forestry (with the help of the Department of Fish and Wildlife) is conducting a comprehensive fish use survey of forest streams.