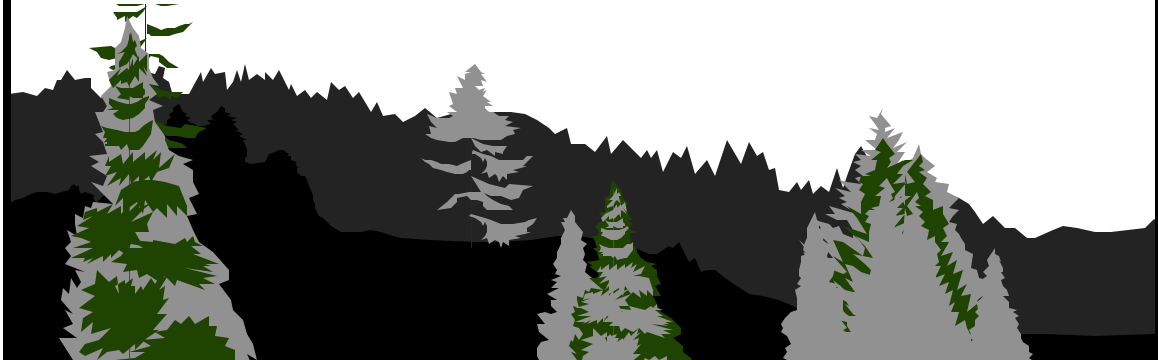


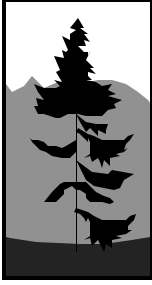
Appendix D

Legal and Policy Mandates



This section describes in detail the main legal and policy mandates that affect state land management. It is divided into the five sections listed below.

- **Board of Forestry Land** — This section discusses the history, legal mandates, policy mandates, and funding mechanisms for these lands.
- **Common School Forest 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 management of state forests, including a 1992 Attorney General's opinion on the objective of Common School Forest Land management; federal and state Endangered Species Act requirements; Oregon Forest Practices Act requirements; and Oregon land use laws.
- **Legal and policy mandates for specific resources** — This section discusses mandates that apply to specific resources.



Board of Forestry Land

History

Board of Forestry (BOF) lands 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 BOF lands to provide healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon.

Legal Mandates

Forest Management Planning

The Oregon Revised 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." Oregon Administrative Rule 629-035-0030 provides more specific direction on what information these forest management plans must contain and the mechanisms for Board of Forestry approval.

Other Key Statutes and Rules

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

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 BOF 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 BOF 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 and make all rules necessary for the “management, protection, utilization, and conservation of the lands.”
4. Oregon Administrative Rules 629-035-0000 through 629-035-0110 provide direction for state forest management policy and planning, and further define how the lands are to be managed to achieve “greatest permanent value” to the citizens of Oregon.

The rules provide the following direction:

- As provided in the statutes, “greatest permanent value” means healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon.
- To secure the greatest permanent value, the lands are to be maintained as forest lands and actively managed in a sound environmental manner to provide sustainable timber harvest and revenues to the state, counties, and local taxing districts. This management focus is not exclusive of other forest resources, but must be pursued within a broader management context.
- Forest management plans are to be developed and implemented that will secure the greatest permanent value.

Analysis of Legal Mandates

The Board of Forestry's legal mandates for managing BOF 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 administrative rules governing state forest management policy and planning provide direction on how to balance these dual obligations. The rules' primary findings and directions are summarized below and on the next page.

1. These lands must be managed to achieve the greatest permanent value to the state.
2. The counties in which these forest lands are located have a protected and recognizable interest in receiving revenues from these forest lands; however, the Board and the State Forester are not required to manage these forest lands to maximize revenues, exclude all non-revenue producing uses on these forest lands, or to produce revenue from every acre of these forest lands.
3. Based on existing Board principles and policies and current scientific and silvicultural information, the uses set forth in the rules are compatible over time and across the landscape when the lands are actively managed in an environmentally and silviculturally exemplary manner.
4. Based on existing Board principles and policies and current scientific and silvicultural information, forest lands that are actively managed as provided for in the rules can produce economic value over the long term and promote healthy, sustainable forest ecosystems.
5. Actively managing forest lands for the purposes described in the rules is in the best interest of the state.

Policy Mandates

The Forestry Program for Oregon

The Forestry Program for Oregon (FPFO) is a broad policy statement that outlines the Board of Forestry's role in serving the citizens of Oregon. The Board performs three primary functions.

1. Promoting certain forestry objectives by serving as an advocate of good stewardship in forest resource management.
2. Encouraging certain objectives by providing a climate to meet these needs through proposed legislation, incentives, and services.
3. Directing that certain actions take place where the Board has a specific regulatory or managerial responsibility.

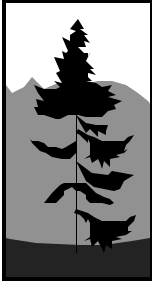
The FPFO's Timber Growth and Harvest Objective is to "promote healthy and productive forests to provide a maximum, sustainable, supply of timber." Under this objective there is an explicit reference to state-owned timberlands: "The department will intensively manage state forest lands (Board of Forestry and Common School Lands) in an exemplary fashion for the sustained production of timber in a cost-effective and an 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."

Fish and Wildlife Policy

OAR 629-035-0020 provides policy direction for the management of fish and wildlife resources on Board of Forestry Lands. This rule specifies that the lands will be managed to provide healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon. Specifically, these benefits include properly functioning aquatic habitats for salmonids and other native fish and aquatic life; and habitats for native wildlife. The rule further requires that forest management plans comply with all applicable provisions of the State and Federal Endangered Species Acts concerning state and federally listed threatened and endangered species.

Funding

Out of the revenues derived from BOF lands, 36¼ percent is used by the Department of Forestry to pay for the management and protection of the land. The department's budget request is subject to the approval of the Board of Forestry and the Governor. Final authorization of the budget is determined by vote of the state legislature. The BOF and CSF budgets are considered as a whole, and are categorized as "other funds" that are separate from the state's general fund. The Board of Forestry Lands and Common School Forest Lands budgets and expenditures are accounted for separately within the Department of Forestry.



Common School Forest Land

History

Only a minor portion of the western Oregon state forests is classified as Common School Forest (CSF) Land. 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.

By the time Oregon gained statehood, Congress had taken steps to define the trust nature of the CSF 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 CSF 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 CSF 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 CSF lands.

Oregon Revised Statutes

Statutes concerning CSF 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. These include some lands in the western Oregon state forests plan area. 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, CSF 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 on the next page.

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) (Crookham 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 State Land Board responsibility to manage these lands in trust for the benefit of the schools. The State 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 State 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 State 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 State 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 State 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 State Land Board’s exercise of its constitutional powers over the disposition and management of Admission Act lands. The State Land Board must comply with the state ESA unless it unduly burdens the State 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 State Land Board’s management and powers.

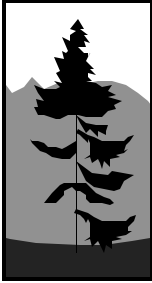
Finally, the Attorney General said it is not possible to predict whether the application of the federal ESA to Admission Act lands could result in a claim against the federal government for a taking of property. However, the state ESA definitely could not result in a taking because the State Land Board 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 Forest Lands is given in the Forestry Program for Oregon, and the Policies for Fish and Wildlife Management on State Forest Land. These policies are discussed under the section on Board of Forestry Lands.

Funding

Receipts from the CSF 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 biennial budget request is subject to the approval of the State Land Board and the Governor. Final authorization of the budget is determined by vote of 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.



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 that 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 that 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 that require an EIS have a greater level of public involvement than those that require an environmental assessment (EA).

State Forests

State law (ORS 526.255) calls for a biennial report to the Governor and legislature that contains “The long range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability

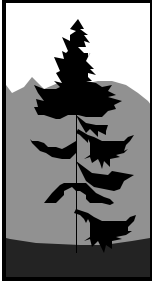
in each management region.”

ORS 530.050 directs that BOF lands shall be managed so as “to secure the greatest permanent value of such lands to the state.” OAR 629-035-0000 through 629-035-0110 provide direction on how forest management plans are to secure “greatest permanent value.”

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 balanced using the direction provided in the administrative rules referenced above. These rules specify that state forest lands be managed to provide healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon. 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. In the course of its planning process, the Department of Forestry may decide to apply to the U.S. Fish and Wildlife Service for an incidental take permit, in order to meet requirements of the federal ESA. Granting an incidental take permit is a federal action because the U.S. Fish and Wildlife Service must approve the application for the permit. **If** the Department of Forestry requests an incidental take permit, then the Department of Forestry will prepare a habitat conservation plan to accompany the permit application. Then the U.S. Fish and Wildlife Service would complete the NEPA-required analysis of the permit application and habitat conservation plan. The U.S. Fish and Wildlife Service would complete environmental analysis only on the federal action, which is the decision on the permit application. They would not have any legal jurisdiction to analyze state forest management planning.

Public involvement in the state forests planning reflects the requirements of OAR 629-035-0080 and the Department of Forestry’s desire to use public comments as a planning resource. Specific goals and methods for public involvement in state forest planning processes are provided by the rule and state forest policy (Oregon Department of Forestry 1999a). Public involvement also furthers understanding, acceptance, and support of the plan. If the process involves an incidental take permit and habitat conservation plan, as described above, the U.S. Fish and Wildlife Service also includes public participation in their NEPA process.



Other Legal Mandates

Federal Endangered Species Act

The federal Endangered Species Act (ESA) was enacted in 1973 to preserve species that 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 (USFWS) and the National Marine Fisheries Service.

The ESA protects species that 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 that are not protected under the law. These species 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.

The ESA directs federal agencies to carry out programs for the conservation of T&E species. Also, agencies of the federal government are prohibited from jeopardizing the existence of any T&E species and from destroying or adversely modifying “critical habitat.” Neither of these provisions distinguishes between plant and animal species.

The designation of critical habitat occurs at the time a species is listed. Only federal lands are directly subject to the restrictions pertaining to critical habitat. However, critical habitat designations on non-federal lands could have indirect effects on management of those lands, if an incidental take permit is requested.

Critical habitat is defined in section 3(5)(A) of the federal ESA as “(i) the specific areas within the geographical area occupied by the species *** on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management or protection ...” Note that the actual presence of a listed species is not required for critical habitat designation, only presence of features that the species would use if it were present. Critical habitat designations are not necessarily limited to federal lands.

“Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a federal agency. Federal agencies must ensure that their actions do not result in destruction or adverse modification of critical habitat.” (Federal Register / Vol. 59, No. 18 / page 3816). Issuance of an incidental take permit is a federal action. As such, USFWS is required to do a section 7 consultation (within agency) prior to issuing the permit. This combination of legal requirements would likely lead to USFWS being unable to grant an incidental take permit that would involve timber harvest on lands designated as critical habitat.

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 further defined harm as “... an act which actually kills or injures wildlife. Such acts may include significant habitat modifications or degradation when it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering” (50 CFR & 17.3).

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, according to the federal ESA, 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.”

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

The state Endangered Species Act was originally passed in 1987 and revised in 1995. Under the 1995 state ESA, the Oregon Fish and Wildlife Commission retains the authority for listing wildlife species as threatened or endangered. The statute recognizes cooperative state or federal programs protecting and recovering threatened or endangered species (such as a habitat conservation plan).

When a species is listed as threatened or endangered, the Oregon Fish and Wildlife Commission must establish, by rule, measurable guidelines to ensure the survival of individual members of the species. These guidelines may include take avoidance and protection for specific resource sites. Under state law, “take” means to kill or obtain possession or control of any wildlife.

For threatened species, if a state agency determines that a proposed action has the potential to violate the guidelines established by the Oregon Fish and Wildlife Commission, it shall notify the Oregon Department of Fish and Wildlife. That department will then recommend reasonable and prudent alternatives, if any, to the proposed action, which are consistent with the guidelines.

For endangered species, agencies managing state lands, such as the Department of Forestry, are responsible for developing endangered species management plans. The Oregon Fish and Wildlife Commission, in consultation with the land management agency, shall determine if state land can play a role in the conservation of the endangered species. Endangered species management plans will be reviewed and approved by the Oregon Fish and Wildlife Commission.

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 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.

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 that 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. In 1994, revised waters of the state rules were adopted by the Board of Forestry and assigned to Division 57 of the Oregon Administrative Rules.

In 1999, following Governor Kitzhaber’s Executive Order on salmon and healthy watersheds, the Board of Forestry formed an advisory committee to study forest practices in light of restoring native fish and their habitat to productive and sustainable levels. The Forest Practices Advisory Committee on Salmon and Watersheds is preparing a final report for fall 2000. Implementation, including any changes to the forest practice rules, is expected to last through 2002.

The following is a summary of key recent changes to the Forest Practices Act.

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 [diameter breast height] 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 — Changes are summarized in the following bullet list.

- **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 percent 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 percent 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 any portions of the western Oregon state forests that are adjacent to State Highways 6, 18, 20, 22, 26, 30, 34, 36, 58, 101, and 126, which are designated “scenic

highways” in ORS 527.755.

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 the following 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 classifies streams as large, medium, or small 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.

Oregon Land Use Laws

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.

To date, nineteen 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 1995). 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.

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.

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 state-wide 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 the department'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.

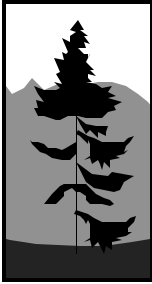
In 1987, the Oregon Legislature passed House Bill 3396, which resolved issues between the Forest Practices Act and the land use programs. Specifically, the Statewide Planning Goals do not apply to programs, rules, procedures, decisions, determinations, or activities carried out under the Forest Practices 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 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 1995)

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 1995)

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 governments 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 governments' comprehensive plans. 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 classifications are updated; land is acquired, sold or exchanged; non-forest uses 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."



Mandates for Specific Resources

Legal and policy mandates apply specifically to some resources. These resources are listed below in alphabetical order, with relevant information under each heading.

Agriculture and Grazing

Agricultural activities are permitted under ORS 530.050(4) and ORS 530.490(2). These laws authorize the State Forester to grant easements on Board of Forestry Lands and Common School Forest Lands. Board of Forestry Policy No. 3-1-4-002 allows non-exclusive permits to be granted for special uses. Agriculture is considered a special use, and is allowed when it doesn't interfere with forest management activities. Any revenue from agriculture permits is shared with the county where the activity takes place.

Grazing on Board of Forestry Lands is permitted by ORS 530.010, 530.030, and 530.050. These statutes allow the State Forester to permit domestic livestock grazing in order to secure the greatest permanent value to the state, as long as this use is not detrimental to the best interest of the state. There are no administrative rules to regulate livestock grazing on Board of Forestry Lands. The Department of Forestry manages any grazing that occurs on Board of Forestry Lands, and shares any income from grazing leases with the county where the land is located.

The Department of Forestry manages Common School Forest Lands under a contract with the State Land Board. The December 20, 1993 contract describes the roles of the Oregon Department of Forestry and the Division of State Lands for these lands. Under this contract, grazing and mineral leases on Common School Forest Lands are managed by the Division of State Lands.

Air Quality

The federal Clean Air Act, as amended in 1977 and 1990 (42 U.S.C. 7401, et seq.), is the main law regulating air quality. The law's goal is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Under the law, the Environmental Protection Agency (EPA), a federal agency, sets air quality standards (National Ambient Air Quality Standards).

The authority to implement the law is delegated to the states. In Oregon, the Department of Environmental Quality (DEQ), a state agency, develops and carries out programs to meet the

national air quality standards, through the State Implementation Plan (SIP). The goal of the SIP is to attain and maintain the national air quality standards, known as NAAQS. Sub-plans have been developed by other state agencies to address specific air quality concerns. Two air quality plans affect forest management directly: the Oregon Smoke Management Plan and the Oregon Visibility Protection Plan.

The Oregon Smoke Management Plan — Oregon Department of Forestry districts issue site-specific and time-specific burning permits under conditions adjusted daily to the weather. The conditions are designed to avoid smoke contamination of certain population centers (designated areas) and popular recreation areas (smoke-sensitive areas). These burning instructions specify geographic locations and fuel to be consumed. Permits may also specify fire protection and mop-up criteria. During burning, smoke behavior is monitored from the ground and at times from the air, and results are compiled on an annual basis by Department of Forestry smoke management staff. The Smoke Management Plan has established special protection zones for some cities.

The Oregon Visibility Protection Plan — Prescribed burning strategies to protect visibility are implemented under the Smoke Management Plan. Visibility is a consideration for wilderness areas, such as the Mount Hood, Mount Jefferson, Mount Washington, and Three Sisters wilderness areas. Due to fire season restrictions and department policy, no prescribed burning takes place from May-June until rains begin, about November.

Cultural Resources

Several federal and state laws and one state-wide land use planning goal regulate cultural resource management on state forest lands. Goal 5, Open Spaces, Scenic and Historic Areas, Natural Resources, and Cultural Resources, requires counties and local governments to inventory cultural resources and manage them to preserve their original character if there are no conflicting uses or consequences. Administrative rules which apply to cultural resources on state forest lands are OAR 690-51-240 (1991) and OAR 736-51-070 (1995, updated version). Archaeological sites are defined as sites over 75 years old. Some sites over 50 years old qualify for limited protection. Oregon statutes do not mandate archaeological surveys or mitigation of impacts by state agencies as part of conducting land management activities. However, artifacts and sites found on public lands must be protected from harm, alteration, or removal. If a sacred object is found, the State Historic Preservation Office (SHPO) and appropriate group or tribe must be notified. Anywhere in Oregon, state law protects Native American cairns and graves.

Information relating to the location of archaeological sites and objects is usually not released to the public unless the public interest requires the disclosure or if the governing body of a Native American tribe requests the information.

The State Historic Preservation Office (SHPO), which is part of the Oregon Parks and Recreation Department, administers the Statewide Plan for Historic Preservation and submits Oregon's nominations for the National Register of Historic Places.

Energy and Mineral Resources

Several state laws regulate energy and mineral resources on state forests, including ORS 273.551, 273.780, and 273.785. The Division of State Lands (DSL) has jurisdiction for the leasing of oil, gas, and minerals on state-owned lands. Before a lease is issued, the law directs DSL to consult with the State Department of Geology and Mineral Industries (DOGAMI) and to get concurrence of the state agency responsible for the surface rights of the land involved. Leases are auctioned when more than forty acres are involved. On less than forty acres, leases are handled through negotiations. DSL also administers a prospecting permit system that could eventually lead to applications for leases.

The Department of Forestry does have the right to use gravel, sand, stone, and soil from state forest lands to repair or construct roads or other state facilities without going through DSL.

Fish and Wildlife

The primary laws specific to fish and wildlife are the state and federal Endangered Species Acts. These were discussed earlier in this appendix.

Land Base and Access

Land Base

The following laws and policies provide direction for the acquisition, exchange, and management of state forest lands.

ORS 530.010 — ORS 530.040 Acquisition, Management and Development of State Forests — These statutes give the Board of Forestry authority and means through the Department of Forestry to acquire forest land by “purchase, donation, devise or exchange.” Any acquisition of forest land must be approved by the board of county commissioners in the county where the lands are located. An administrative rule is now being developed for land acquisitions and exchanges, and is expected to be adopted in 2001.

Board of Forestry Policies

Land Acquisition and Exchange Policy For State Forests — Through this policy the Board of Forestry has reaffirmed that the Department of Forestry will actively pursue acquisitions and exchanges as a means to consolidate state forest lands for management efficiencies, economic values, or enhanced stewardship practices.

Forestry Program for Oregon (FPFO) — The Forestry Program for Oregon is the strategic

planning document for the Oregon Board of Forestry (Oregon Board of Forestry 1995a). The policies and programs of the FPFO support the land acquisition and exchange policy above.

Two objectives in the FPFO are particularly important for the state forest land base.

- **Objective 1: Forest Land Base** — Under this objective, the Board of Forestry promotes preserving and expanding the forest land base in Oregon.
- **Objective 4: Timber Growth and Harvest** — Under this objective, the Board of Forestry directs that the management of state forest land will be done in an efficient and cost-effective manner, which supports the reasoning for most land exchanges.

The purpose of acquiring and exchanging land is to increase the amount of state forest land and/or to block up state forest ownership (consolidate state forest lands in contiguous blocks, instead of in scattered parcels). The consolidation of state forest lands will increase management efficiencies and long-term economic values, and enhance stewardship practices and other forest resource values. The Department of Forestry has worked to block up state forest lands for many years. The land exchange and acquisition program operates from statutory authority and requirements (ORS 530.010 - ORS 530.040) and Board of Forestry policies described above. Each district has its own land exchange plan, with parcels identified for acquisition and divestment.

Access

The following laws and policies provide direction for access to and roads on state forest lands.

Forest Practices Administrative Rules, Chapter 629, Division 24 — State forest land is subject to all the Oregon Forest Practices administrative rules. Rules 629-24-520 through 629-24-524 specifically address road location, road design, road construction, and road maintenance. These rules recognize the necessity of roads for forest management and protection, and set minimum construction and maintenance standards intended to protect water quality, forest productivity, and fish and wildlife habitat.

Motorized Recreation Administrative Rules, Chapter 629, Division 26, 629-26-005 through 629-26-025 — These rules govern the use of recreational ORVs (off-road vehicles) on state forest land and give the State Forester authority to designate off-road riding areas, to close riding areas, and to permit organized recreation events. As of summer 1995, these rules are in the process of being repealed, amended, and incorporated into a new set of comprehensive rules, Chapter 629, Division 25, Recreational Use of State Forest Land.

Oregon Vehicle Code, Off-Road Vehicles, ORS 821.010 through 821.320 — These statutes govern the use of recreational ORVs on all lands in Oregon, including state forest lands. They set standards for registration, equipment, and operation, and also set penalties for violations, including penalties for ORV-caused damage to trees, vegetation, or soil.

Forestry Program For Oregon, Objective 5: Stewardship Through Regulation of Forest Practices — Through the FPFO, the Board of Forestry directs the Department of Forestry to promote the management of forest roads to minimize the number and width of roads, and the disturbance of soil.

Department of Forestry, Forest Road Manual for State Forests, Forest Roads Policy — The Forest Road Policy states that roads will be developed and maintained to provide access for the sale of timber and other forest products, for timber management activities, for protection from fire, and for public access. It further states that forest roads will be designed, constructed, and maintained to meet or exceed rules of the Forest Practices Act. The road manual sets road standards, gives design guidelines, sets an excavation and appraisal policy, and provides a wide variety of specifications and costs. (Oregon Department of Forestry 2000b)

Plants

Federal Endangered Species Act

The federal Endangered Species Act (ESA) was enacted to preserve plant and animal species that are at risk of becoming extinct. The federal ESA is administered for plants by the U.S. Fish and Wildlife Service (USFWS). For endangered plants, the federal 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, according to the federal ESA, 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.”

State Endangered Species Act

The Oregon laws covering threatened and endangered species 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.

The state Endangered Species Act was first passed in 1987. 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). Protection and conservation programs are established through administrative rules. State agencies such as the Department of Forestry are directed to cooperate in furthering conservation programs for T&E species.

If the Department of Forestry determines that a conflict exists, then the conservation requirements of OAR 603-73-090 (5)(b) through (5)(h) apply. ODF’s procedures further outline the steps for compliance with these rules.

Recreation

Public use rules for state lands (Recreational Use of State Forest Land, Chapter 629, Division 25) establish standards for recreational use. The rules regulate off-road vehicle use, camping, firearm use, disposal of garbage and human waste, and other activities associated with recreational activity.

Tillamook State Forest — In 1991, the Oregon Legislature passed House Bill 2501, which called on the Oregon Department of Parks and Recreation and the Oregon Department of Forestry to prepare a comprehensive recreation plan for the Tillamook State Forest, to interpret the forest's history, and to provide for diverse outdoor recreation on the forest. The bill required that the plan be consistent with the primary purpose of timber production and of state forests as described in ORS 530.050. The *Tillamook State Forest Comprehensive Recreation Management Plan* was published in January 1993, and provides direction for recreation management on the Tillamook State Forest (Oregon Department of Forestry and Oregon Department of Parks and Recreation, 1993). This plan is currently being updated.

Scenic Resources

Generally, most state forest land adjacent to visually sensitive highway corridors is considered to be of high scenic quality. Along major highways, the immediate visual foreground is protected either by Department of Transportation-owned scenic buffers or by scenic statutes and Oregon Forest Practices Act rules. For areas farther back from highways but still visible from the road, which are considered mid-ground and background scenic areas, many acres are designated as scenic, allowing management activities for these areas to be adjusted for visual considerations.

The following highways in northwest Oregon are designated as scenic for the purpose of visual corridor management, and are adjacent to state forest lands in the districts indicated. The visually sensitive corridor is defined as the area within 150 feet of the outermost right-of-way boundary along both sides of the highway. Special rules apply to timber harvest in this corridor.

Highway 6	—	Forest Grove and Tillamook Districts
Highway 20	—	West Oregon District
Highway 22	—	Clackamas-Marion District
Highway 26	—	Forest Grove and Astoria Districts
Highway 30	—	Astoria District
Highway 34	—	West Oregon District
Highway 36	—	Western Lane District
Highway 101	—	Tillamook District
Highway 126	—	Western Lane District

State Scenic Waterways Program

The state scenic waterways program applies only to the Nestucca River Scenic Waterway in Forest Grove and Tillamook districts. The program is designed to protect and enhance the special attributes and natural values of designated scenic waterways. These values include recreation, fish, wildlife, water quality, geology, historical and botanical resources, aesthetics, and the freeflowing character of the rivers. Dams, reservoirs, impoundments, and placer mining are prohibited. The Oregon Department of Parks and Recreation has general administrative rules for scenic waterways, and has developed specific administrative rules for some individual scenic waterways. Administrative rules for the Nestucca Scenic Waterway were published in July 1994 (OAR 736-40).

There is a review and approval process for land uses that may noticeably alter or modify property within the scenic waterway corridor. Land uses that require review and approval include timber harvest and road construction, among others. The Department of Parks and Recreation must be notified one year in advance of activities requiring review and approval. Approval is based on criteria established in the administrative rules.

Soils

The Department of Forestry manages state forest lands in accordance with the Oregon Forest Practices Act rules (Division 24) for soil protection. These rules define Best Management Practices for protecting soil and forest productivity when conducting timber harvest, prescribed burning, or road construction activities. The department uses the professional expertise of foresters, geotechnical specialists, soil scientists, and forest engineers to evaluate proposed activities.

Water Resources

In 1909, the Oregon Legislature declared that all water in the state belongs to the public. In the years since then, many state agencies have been given the job of helping manage the public's water.

The Water Resources Commission (WRC) is responsible for the development of an integrated, coordinated state program for managing Oregon's water (ORS 536.300). Other state agencies and public corporations are directed to conform to statements of water resources policy (ORS 536.360). Oregon Revised Statutes Chapters 536 through 543 guide the WRC on water management policies.

Oregon Administrative Rules (OAR), Chapter 690, contain rules developed by the WRC that address water management. In addition, the Water Resources Department is in the process of proposing new rules for the protection of instream flows for certain fish species. These rules could limit the issuance of new water permits in some areas.

Oregon Revised Statutes Chapter 527, known as the Forest Practices Act, regulates forest operations. For protecting water resources, the primary focus of the regulations is on controlling activities around all types of water bodies and stream channels.

Water Resources Department Programs

Basin management programs — Basin programs establish water management policies and objectives that govern the appropriation and use of surface and ground water within each drainage basin. These programs are in Chapter 690, Division 500, of the Oregon Administrative Rules, and are found in the publication, Oregon Water Management Programs (Oregon Water Resources Department, date unknown). OAR, Division 410, establishes state-wide policies and principles pertaining to a wide range of existing water rights for instream use. The Water Resources Commission has recently adopted amendments to OAR, Division 77, that set up a process for leasing existing water rights for instream use.

The North Coast Basin Program, Mid Coast Basin Program, and Draft Willamette Basin Plan cover the three basins in the planning area. These programs specify the allowable uses of the waters within the basins. Applications for new water rights will only be approved for the uses specified under the conditions of adequate water supply.

Water Quality

Water quality protection is mandated by both federal and state laws.

The most important federal law for water resources is the Clean Water Act (CWA), first passed in 1972 and amended several times since then. The Clean Water Act's goal is to restore and maintain the chemical, physical, and biological integrity of the nation's waters to protect beneficial uses such as public water supply, recreation in and on water, and propagation of fish and wildlife. The states are responsible for implementing the law and meeting its water quality standards.

Oregon forest practices rules are approved as sufficient to implement water quality standards under the Clean Water Act. Section 303(d) of the Clean Water Act requires states to identify and list threatened and impaired waterbodies. Rules describing beneficial uses, policies, standards and treatment criteria (OAR Chapter 340, Division 4) are enforced by the Oregon Department of Environmental Quality. ORS 468B contains the state laws pertaining to water pollution control. OAR Chapters 40-55 contain water quality regulations.

The state's water quality is under the authority of the Environmental Quality Commission, and is regulated by the Department of Environmental Quality (DEQ). ORS 468B contains the state laws pertaining to water pollution control. DEQ's water quality program for forest lands is administered by the Board of Forestry through the Forest Practices Act's administrative rules. These rules specify Best Management Practices (BMPs) for forest operations, which ensure that water quality will meet DEQ standards. Any forest operation that complies with the rules is deemed to comply with the state's water quality standards. ORS 527.710, 527.765, and 527.770 contain the Forest Practices Act rules to achieve these water quality standards.

The Oregon Water Resources Commission (WRC) is responsible for the development of an

integrated, coordinated state program for managing Oregon's water. Other state agencies and public corporations are directed to conform to statements of water resources policy. Oregon Revised Statutes Chapters 536 through 543 guide the WRC on water management policies. Oregon Administrative Rules (OAR), Chapter 690, contain rules developed by the WRC that address water management. The state's laws and administrative rules are designed to achieve the goals of the federal Clean Water Act, as well as to achieve state goals for water resources.

The Oregon Plan for Salmon and Healthy Watersheds (OPSHW) (Governor's Natural Resources Office 1998) is a comprehensive plan for the recovery of salmon and steelhead stocks in much of Oregon, and also a plan for improving and preserving water quality in hundreds of "water quality-limited streams" through the Healthy Streams Partnership. Many state agencies, including the Department of Forestry, are involved in carrying out the plan, which was developed by a special task force working for the governor. OPSHW's mission is "to restore our native fish populations — and the aquatic systems that support them — to productive and sustainable levels that will provide substantial environmental, cultural, and economic benefits."

Wetlands

Federal laws and policies — At the federal level, the U.S. Army Corps of Engineers regulates the discharge of materials into waters of the United States, which includes wetlands. This authority is derived from Section 404 of the Clean Water Act. Key exemptions exist under federal law for obtaining individual dredge and fill permits for: 1) normal farming, ranching, and forestry activities, such as plowing, minor draining, and harvesting; 2) constructing or maintaining stock ponds or irrigation ditches; and 3) constructing or maintaining farm, forest, or mining roads. Essentially, all normal silvicultural activities are exempt as long as they do not convert a wetland to an upland.

State laws and policies — The Division of State Lands administers several aspects of regulation and management of wetlands, that are relevant to state forest lands. These statutes include the state's Removal-Fill Law, Senate Bill 3, and the Mitigation Bank Act.

- The Removal-Fill Law (ORS 196.800-196.990) requires permits from the Division of State Lands for removal, fill, or alteration involving 50 cubic yards or more of material in any water of the state, including wetlands.
- Senate Bill 3, passed in 1989, is primarily intended to promote protection and conservation of wetlands and is in many ways an adjunct to the Removal-Fill Law.
- The Mitigation Bank Act of 1987 is a state statute that provides for the acquisition and protection of wetlands, and for the establishment of wetlands mitigation banks by the Division of State Lands.

The Oregon Department of Forestry's Forest Practices Act identifies three major types of wetlands: significant wetlands, stream-associated wetlands, and other wetlands. The Forest Practices Act also regulates activities that affect these areas. The Water Protection Rules (ORS 629-645 and 629-655) in the Forest Protection Rules identify the protection measures required for riparian areas and wetlands.

