

## ODF Enforceable Policy Summary as of October, 2021

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**527.620 Definitions for ORS 527.610 to 527.770.** As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(1) " Board" means the State Board of Forestry.

(2) " Clear -cut" means any harvest unit in western Oregon 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. " Clear -cut" means any harvest unit in eastern Oregon that leaves fewer than 15 trees per acre that are well - distributed over the unit and that measure at least 10 inches at DBH. For purposes of this subsection, no tree shall be counted unless the top one -third of the bole of the tree supports a green, live crown. For purposes of computing basal area, trees larger than 20 inches shall be considered 20 -inch trees.

(3) " Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

(4) " DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one -half feet above the ground, on the uphill side.

(5) " Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(6) " Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

- (a) Reforestation of forestland;
- (b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; and

(e) Disposal of slash.

(7) " Forest tree species" does not include:

(a) Christmas trees on land used solely for the production of cultured Christmas trees as defined in ORS 215.203 (3).

(b) Hardwood timber, including but not limited to hybrid cottonwood, which is:

(A) Grown or growing on land which has been prepared by intensive cultivation methods and which is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the " furnish" for manufacturing paper products;

(C) Harvested on a rotation cycle within 10 years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

(8) " Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(9) " Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(10) " Operator" means any person, including a landowner or timber owner, who conducts an operation.

(11) " State Forester" means the State Forester or the duly authorized representative of the State Forester.

(12) " Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

(13) " Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

(14) " Visually sensitive corridor" means forestland located within the area extending 150 feet measured on the slope from the outermost right of way boundary of a scenic highway referred to in ORS 527.755.

(15) " Written plan" means a plan submitted by an operator, for written approval by the State Forester, which describes how the operation will be conducted, including the means to protect resource sites described in ORS 527.710 (3)(a) and information required by ORS 527.745 and 527.750, if applicable.

### **527.630 Policy.**

(1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 that assures the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990 and 527.992, it is declared to be in the public interest to vest in the board exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

**527.660 Committees to review rules.** Each forest practice committee shall review proposed forest practice rules in order to assist the board in developing rules appropriate to the forest conditions within its region. Committee recommendations are advisory only and the committees need not be consulted prior to the adoption of any forest practice rule.

**527.670 Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan.** (1) The board shall designate the types of operations for which notice shall be required under this section.

(2) The board shall determine by rule what types of operations require a written plan to be approved by the State Forester.

(3)(a) The board's determination under subsection (2) of this section shall require a written plan for operations:

(A) Within one hundred feet of a Class 1 stream, unless the board, by rule, provides that a written plan is not required because there is no reasonable likelihood that such operations would damage a resource described in ORS 527.710 (2), within the riparian management area;

(B) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a);

(C) On lands determined by the State Forester to be within high risk sites, unless the board, by rule, provides that a written plan is not required because there is no reasonable likelihood that such operations would damage a resource described in ORS 527.710 (2); or

(D) On lands to be clear -cut in excess of 120 acres pursuant to ORS 527.750.

(b) Plans submitted under subparagraphs (C) and (D) of paragraph (a) of this subsection are not subject to appeal under ORS 527.700 (3).

(c) The board shall adopt rules and standards for which a written plan may be required for final clear -cut harvest operations of any stand of an average age less than 40 years. The written plan for such an operation must address the environmental consequences of the harvest and the economic costs and benefits.

(4) The distances set forth in subparagraphs (A) and ( B) of paragraph (a) of subsection (3) of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be protected by the board' s rules adopted pursuant to ORS 527.710 (3)( c).

(5) For the purpose of determining the distances set forth in subparagraphs (A) and (B) of paragraph (a) of subsection (b3) of this section site means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall send a copy of notices involving chemical applications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The board shall adopt rules specifying the information to be contained in the notice. All information filed with the State Forester pertaining to chemical applications shall be public record. The State Forester shall also send to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

(7) An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within three working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person who requested of the State Forester in writing that the person be sent copies of notice and written plan and who has paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for sending copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall send a copy of the notification to the Department of Revenue and the county assessor for the county in which the operation is located, at times and in a manner determined through written cooperative agreement by the parties involved.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State

Forester may waive any waiting period for operations not requiring a written plan under subsection (3) of this section, except those operations involving aerial application of chemicals.

(10) Whenever an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subparagraph (A) or (B) of paragraph (a) of subsection (3) of this section, the State Forester shall not approve any such written plan until 14 calendar days following the date the written plan was filed with the State Forester. An operation may commence upon approval of the written plan.

(11)(a) The State Forester shall issue a decision on a written plan within five working days after the end of the 14 -day period described in subsection (10) of this section.

(b) If the State Forester fails to issue a decision within five working days after the end of the 14 -day period described in subsection (10) of this section, the written plan shall be deemed approved and the operation may be commenced.

(12) When the operation is required to have a written plan under subparagraph (A) or (B) of paragraph (a) of subsection (3) of this section and comments have been timely filed under subsection (9) of this section pertaining to the operation requiring a written plan, the State Forester shall:

(a) Send a copy of the approved written plan to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) Send to the operator, timber owner and landowner a copy of the approved written plan and copies of all timely comments submitted under subsection (9) of this section.

**527.700 Appeals from orders of State Forester; hearings procedure; stay of operation.** (1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The board may delegate to a hearings officer the authority to hear and issue proposed or final orders on matters under this section. Hearings provided under this section shall be conducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required pursuant to ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the written plan was approved. Copies of the complete request shall be served, within the 14 -day period, on the operator, timber owner and landowner. The request shall include:

(a) A copy of the written plan on which the person is requesting a hearing;

(b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;

(c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder; and

(d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of paragraph (c) of subsection (5) of this section, the board shall set the matter for hearing within 14 calendar days after receipt of the request for hearing. The operator timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. A final order shall be issued rescinding, affirming or modifying the written plan within 28 days after the request for hearing was filed, unless all parties agree to an extension of the time limit.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well- founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and ( 5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$ 15, 000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board affirms the written plan pertaining to the operation for which the stay was granted, the board shall award reasonable attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board disapproves or changes the written plan as submitted and approved by the State Forester pertaining to any operation, the board shall award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

**527.710 Duties and powers of board; rules to protect resources; inventory for resource protection; consultation with other agencies required.** (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the board shall adopt, in accordance with applicable provisions of ORS 183.310 to 183.550, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall assure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

- (a) Air quality;
- (b) Water resources, including but not limited to sources of domestic drinking water;
- (c) Soil productivity; and d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS 468B.005 to 468B.110, 468B.300, 468B.335 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 316.084, 501.005 to 501.540 and ORS chapters 496, 498, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.475 to 358.565, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99 -663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Division of State Lands under ORS 196.800 to 196.900, 273.553 to 273.591, 307.550, 307.560 and 541.700 to 541.990;

(g) Federal Safe Drinking Water Act programs administered by the Health Division under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591, 307.550 and 307.560;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308.740 to 308.790;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630. The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If based upon the analysis required in section 15 (2)( f), chapter 919, Oregon Laws 1991, and as the results become available, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for



determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) The board shall adopt rules that provide the State Forester with authority to condition the approval of plans required under ORS 527.670 (2) and (3) when the State Forester makes a determination that there is evidence of a potential threat to resources protected under this section by controlling method, timing and extent of harvest when the forester determines such limitations are necessary to achieve the objectives of ORS 527.630.

**527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions.**

(1) Notwithstanding any provisions of ORS chapters 196, 197, 215 and 227, and except as provided in subsections (2), (3) and (4) of this section, no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary.

(2) Nothing in subsection (1) of this section prohibits local governments from adopting and applying a comprehensive plan or land use regulation to forestland to allow, prohibit or regulate:

(a) Forest practices on lands located within an acknowledged urban growth boundary;

(b) Forest practices on lands located outside of an acknowledged urban growth boundary, and within the city limits as they exist on July 1, 1991, of a city with a population of 100,000 or more, for which an acknowledged exception to an agriculture or forestland goal has been taken;

(c) The establishment or alteration of structures other than temporary onsite structures which are auxiliary to and used during the term of a particular forest operation;

(d) The siting or alteration of dwellings;

(e) Physical alterations of the land, including but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, duns, reservoirs, road construction or recreational facilities, when such uses are not auxiliary to forest practices; or

(f) Partitions and subdivisions of the land.

(3) Nothing in subsection (2) of this section shall prohibit a local government from enforcing the provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

(4) Counties can prohibit forest practices on land for which an acknowledged exception to an agricultural or forest land goal has been taken.

(5) To insure that all forest operations in this state are regulated to achieve protection of soil, air, water, fish and wildlife resources, in addition to all other forestlands, the Oregon Forest Practices Act applies to forestlands inside any urban growth boundary unless a local government has adopted regulations for forest practices. Such local regulations shall:

(a) Protect soil, air, water, fish and wildlife resources; and

(b) Be acknowledged as being in compliance with land use planning goals.

(6) Local governments which have, before September 29, 1991, adopted a comprehensive plan policy or land use regulation allowing, prohibiting or regulating forest practices consistent with subsections (1) to (5) of this section shall inform the State Forester of such policies and regulations within 60 days of September 29, 1991. Existence or adoption' of such policies or regulations relieves the State Forester of responsibility to administer the Oregon Forest Practices -Act within the affected area.

(7) The Director of the Department of Land Conservation and Development shall provide the State Forester copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the adoption, amendment or repeal of a comprehensive land use regulation allowing, prohibiting or regulating forest practices.

**527.990 Criminal penalties.** (1) Violation of ORS 527.670 or any rule promulgated under ORS 527.710 is punishable, upon conviction, as a misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a misdemeanor. Violation of ORS 527.260 is punishable, upon conviction, by a fine of not more than \$ 250 or by imprisonment in the county jail for not more than 60 days, or both.