

Work Plan: **Private Forests**

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## **BACKGROUND**

The Oregon Department of Forestry provides resource protection and landowner assistance on Oregon’s 10.7 million acres (35 percent of Oregon’s forestland) under private forest ownership. Oregon’s privately owned forests are diverse in size and character, including large industrial ownerships, family woodlands of many sizes, and treescapes in cities, suburbs and rural residential areas. To support such diverse ownerships, the Private Forests program provides landowner assistance in the areas of forest and stream health protection and enhancement, urban and community forestry, enforcement of forest management laws, research and monitoring, and incentive programs. These forests provide values for all Oregonians, including watershed protection, ecosystem services, economic activity, fish and wildlife habitat, and recreation.

### *Current Challenges to Keeping Forestlands in Forestland*

Since the founding of the Department of Forestry in 1911, Oregon has seen a continuous evolution of the primary challenges to maintaining healthy, working forests on both private and

public forestland. At the turn of the last century, wildfire was the greatest threat to forest sustainability, and the Department's primary mission was—and is today—to provide fire protection against this threat. Soon thereafter, deforestation became the next challenge to forest sustainability and the Department responded with robust reforestation laws and practices. Later in the 20<sup>th</sup> century, and precipitating the passage of Oregon's Forest Practices Act (FPA), was an increase in the public's environmental awareness and concern regarding natural resource protection. The FPA and associated best management practices was the response, with an emphasis on a strong regulatory approach to ensuring desired public benefits from private forestlands. Today we are facing the next evolution of challenges to healthy, working forests and forest sustainability in Oregon—the increasing trend in the conversion and fragmentation of forestlands. This Board work plan, and the Board products that result, will guide the Department's vision and direction in choosing the most effective response to address this new, primary challenge to maintaining healthy, working forests on private lands.

As Oregon grows and faces greater development pressures, increasing numbers of forest tracts face a heightened risk of such conversion. Nationally, the U.S. Forest Service and the National Association of State Foresters identified development and fragmentation as critical issues facing our forests today. Development and economic pressures on private lands are driving parcellation and/or conversion of forestland to other uses, with industrial lands close to expanding population centers and working family forests particularly susceptible.

Oregon is following a national trend away from industrial forest ownerships that manage their land to provide a continuous flow of wood to their own mills, towards ownerships that manage timberlands as a separate profit center, e.g., Real Estate Investment Trusts (REITs) or investment purposes, e.g., Timber Investment Management Organizations (TIMOs). These organizational structures may be more responsive to market demand for land for development or other purposes. This trend may increase parcellation, shifting land from industrial to non-industrial owners. While many of the new non-industrial owners may have a broad array of values and objectives for ownership, they often lack the knowledge to implement their objectives and are generally less able to make long-term investments in wood production. Furthermore, many family forestlands are now going through a shift of ownership to the next generation of family members, who may be more likely to sell rather than manage the land for income.

Oregon's private forests at risk of parcellation and/or conversion has expanded in recent years. As development pressures, population growth, and real estate values increase, more forestland will be at-risk of conversion. We estimate that over 300,000 acres of Oregon forest—about 5 percent of the state's private forestland—exist inside urban growth boundaries or other development zones. Another 1.8 million acres of private forest exist within one mile of developable areas.

Forest fragmentation provides a new set of challenges, which include:

- Fragmentation and parcellation of forests, combined with the development of roads and residences, can degrade the “green infrastructure” of a forested watershed, including clean water, the diversity of fish and wildlife species, and their habitat. Risks of forest fragmentation in Oregon are principally related to the growth in the number of rural

residential structures on private forestlands and increasing building densities on those lands. From 1974-2009, the largest single gain in the area of a specific land use was a 434,000-acre increase in land in low-density residential use. During this time, Oregon has seen a 239% increase in the number of structures on forestland. This type of forest fragmentation can lead to the loss of working forests as well as increases in fire suppression costs.

- Conversion from forest to development dramatically changes the management of the surrounding landscape, limiting the range of traditional forestry practices. In many areas, the notion of wood production forestlands—even in the context of sustainable forestry practices—is no longer acceptable to residents.
- When formerly productive timberlands are converted to development, surrounding economies and supporting industries are affected, as forest-related jobs and infrastructure are no longer viable. Forest-related taxes are no longer available to support government services and education. With little or no return for their investment in forest management, some landowners sell the land for development or other non-forest land use, perpetuating the problem.
- The presence of development in forested areas changes everything about wildfire—creating a higher number of human-caused fires, placing homes at risk, making firefighting more complicated, and increasing firefighting costs.

These changes affect the ability of the Department to deliver efficient and effective services to private forest landowners. ODF faces a significant task in administering the FPA statutes and rules and provide wildland, urban, and community forest education and assistance. ODF field staff spends an increasingly disproportionate amount of time dealing with natural resource situations and conflicts in forests at risk of conversion and fragmentation. The Department must ensure it continues to deliver a mix of services that meets the diverse needs of landowners, communities, developers, regulators and stakeholders across a broad diversity of forests while promoting and conserving forestland and forest values.

These forestland ownership changes in Oregon are likely to continue to affect the capacity of the Department to provide services, and highlight the need to develop new and innovative landowner and institutional strategies to address these challenges. In order to achieve the Forestry Program for Oregon vision of achieving sustainable forest management across all Oregon's forestlands, the Private Forests Division needs to address these challenges.

Considering a four-part framework of general strategies to meet expectations of public benefits from private lands (Table 1), the Department has historically utilized strategy four—regulating/restricting landowners—to achieve such public benefits. In an environment where private forestlands are at greater risk of development and fragmentation due to increasing non-timber values, continuing to rely on regulations as the primary tool will be less effective in the future, if the result is reduced timberland return on investment.

Table 1: Four-part framework of general strategies to meet expectations of public benefits from private lands (adapted from OFRI 2008<sup>1</sup>)

1. Improve Timber Resource Economics	2. Improve Non-Timber Resource Economics
3. Compensate/Incentivize Landowners	4. Regulate/Restrict Landowners

Given these challenges, administering current statutory and rule mandates and providing forest landowner services is increasingly difficult given current program resources. The diversification of tools, and increasing the use of strategies one, two, and three (Table 1), could become more important in the future if Oregon is to continue to derive expected public benefits from private forestlands.

*Current Private Forests Program Governing Policies*

At the broadest level, the following Oregon Revised Statutes define the current policies governing landowner services provided by the Private Forests division:

- 527.630 Policy; rules.** (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 ensure 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 and to ensure 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 State Board of Forestry 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.

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<sup>1</sup>Oregon Forest Resources Institute. 2008. "The Future of Oregon's Working Forests". Oregon Forest Resources Institute. Portland, OR. 13 pp.

(5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, “rapidly moving landslide” has the meaning given in ORS 195.250.

(6) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands.

**ORS 526.425 Management assistance to nonindustrial private forest landowners; rules.**

Recognizing that nonindustrial private forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, it is hereby declared to be the public policy of the State of Oregon to encourage management of nonindustrial private forestlands for tree production. Therefore, under the direction of the State Board of Forestry and to the extent funds are available, the State Forester shall:

(1) Provide for coordinated technical and financial assistance to the nonindustrial private forest landowner;

(2) Provide management planning for nonindustrial private forestlands;

(3) Advise and encourage nonindustrial private forest landowners to carry out young growth management activities, such as converting underproductive forestlands, reforestation, release, precommercial thinning and salvaging insect or disease damaged trees;

(4) Administer federal programs, such as the Agricultural Conservation Program or Forestry Incentives Program, that are designed to help encourage management of nonindustrial private forestlands;

(5) Advise and encourage nonindustrial private forest landowners to form cooperatives or aggregates for the purpose of more efficiently carrying out their young growth management activities;

(6) Periodically advise and recommend changes to the Legislative Assembly on laws conflicting with the intent of this statute; and

(7) In compliance with ORS chapter 183, promulgate rules consistent with law for providing management planning for nonindustrial private forestlands.

**526.505 Policy.** Trees not only are important to the economic and environmental well-being of Oregon, but also represent a significant component of the quality of life for urban residents. As a matter of policy, it is important to promote and protect the human habitat values that accrue from a healthy urban forest. Therefore, it is declared to be the public policy of the State of Oregon to encourage cities to plant and properly care for trees within the cities’ urban growth boundaries and develop management plans to protect and promote urban forests.

The *2011 Forestry Program for Oregon*, the Board of Forestry’s framework for strategic planning, sets the Board policy and direction for the Department. The Board’s mission, vision, and values describe the future the Board is striving to achieve. The Board of Forestry has established seven Oregon goals for achieving the sustainable management of Oregon’s public and private forests. The Board believes all the issues, challenges, and opportunities surrounding Oregon’s forest resources can be organized and discussed within these seven goals. Under each goal, the Board has developed a list of objectives; short-term actions upon which it intends to

focus its efforts. The Board's seven broad strategies (goals) and objectives provide a framework for establishing actions and for designing and implementing agency programs.

At their March 2011 meeting, the Board identified current and future risks of forest fragmentation (i.e., increasing density of structures and parcellation) and the conversion of forests to non-forest use as the primary, overarching challenge to sustainable forestry and keeping working forests working. The *2011 Forestry Program for Oregon* set the policy direction for addressing this challenge through a three-tiered approach known as the Oregon Way<sup>2</sup>. Oregon's policy and regulatory framework for protecting water quality on nonfederal forestland relies on two main regulatory approaches augmented by voluntary measures and incentives. Oregon's strong land use laws help maintain forestland in forest use. The Forest Practices Act works in concert with land use laws to ensure economically efficient forest practices. The Oregon Plan for Salmon and Watersheds provides additional voluntary approaches to improve water quality outcomes on forestland. This three-tiered approach has been effective in maintaining working forests and results in forestland having the highest water quality in Oregon. As stated in objective A.2, the Board:

Supports an effective, science-based, and adaptive Oregon Forest Practices Act and a strong, but flexible, Land Use Planning Program as the cornerstones of forest resource protection on private lands in Oregon. The Board will use non-regulatory methods as much as feasible to achieve public-policy goals on private forestlands, and consider the use of additional regulatory methods only when non-regulatory methods are either not feasible or are not likely to achieve the desired outcome.

The other *2011 Forestry Program for Oregon* objectives that inform the Private Forests Divisions work include:

- Adaptive forest management, monitoring, assessments, systematic evidence reviews, and research -- particularly research regarding the scientific principles of ecosystem dynamics -- into learning, planning and decision-making processes (Objective A.3).
- Promote fulfillment of the shared responsibilities of homeowners, road users, forestland owners, forest operators, and state and local governments for any additional actions to reduce public safety risks with respect to landslides (Objective A.8).
- Promote the development of new forest resource markets, such as forest biomass, carbon sequestration, and other ecosystem services that reward landowners for maintaining their lands as forests (Objective B.2).
- Support programs that enhance urban and community forest values and that increase Oregonians' understanding of the important role urban and community forests play in providing environmental, economic, and social benefits. The Board will also promote

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<sup>2</sup> Oregon Forest Resources Institute. 2014. "The Oregon Way: Forests and Fish; Protecting aquatic habitat in Oregon's forests." Oregon Forest Resources Institute. Portland, OR. 15 pp.

greater understanding of the dynamics of forest ecosystems and their interaction with urban areas (Objective B.6).

- Support land use planning and policies that promote a stable forestland base, encourage long-term investments in forestland, and keep working forests working (Objective C.1).
- Develop policies that better address forest operations within urban and other residential emphasis forests (Objective C.3).
- Promote policy frameworks and land management assistance programs that recognize and encourage the diverse management objectives of Oregon's public and private forest land owners. Diverse forest management objectives provide a suite of benefits which collectively, in appropriate proportions and locations, will meet Oregon's environmental, economic, and social needs (Objective C.5).
- Use education, engineering, incentives, and enforcement of the Forest Practices Act to protect soil productivity and water quality on non-federal forestlands (Objective D.1).
- Promote the maintenance of forestland in forest uses and promote the establishment of new forests as key elements in promoting high quality water and protection of soil productivity (Objective D.4).
- Support and contribute to continuing statewide efforts under the Oregon Plan for Salmon and Watersheds to enhance, restore and protect Oregon's native salmonid populations, watersheds, water quality, and fish and wildlife habitat, while sustaining a healthy economy (Objective D.6).
- Recognize that private forest landowners' contribution to providing Oregonians with high quality drinking water is achieved through compliance with state water quality standards (Objective D.7).
- Clarify Board authorities and responsibilities with respect to forest biological diversity and promote policies that will lead to a reduction in the number of at-risk Oregon native forest plant and animal species (Objective E.2).
- Promote coordinated state government policies to prevent and control introductions of damaging, invasive, nonnative species and pathogens on forestlands that threaten the conservation of native plant and animal populations and their habitats (Objective E.3).
- Promote the development of specific, measurable habitat conservation expectations for all land uses through the Oregon Conservation Strategy. The Conservation Strategy should clearly state public expectations for base-line resources site protection, as well as broader contributions of private land owners to achieve state conservation goals. The Strategy should also clarify that private forestlands will be held to the same standards for native species and habitat conservation as other private land uses (Objective E.4).

- Promote a variety of non-regulatory tools, such as landowner recognition, incentives, easements, exchanges, and technical assistance, to help implement the forest-related elements of the Oregon Conservation Strategy (Objective E.2).

## **BOARD'S PRIORITY SET OF ISSUES FOR 2016-2017**

Based on major issues from the 2014 Private Forests work plan, the 2015 Board retreat, and from 2015 legislative direction, the Board has indicated three main issues to focus on in 2016-17, with specific topics under each issue:

- Water Quality Topics
  - Riparian Rule Analysis on Small and Medium Fish Streams (in progress).
  - RipStream Analysis and Results (Downstream, Large wood, Riparian condition).
  - Relationship between BOF and EQC – potential joint BOF-EQC meeting on Pesticide Stewardship Partnership (PSP).
  - *TMDL Process Review, Update of DEQ-ODF MOU (on Hold).*
  - *Eastern Oregon Riparian Policy / Non-fish Stream Riparian Policy (on Hold).*
- Forest Practices Act (FPA) Rule Policy Review
  - Specified Resource Sites Rule Making for Bald Eagles – In progress 2015-16.
  - Approach for Strategic Monitoring Update – on track for 2016.
  - *Landslides and Public Safety Rule Making Process (on Hold).*
  - *Specified Resource Sites Policy Review (on Hold).*
- Implement Legislative Direction
  - HB 3013 – Wildlife Food Plots.
  - HB 3549 – Pesticides by Aircraft Requirements.
  - HB 2984 – Urban Lumber.

The Private Forests work plan also contains annual topics:

- Annual Topics
  - Operator of the Year Award.
  - Committee for Family Forestlands Report.
  - Annual Forest Practices Agency Meeting Report.
  - Forest Health Report.
  - Annual Monitoring Report.
  - Urban and Community Forestry Program.

## **ISSUE/TOPIC: WATER QUALITY TOPICS**

The Board is charged with the responsibility to “supervise all matters of forest policy and management under the jurisdiction of the state ...” (ORS 526.016). The Forest Practices Act (FPA) gives the Board exclusive authority to adopt and enforce rules governing forest practices. Oregon statutes create a unique cooperative relationship between the Board and the Environmental Quality Commission (EQC) that ensures water quality protection on forestland. The EQC sets water quality standards and the Board ensures forest practices meet these standards on state and private forestlands. The FPA requires the Board to regulate nonpoint source discharges from forest operations on forestlands (ORS 527.765).

Over the past 13 years, ODF, DEQ, the Board, and EQC have been cooperating on a process of reviewing Oregon’s forest practices rules and BMPs to ensure an adequate level of protection for water quality and aquatic and riparian habitats. This review initially focused on 18 water protection rule concepts, which incorporated recommendations from a number of scientific reviews. As of April 2009, the Board completed its review process for these rule concepts, developing a number of new and revised forest practices rules, as well as new and revised voluntary measures under the Oregon Plan for Salmon and Watersheds.

ODF, ODFW and DEQ continue to cooperate on policy, regulatory, research, and monitoring efforts to ensure continuous review and improvement of water quality protection. The FPA specifically identifies three priority rule divisions for monitoring: water protection, landslides and public safety, and chemicals. The Riparian Function and Stream Temperature monitoring project (RipStream) focuses on effectiveness of rules and BMPs in protecting stream temperature and promoting riparian structure that provides necessary functions for the protection of fish and wildlife habitat in small and medium fish-bearing streams. The complementary Watershed Research Cooperative paired watershed studies evaluate the environmental effects on water and fish of contemporary forest management practices now in use on younger intensively managed forests.

Concerns regarding water quality policy have increased due to a number of lawsuits and decisions, including the Coastal Zone Act Reauthorization Amendments (CZARA) lawsuit; the Northwest Environmental Defense Center (NEDC) v. Decker forest roads lawsuit; and the recent stream temperature standards and associated TMDL lawsuits. On January 30, 2015, the National Oceanic and Atmospheric Administration (NOAA) and the United States Environmental Protection Agency (EPA) issued a finding that the State of Oregon (State) has not submitted a fully approvable Coastal Nonpoint Pollution Control Program, under the CZARA program requirements. NOAA and EPA arrived at this decision because they found that the State has not adopted additional management measures applicable to forestry that are necessary to achieve and maintain applicable water quality standards and to protect designated uses. In addition, NOAA has identified loss of stream complexity, degraded water quality, and inadequate fish passage as primary threats, limiting factors, and concerns for Oregon coastal coho salmon.

At the January 2011 Board meeting, the Department, in conjunction with DEQ, presented a water quality issue summary paper that provided information on 1) the Board's responsibility, authority, and accountability regarding water quality, 2) the relationship between the Board and the EQC, 3) a summary of past Board work on water quality, and 4) emerging issues in water quality policy.

At their March 2013 meeting, the Board established a recognized EQC Liaison role on the Board, with an initial appointment to Board Member Gary Springer for a one-year trial period ending March 2014. At their March 2013 meeting, the Commission also approved the creation of a liaison position between the EQC and the Board and appointed Ed Armstrong to serve as that liaison from the EQC. In 2014, the Board continued the EQC liaison relationship, which has led to several joint-meetings and tours with the EQC on water quality topics.

At their January 2012 meeting, the Board initiated a rule analysis of riparian protection standards on small and medium fish streams in western Oregon. The monitoring results leading to this analysis only identified an issue with the Protecting Cold Water (PCW) criterion as based on sample sites in the Coast Range and Interior Geographic Regions of Oregon. At their April 2012 meeting, the Board adopted the following rule objective focused on this criterion (rather than on the complete set of goals for the water protection rules):

Establish riparian protection measures for small and medium fish-bearing streams that maintain and promote shade conditions that insure, to the maximum extent practicable, the achievement of the Protecting Cold Water criterion.

The Board also approved a plan for developing alternatives (April 2012), including non-regulatory approaches, for the rule analysis of riparian protection standards on small and medium fish streams. The plan included a decision timeline on findings (an "informal checklist") to be made at each step of the process to provide the Board clear information about the legal on-ramps, off-ramps and safety nets that define their decision space at each step.

At their November 2015 meeting, the Board decided on a riparian rule package to move into a formal rule making process. The Board directed the department to appoint a rule making advisory committee that includes stakeholders and agencies who have participated in the rule analysis process. The Board found that the adopted package insures, to the maximum extent practicable, that forest operations will meet the EQC's PCW criteria. The Board also reached the remaining findings identified in the April 2012 timeline.

During Board discussions of the riparian rule analysis, concerns were raised regarding the adequacy of riparian protection standards for eastern Oregon and non-fish bearing streams. The Department agreed to include the review of eastern Oregon riparian policy and non-fish stream riparian policy in the water topics to be addressed by the Board.

The rule analysis on small and medium fish streams, RipStream research, paired watershed studies, and road sediment topics form an integrated set of Board work, work products, and timelines that include concerns raised by the lawsuits and DEQ's rulemaking process and basin-specific TMDL process. These topics fit within the Board's *Forestry Program for Oregon*, stated

policy objectives for private forests, and the current statutory framework for regulating forest practices.

***Task and Deliverables***

The Board will provide oversight, input, and a decision on rule language to implement the riparian rule package adopted November 2015.

The board will continue to review research results from the RipStream project on adequacy of the FPA rules and BMPs in meeting desired riparian condition and related functions, e.g. large wood recruitment.

The Board and EQC liaisons will continue to ensure communication between the Board and EQC, and help plan a joint meeting on a current water quality project, the Pesticide Stewardship Partnership.

The Board will continue to review and discuss the outcomes from the water quality related lawsuits, decisions, and plans and provide direction as appropriate.

The revision of the DEQ-ODF MOU on water quality standards and protection is on hold due to work on higher priority topics. The work on a basin-specific TMDL process has not resulted in policy questions at this point in time.

***Timeframe with Milestones***

- |            |  |
|------------|--|
| Apr. 2016  | Board will review Riparian Rule Advisory Committee report and initial draft rule language.     |
| June 2016  | Board will review proposed riparian rule language and fiscal impact statement prior to filing. |
| Sept. 2016 | RipStream analysis and results (Riparian condition, Downstream, Large wood).                   |
| TBD 2016   | Potential joint BOF-EQC meeting on Pesticide Stewardship Partnership (PSP).                    |

## **ISSUE/TOPIC: FOREST PRACTICES ACT (FPA) RULE POLICY REVIEW**

The Board's 2011 *Forestry Program for Oregon* supports an effective, science-based, and adaptive Oregon Forest Practices Act (FPA) as a cornerstone of forest resource protection on private lands in Oregon (Objective A.2). The Board's guiding principles and philosophies includes a commitment to continuous learning, evaluating and appropriately adjusting forest management policies and programs based upon ongoing monitoring, assessment, and research (Value Statement 11).

In 2009, the Board began an overall Forest Practices Act (FPA) rule enforcement policy review, including a focus on landslides and public safety, forest pesticides, and special resource site authorities. The Board completed the review of forest pesticides in 2011. There are four topics currently identified for Board work under this review.

### *Specified Resource Sites Rule Making for Bald Eagles*

Bald eagle nest, roost, and perch sites currently receive protection under the Forest Practices Act (OAR 629-665-0220 through 665-0240). The bald eagle was removed from the federal Endangered Species Act in July, 2007. The Oregon Fish and Wildlife Commission's delisted the bald eagle from the State List of Threatened and Endangered Species (Oregon Administrative Rules (OAR) 635-100-0125) in 2012.

When a threatened or endangered species is delisted by the Oregon Fish and Wildlife Commission and/or the U.S. Fish and Wildlife Service, the Board must determine whether continued protection of resource sites is warranted. If the Board determines that continued protection rules are warranted, the rules shall be promulgated under the appropriate statutory authority. If the Board determines that continued protection rules are not warranted, existing rules must be repealed. Until such a Board decision is made, the current bald eagle protection measures outlined in OAR 629-665-0220 through OAR 629-665-0240 remain in effect.

At their July 2014 meeting, the Board directed the department to begin a rule review process, using three Regional Forest Practices Committees (RFPC) as advisory boards. Administrative rules (OAR Chapter 629 Division 680) direct the process for rule review of specified resources. The department initiated a four-phase process. Phase 1 consisted of initial outreach to field staff, RFPCs, agencies, Tribal governments, and stakeholders to describe the current state, define the scope and purpose of rulemaking, discuss general concept input and information gathering, and share the issue paper (completed). Phase 2 defines the future state, where we want to be, with a second set of meetings. The department completed a technical report review with experts, external contacts and field personnel, presented the technical report to the RFPCs and interested parties. Their input will be documented and incorporated, as appropriate, prior to Board review of the technical report. Phase 3 involves Board approval for rulemaking, including review of the technical report, draft rule package, and ensures alignment with board goals. Pending Board approval, the department will file Secretary of State (SOS) documents and make appropriate notifications. Phase 4 will initiate public hearings and the public comment period, including public input, preparation of hearing reports and request Board approval for the final rule

package. Pending Board approval, the department will file SOS paperwork and Legislative Counsel Notice and complete the final phase of outreach and field guidance.

#### *Approach for Strategic Monitoring Update*

The Forest Practices Monitoring Program Strategic Plan has guided the Division's monitoring priorities since it was developed in 2002. The plan established a prioritized list of monitoring questions categorized by general issues and monitoring type (effectiveness, trend, etc.). The questions were drawn from the previous monitoring strategy, Oregon Plan for Salmon and Watersheds Work Plan, the Forest Practices Advisory Committee final report, and citizen and stakeholder group input in 1994 and 2000. Monitoring projects to address top priority questions are either complete or ongoing.

The Department developed a draft work plan for how to update the strategy and the Board approved this work plan at their January 2015 meeting. Staff have gathered input from stakeholders and partner agencies on the suite of questions to consider in the strategy and the method for prioritizing these questions. The department is currently working with these groups to prioritize the questions in a documented and consistent manner, and then solicit their input on the draft strategy once we have completed it. We anticipate bringing the strategy to the Board in spring 2016.

#### *Landslides and Public Safety (on hold)*

At their November 2008 meeting, the Board reviewed draft permanent rule language for the intermediate risk category for landslide and public safety rules. The proposed rule was intended to maximize operational flexibility within the constraints of providing for public safety. The Department also sought to change the rule language for purposes of clarity, efficiency, and effectiveness. These changes included: (1) wording; (2) improving rule organization; and, (3) clarifying the roles of the operator and State Forester regarding shared responsibility, stated in OAR 629-623-0000(1). The Department did not modify the intent and purpose of the rules, as stated in OAR 629-623-0000(3).

The Board determined that the draft permanent rule implemented the provisions of ORS527.710 (10) but did not result in new or increased standards for forests practices. Therefore, scientific-findings and economic-analysis under ORS 527.714 (5) and (7) were not required. However, given that analysis done in the process of developing the proposed rules indicated some potential for increased restriction and/or economic impact to landowners, the Board directed the Department to provide the Board with appropriate information on alternatives evaluated and economic impact prior to requesting formal rule making authority.

In the process of compiling information for the Board in response to this direction, staff conducted discussions within the Department and externally with stakeholders. This process, coupled with field visits to landslide sites in Oregon, raised issues regarding the direction and scope of the rule revision process. The primary issues involved the scope of rule changes and the Department's interpretation that the proposed draft rules did not result in new or increased

standards for forests practices. Issues raised about the process and rule changes suggested that the draft permanent rules presented to the Board in November 2008 may not “improve the intermediate risk rules and ... improve the overall clarity, efficiency and effectiveness of the division rules” as was originally directed by the Board in November 2006. In order to ensure greater success at meeting this original direction, the Department determined that there was a need to broaden the scope of the rule revision process. The department suspended this rule change process due to the loss of the Private Forests Division Geotechnical Specialist position in 2009.

#### *Specified Resource Sites Policy Review (on hold)*

After more than a decade since the adoption of special resource site protection policies, Board review of such policies—related statutes and/or rules—is needed in light of changing circumstances for private forests in Oregon and species protection efforts. Changes include the development of a Federal recovery plan for spotted owls, effective implementation of the Oregon Plan for Salmon and Watersheds, Oregon Department of Fish and Wildlife’s development of a statewide conservation strategy, and the development of a programmatic Safe Harbor Agreement for Spotted Owls. Overall there is also a growing recognition that species-by-species approaches to resource protection, as opposed to more holistic landscape level approaches, may not be the most effective or efficient means to achieve specified resource site protection goals.

A policy-level review of the current approach to special resource site protection should address the following topics:

- What is the most appropriate role of the state / Department vis-à-vis the Endangered Species Act and federal regulations for species protection?
- Does the implementation of current policy remain appropriate given the evolution of economic, social, and environmental issues in Oregon since the policies were adopted?

#### *Task and Deliverables*

Board will review technical report on the bald eagle under the FPA, ensure alignment with board goals, and decide whether to begin rule-writing process.

Board will review draft rule language for the bald eagle under the FPA.

Draft Forest Practices Monitoring Program Strategic Plan.

#### *Timeframe with Milestones*

April 2016      Technical Report on Specified Resource Sites Rule Making for Bald Eagles and Recommendations.

April 2016      Update on Forest Practices Monitoring Program Strategic Plan.

July 2016      Rule concepts for the bald eagle under the FPA.

November 2016      Draft rule language for the bald eagle under the FPA.  
September 2016      Draft Forest Practices Monitoring Program Strategic Plan.

## **ISSUE/TOPIC: IMPLEMENT LEGISLATIVE DIRECTION.**

In the 2015 regular session, the Oregon State Legislature passed three bills that will or could require Board rulemaking in 2016-17: House Bill (HB) 3013, relating to wildlife food plots; HB 3549, relating to pesticide control; and HB 2984, relating to forestry product cooperatives.

### *House Bill 3013, relating to wildlife food plots*

HB 3013 allows small forestland ownerships (at least 10 acres, but less than 5,000 acres) subject to reforestation requirements under Forest Practices Act to establish wildlife food plots within the boundaries of the ownership. The bill defines “Wildlife food plot” as a small forestland area that, instead of being used for growing and harvesting of forest tree species, is planted in vegetation capable of substantially contributing to wildlife nutrition. The bill specifies limits for combined size of the wildlife food plots on an ownership and defines establishment of food plots as a forest practice and forest operation requiring notice to the State Forester. The Bill requires the Board to adopt rules to carry out these provisions and to consult with the Oregon Department of Fish and Wildlife to identify vegetation capable of substantially contributing to wildlife nutrition.

### *House Bill 3549, relating to pesticide control*

House Bill 3549 makes a number of changes to the pesticide control laws (ORS 634), including requiring the Pesticide Analytical and Response Center to establish procedures for member agencies to respond to pesticide-related reports, adjusting aerial pesticide applicator licensing, and modifying processes for dealing with pesticide violations. The bill also requires an unsprayed strip of at least 60 feet next to an inhabited dwelling or school when aerially applying herbicides on forestland:

When a forest operation involves applying herbicides by aircraft near an inhabited dwelling or school, the operator is responsible for leaving an unsprayed strip of at least 60 feet adjacent to the dwelling or school. The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634.

The bill makes the requirement part of the Oregon Forest Practices Act and it takes effect January 1, 2016.

The department is working with stakeholders to evaluate the statute and determine if the Board needs to adopt rules. The bill does not define a number of terms, e.g., school, and requires interpretation for administration. We are currently working on guidance to field offices on procedures for administration, e.g., how to evaluate compliance. We are drawing upon definitions and standards from guidance for related rules, with the goal of providing guidance that is simple, clear, and practical for implementation. The development of guidance, with review by stakeholders and field staff will minimize the need for ad hoc interpretations and help staff to determine if the department will recommend that the Board adopt rules for definitions and standards.

*House Bill 2984, relating to forestry product cooperatives*

HB 2984 establishes the authority and requirement for Clackamas County to establish the Clackamas Forestry Product Cooperative Project as a pilot program. The bill provides \$400,000 through the Department of Forestry to provide grants to Clackamas County for the pilot. In addition to promoting economic development within Clackamas County, the purpose of the project is to develop a program model for use by counties in this state that wish to promote economic development by using cooperatives to provide for the commercial production and marketing of forestry products from non-forest lands. An underlying concept is to facilitate and encourage the utilization of urban trees for wood production. The pilot also intends to establish trees in areas currently not used for wood production, e.g., parking lot strips. The department sees significant benefit in increasing the utilization of urban trees at the culmination of their life span. Utilization could lower the costs or perhaps even provide some revenue to help cities maintain the Tree City USA status.

Because of the logistical challenges associated with the utilization of individual trees, the HB 2984 states that it is in the public interest to establish cooperatives to coordinate the tracking, removal and sale of trees and to set prices to accomplish increased utilization. The bill sets up a regulatory system that requires the State Forester to establish procedures and guidelines for the negotiations between the parties in the cooperative, actively supervise those negotiations, and review the tentative prices established by those negotiations. This regulatory system is intended to grant immunity from federal and state antitrust laws to the Clackamas Forestry Product Cooperative Project parties for limited purposes. The department has developed a grant agreement with Clackamas County for the pilot project. As the cooperative develops, the department will determine if the Board needs to establish regulatory rules for the cooperative.

***Task and Deliverables***

The Department will develop a plan for the HB 3013 rulemaking process, starting with the current state. The department will hold initial meetings with stakeholders to define scope and purpose of rules, gather general concept input and information, and develop an issue paper. The department will seek Board approval to begin rulemaking. Pending Board approval to begin, the department will develop draft rule language for Board review and approval.

***Timeframe with Milestones***

- TBD 2016      Staff report describing plan for HB 3013 rulemaking process, including scope and purpose of rule, stakeholder input, and issues to address.
  
- TBD 2016      Draft rule language for implementing HB 3013 for the Board's review.

**ISSUE/TOPIC: BOARD UPDATES.**

The Private Forests Division also provides the Board annual reports and topic that includes the following:

*Task and Deliverables, with timeframes*

March 2016 Operator of the Year Award.

March 2016 Annual Forest Practices Agency Meeting Report.

July 2016 Committee for Family Forestlands Report.

Sept. 2016 Forest Health Report.

Sept. 2016 Annual Monitoring Report.

Jan. 2016 Urban and Community Forestry Program.

## Oregon Board of Forestry Work Plans Draft Private Forests 2016 Matrix

Private Forests Work Plan	Board of Forestry Agenda						
	Jan	Mar	Apr	June	July	Sept	Nov
<b>Focus on Water Quality Topics</b>							
<i>Specific Topics and Milestones</i>							
❖ Riparian Rule Analysis on Small and Medium Fish Streams			X	X			
❖ RipStream Analysis and Results (Downstream, Large wood, Riparian condition)						X	
❖ BOF and EQC Relationship – potential joint meeting on Pesticide Stewardship Partnership	TBD						
❖ TMDL Process Review, Update of DEQ-ODF MOU	Hold						
❖ Eastern Oregon Riparian Policy / Non-fish Stream Riparian Policy	Hold						
<b>Conduct Forest Practices Act (FPA) Rule Policy Review</b>							
<i>Specific Topics and Milestones</i>							
❖ Specified Resource Sites Rule Making for Bald Eagles			X		X		X
❖ Approach for Strategic Monitoring Update			X			X	
❖ Landslides and Public Safety Rule Making Process	Hold						
❖ Specified Resource Sites Policy Review	Hold						
<b>Implement Legislative Direction</b>							
<i>Specific Topics and Milestones</i>							
❖ HB 3013 – Wildlife Food Plots	TBD						
❖ HB 3549 – Pesticides by Aircraft Requirements	TBD						
❖ HB 2984 – Forest Product Cooperatives, Urban Lumber	TBD						
<b>Board Updates</b>							
<i>Specific Topics and Milestones</i>							
❖ Operator of The Year Award		X					
❖ Committee for Family Forestlands Report					X		
❖ Annual Forest Practices Agency Meeting Report		X					
❖ Forest Health Report						X	
❖ Annual Monitoring Report						X	
❖ Urban and Community Forestry Program	X						

## Oregon Board of Forestry Work Plan Dashboard

Private Forests Work Plan	Information Gathering	Analysis	Board Discussion / Direction	Recommend / Revisions	Final Decision
<u>Water Quality</u> : Riparian Rule Analysis on Small and Medium Fish Streams					
<u>Water Quality</u> : RipStream Analysis and Results (Downstream, Large wood, Riparian condition)					
<u>Water Quality</u> : BOF and EQC Relationship – potential joint meeting on Pesticide Stewardship Partnership					
<u>FPA Review</u> : Specified Resource Sites Rule Making for Bald Eagles					
<u>FPA Review</u> : Approach for Strategic Monitoring Update					
<u>Legislative Direction</u> : HB 3013 – Wildlife Food Plots					