

**MEMORANDUM OF AGREEMENT
Conversions of Forestland**

Among

The Oregon Department of Forestry

The Oregon Department of Agriculture

The Oregon Department of State Lands

The Oregon Department of Fish and Wildlife

The Oregon Parks and Recreation Department

The Oregon Department of Land Conservation and Development

And

The Oregon Department of Environmental Quality

The Oregon Department of Forestry (ODF), Oregon Department of Agriculture (ODA), Oregon Department of State Lands (DSL), Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department (OPRD), and Oregon Department of Environmental Quality (DEQ) have common interests and responsibilities in protecting waters of the state and other natural resources during the conversion of forestland to non-forest uses. It is in the best interest of the state to closely coordinate efforts, minimize duplication, and to work towards common goals in regulating the conversion process.

I. Purpose

The purpose of this agreement is to clarify the roles and responsibilities of the state agencies involved during the conversion of forestland to other non-forest uses on publicly or privately owned lands, to ensure that state water quality and other resources are protected throughout the process, and to ensure a smooth transition of jurisdiction between the agencies.

II. Legislative Direction

1. The Environmental Quality Commission (EQC) and DEQ are responsible for implementing the Federal Clean Water Act in Oregon, ORS 468B.035, including adoption and enforcement of water quality standards (OAR 340-040 to 340-041).

that are concerned with the forest environment. The Oregon Forest Practices Act (FPA) requires the BOF, in consultation with the EQC, to establish Best Management Practices (BMPs) to apply to forest operations to insure to the maximum extent practicable nonpoint source discharges from forest operations do not impair the achievement and maintenance of water quality standards established by the EQC (ORS 527.765). ODF is the Designated Management Agency by DEQ for protecting water quality on non-federal forestlands. Forestlands managed by the USDA Forest Service and USDI Bureau of Land Management are not addressed by this MOA.

3. The BOF, with the consultation and support of DEQ, has adopted BMPs for forest operations ((OAR 629-600-0100(47)). These rules, including but not limited to, OAR 629-635 to 629-660 are administered and monitored by ODF to assure their implementation and effectiveness. DEQ participates in the monitoring efforts. The EQC and BOF, advised by DEQ and ODF have determined the BMPs, as required by ORS 527.765, are sufficient to achieve and maintain state water quality standards. The Water Quality Protection Rules are reviewed regularly and altered when deemed necessary.
4. The FPA applies to forest operations on forestlands, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied (ORS 527.620). No unit of local government shall adopt any rules, regulations, or ordinances or take any other actions that prohibit, limit, regulate, and subject to approval or in any way affect forest practices on forestlands located outside of an acknowledged urban growth boundary (ORS 527.722). If a city or county has assumed the responsibility of regulating forest operations (ORS 527.722) then those local governments are responsible for protecting water quality during any forestland conversions within their city limits or urban growth boundaries.
5. Nothing in the FPA shall prevent the conversion of forestland to any other use (ORS 527.730). Only bona fide, established and continuously maintained changes from forest use are granted an exemption from reforestation requirements (ORS 527.760). All exemptions from reforestation requirements must demonstrate that an intended change in land use is authorized under local land use and zoning ordinances and the exemption is only for the smallest land area necessary to carry out the change.
6. Operators conducting forest operations in accordance with the FPA shall not be considered to be in violation of any water quality standards (ORS 527.770).
7. ODA is responsible for addressing water pollution associated with agricultural lands and soil erosion. The Agricultural Water Quality Management Act (SB1010) allows ODA to develop and implement water quality management plans and administrative rules for agriculture and rural lands (ORS 568.900 to 568.933).
8. DSL is responsible for administration of Oregon's Removal-Fill Law (ORS 196.795 to 196.990). The law requires a permit from DSL to remove, fill or alter more than 50 cubic yards of inorganic material within the bed or banks of waters of the state. Exceptions are in State Scenic Waterways and areas designated as essential salmon habitat, by DSL in consultation with ODFW, where a permit is required for all in-stream activity, regardless of size. DSL must ensure that during forestland conversion the landowner/operator obtains a Removal-Fill permit when appropriate.

9. DLCD is responsible to ensure that all Oregon cities and counties have a comprehensive plan and accompanying implementing ordinances that are in compliance with state land use planning goals (ORS 197.225 to 197.245). Goal 4, "Forest Lands," requires that local comprehensive land use plans and land use regulations provide for the conservation of forestlands by maintaining the forestland base. Goal 6, "Air, Water and Land Quality," requires such plans and regulations to provide for the maintenance and improvement of the air, water and land quality of the state. The conversion of forestlands to urban or rural non-forest uses is limited. Any comprehensive plan or zone changes must comply with the statewide planning goals. The allowance of any permitted or conditionally allowed non-forest uses must comply with locally acknowledged comprehensive plan, zoning and other local land use provisions.
10. ODFW is responsible to protect and enhance fish and wildlife resources, to manage fishery and wildlife resources, prevent the serious depletion of any indigenous species and to provide the optimum recreational, commercial, and aesthetic benefits for present and future generations of citizens through the Wildlife Policy (ORS 496.012) and Food Fish Management Policy (ORS 506.109). ODFW has also adopted the Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0000) to mitigate impacts to fish and wildlife habitat caused by land and water development actions. Other state agencies, such as ODF and DSL, consult with ODFW as necessary.
11. OPRD is responsible to protect and enhance scenic, aesthetic, natural, recreation, scientific, and fish and wildlife values along scenic waterways (ORS 390.805 to 390.925). OPRD must be notified of and give approval before certain activities proposed within ¼ mile of the bank of Oregon's designated scenic waterways may be undertaken. Such activities include the cutting of trees, mining, construction of roads, railroads, utilities, buildings, or other structures. The proposed uses or activities may not begin until the written notification is approved, or until one year after the notice is accepted.
12. DEQ is responsible for providing a 401 Certification for all proposed projects that require a federal permit if the proposed activity may result in a discharge into navigable waters. Section 401 of the Federal Clean Water Act requires applicants for federal permits or licenses to provide the federal agency a water quality certification from the State of Oregon if the proposed activity may result in a discharge to surface waters. Applicants may be required to pay a fee and must submit all necessary project information as indicated in OAR 340-048-0020. The certification ensures that any project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards (OAR 340-048-0005). A 401 Certification is required for a variety of projects including, but not limited to, stream and wetland restoration projects, dredging, wetland fills, fish habitat enhancement projects, and forest conversions when activities associated with the project may result in a discharge to surface waters.
13. DEQ is responsible for administering the National Pollutant Discharge Elimination System (NPDES) storm water permit program for the State of Oregon. NPDES permits are required for certain industrial sites, construction activities, and municipal storm sewer systems. Prior to any on-site activities, DEQ requires coverage under the NPDES 1200-C general permit or an individual permit for construction activities if one or more acres of land will be disturbed during an operation. If a landowner proposes to convert forestland to another use, an NPDES 1200-C permit may be required. Unless waived, an applicant must pay fees and submit a complete permit application including,

but not limited to a *Land Use Compatibility Statement* and an *Erosion and Sediment Control Plan* to the appropriate DEQ Regional office or DEQ Agent (OAR 340-045-0015).

14. All agencies are committed to protecting and restoring salmon habitat and water quality, consistent with the Oregon Plan for Salmon and Watersheds (ORS 541.405 to 541.420).

III. Mutual Agreements

1. State agencies signatory to this MOA are committed to collaborate on jurisdiction and enforcement issues related to forestland conversions.
2. The FPA's Water Protection Rules are the standard to protect water quality from nonpoint sources on non-federal forestland. The landowner/operator is responsible for following all relevant rules in the FPA unless they have been specifically waived, exempted, and/or modified, until forest operations have ceased. ODF will take appropriate enforcement actions if the FPA is violated.
3. When a landowner/operator proposes to convert forestland to another use, ODF may waive, exempt, or modify FPA requirements as provided by statute and rule (ORS 527.760; OAR 629-605-0173, 629-610-0090). ODF will require a Plan for an Alternate Practice containing information describing the specific waiver, exemption, or modification of rules requested as applicable to the specific operation proposed. (Exemption from reforestation requirements for the smallest land area necessary to carry out the change is generally the only exception requested.)
4. ODF will provide DEQ copies of all notifications proposing conversions to another land use, unless the only deviation from FPA requirements is reforestation exemption of less than 1 acre. ODF will also provide copies to other regulatory agencies as appropriate, i.e. conversions to agricultural use to ODA, operations within ¼ mile of a scenic river to OPRD, and to DSL when a wetland is proposed to be filled, excavated, or altered.
5. A plan for an alternate practice must address potential water quality or natural resource impacts of the proposed alternate practices. If alternate practices are proposed in addition to the exemption from reforestation, the receiving regulatory agency whose standards may potentially be affected must determine that their standards will also be met by the proposed alternate practice, by issuing required permits, granting approvals or providing other assurances to ODF, before the plan for an alternate practice is approved by ODF. No activity will be approved under a conversion plan for an alternate practice unless the activity complies with the regulations of the new land use in effect at the commencement of the conversion activity. (See Appendix for explanation of plan for an alternate practice and/or responses.)

6. When a specified resource site as defined in OAR 629-665-0000 is proposed to be converted to a non-forest use, ODF may consult with ODFW.
7. When contacted by a landowner/operator regarding a proposed forestland conversion, all state agencies signatory to this MOA will provide timely written approval and/or response. Each agency will provide input as needed and requested by ODF and the landowner/operator.
8. DLCD staff will, upon request, assist ODF staff in determining whether a proposed forestland conversion is authorized under local land use regulations and that all necessary land use approvals and construction permits have been obtained, or are likely to be obtained in the specified timeframe.
9. ODA will determine if proposed conversion to agricultural use includes farm use as defined in ORS 215.203 and farming practices as defined in ORS 30.930 (2).
10. State agencies signatory to this MOA retain their independent enforcement authority over any violations under their jurisdiction.
11. The parcel of land that is being converted must show progress towards the future use within twelve months of completion of the forest operation. The landowner shall ensure sufficient re-vegetation of the site to provide continuing soil productivity and stabilization during this time (OAR 629-610-0080). Evidence of progress toward the future use may include, but is not limited to, stump removal, cultivation, excavation, fencing and construction (OAR 629-610-0090). Activities associated with forest operations during this time period remain under the jurisdiction of the FPA unless otherwise outlined in the plan for an alternate practice and agreed upon by the jurisdiction of the future land use. Any water quality or other natural resource violations during this time may also be enforced by other appropriate state agencies in collaboration with ODF.
12. Once forest operations have been completed as indicated in the plan for an alternate practice, and during the twelve month conversion period, the landowner/operator is responsible for meeting state water quality standards and/or the resource protection rules of the appropriate state agency and/or local government that has jurisdiction over the new land use. If the landowner/operator has not begun action to convert to another use within twelve months, ODF may reassert jurisdiction and administer all appropriate rules under the FPA (OAR 629-610-0000 to 629-610-0080).
13. The change in land use shall be completed and continuously maintained within twenty-four months of the completion of the forest operation (OAR 629-610-0090). To remain exempt from the reforestation requirements the new use must also be maintained for at least six years. If the conversion is not completed or maintained, ODF may reassert jurisdiction and administer all appropriate rules under the FPA.
14. The point at which an operation ceases to be a forest operation and becomes preparation for the new non-forest use is variable and may not be a discrete point in time if conversion operations overlap with forest operations. Examples of these activities include, but are not limited to, any road construction that is beyond what is covered under the FPA's forest road construction standards, landing expansion

beyond that reasonably expected for timber harvest, removal of tree stumps, and the installation of utility lines, water lines, septic tanks, wells or other facilities needed to support non-forest uses.

15. If an undocumented conversion from forestland to another land use is identified by ODF, ODF will inform the appropriate state agencies and local governments of the situation. If notice is provided to another agency, the other agency will contact ODF, and collaborate on the necessary steps to be taken.
16. Enforcement actions among interested agencies and local governments will be coordinated to ensure all relevant resource protection requirements are addressed. For example, if an area has been harvested and not re-vegetated, the landowner may be subject to enforcement actions including but not limited to:
 - a. Failing to meet the conditions specified under the plan for an alternate practice
 - b. Failing to obtain the appropriate NPDES storm water permit from DEQ;
 - c. Causing pollution to any waters of the state as defined in ORS 468.025;
 - d. Failing to obtain removal/fill permits regulated by DSL;
 - e. Violating rules in the appropriate Agriculture Water Quality Management Area;
 - f. Failing to obtain approvals, permits, and comprehensive plan and zoning changes required by local jurisdictions; and/or
 - g. Failing to obtain written approval to conduct activities within state scenic waterways by OPRD.

IV. Implementation, Training, and Evaluation

1. DEQ, ODF, ODA, DSL, ODFW, OPRD and DLCD agree to work together to:
 - a. Conduct training sessions for appropriate staff that will include representation from all agencies signatory to this agreement. The intended purpose of the training sessions will be to explain the forestland conversion process and to ensure communication and collaboration between the staff of each agency.
 - b. Hold training sessions for city and county planning, public works, and development staff as needed.
2. Training sessions will also be offered by ODF for cities and counties interested in assuming the responsibilities of regulating forest operations within urban growth boundaries.
3. Outreach efforts will be undertaken with key related industries such as contractor and realtor associations and lending institutions.

4. This MOA and the Forestland Conversion process will be evaluated in 2008 and triennially after that to determine whether revisions are necessary.

V. Issue Resolution:

1. DEQ, ODF, ODA, DSL, ODFW, OPRD and DLCD are committed to work together to ensure that water quality and other natural resources are protected and maintained during the forestland conversion process. Should issues arise:
 - a. The local offices of each agency will evaluate the issue and work together on a resolution in a timely manner. The state agency responsible for regulating the proposed future land use shall provide input as necessary. ODF will coordinate with each state agency to ensure that the transfer of oversight responsibility and enforcement authority is accomplished. Coordination with the local government shall occur as needed. In the case of a violation, it is possible that more than one agency and/or the local government will take enforcement actions. Enforcement actions will be coordinated between the agencies and the local government taking such action.
 - b. If there is a situation that requires immediate actions to rectify a water quality and/or other natural resource problem, the responsible agencies will work together to ensure that appropriate and timely measures are taken. If necessary, staff from each interested agency will visit the site, together if possible, to determine what BMPs should be used to correct the situation and decide what, if any, enforcement actions are necessary. It is understood that communication and collaboration on the timeliness and necessary actions needed regarding such issues is imperative.
 - c. If a resolution cannot be agreed upon, the local offices will jointly develop a briefing document and will elevate the issue to each agency's headquarters office. The briefing document will accomplish the following: 1) Describe the background, including a statement of why the issue has not been resolved; 2) Describe alternative solutions including pros and cons; and 3) Describe any recommendations for resolution. Communication amongst agencies will occur as necessary to resolve the issue in a timely manner. Those responsible for addressing issues in each agency include: the Operations Unit Manager for the Private Forests Program at ODF, the Administrator of the Natural Resources Division at ODA, the Manager of the Program Policy and Project Assistance Section at DEQ, the Manager of the Property and Resource Management Division at OPRD, the Forest Practices Coordinator at ODFW, the Assistant Director for the Wetlands and Waterways Conservation Division at DSL, and the Farm and Forestlands Specialist in the Planning Services Division at DLCD.
 - d. Issues may be raised to the attention of the Administrator of the Natural Resources Division at ODA, the program Director of the Private Forests Program at ODF, the Water Quality Division Administrator at DEQ, the Manager of the Property and Resource Management Division at OPRD, the Land Resources Program Manager at ODFW, the Assistant Director of the Wetlands and Waterways Conservation Division at DSL, and the Manager of the

Planning Services Division at DLCD if a resolution is not achieved at the previous level.

- e. The DEQ, ODF, ODA, DSL, ODFW, OPRD and DLCD may request assistance from other agencies or entities at any step in the dispute resolution process as deemed necessary.

VI. Other Considerations

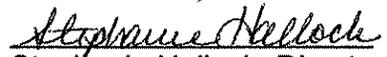
1. This agreement will be effective as of the date of the last signature. The termination of this document may occur by mutual consent of the agencies or by sixty days notice of cancellation from one or more of the agencies to all of the others. This termination notice shall be in writing.
2. Nothing in this Memorandum of Agreement shall be construed as obligating any listed agency to expend funds or involve any listed agency in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively available for this work.

Approved:

Oregon Department of Forestry


Marvin Brown, State Forester
Date: 7/11/06

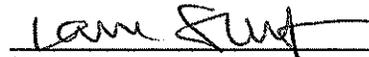
Oregon Department of Environmental Quality


Stephanie Hallock, Director
Date: 11/2/06

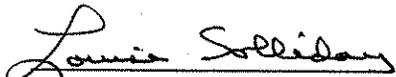
Oregon Department of Agriculture


Katy Coba, Director
Date: 7-25-06

Oregon Department of Land Conservation and Development


Lane Shetterly, Director
Date: 7/26/06

Oregon Department of State Lands


Louise Solliday, Director
Date: 7/27/06

Oregon Department of Fish
and Wildlife


Virgil Moore, Director
Date: 9/12/06

Oregon Department of Parks
and Recreation


Tim Wood, Director
Date: 9/14/06

APPENDIX

All plans for alternate practices proposing conversion to a nonforest use must include:

- 1) A description of the intended change in land use and the incompatibility of the land use with forest tree cover on all or part of the operation area.
- 2) The specific statute or rule requirements to be waived, exempted, and/or modified.
- 3) Identification on a map of the specific portion of the operation area necessary for the proposed change in land use.
- 4) Written approvals from the applicable local jurisdiction (city and/or county planning department) and the county assessor stating that the proposed land use change is authorized under local land use and zoning ordinances and the land owner has obtained, or will obtain all necessary state, federal, and local land use and construction permits within twelve months.
- 5) Written approval and/or response from each state agency with resource protection jurisdiction over the proposed non-forest use for which a waiver or modification of FPA requirements other than reforestation outside the RMA are requested. These include:
 - a) DEQ: When a conversion from forestland to a residential and/or urban use is proposed the landowner must obtain a written response from DEQ that states all necessary permits (i.e. 1200-C permits for stormwater) have been obtained or are in the process of being obtained for the future use. DEQ will also communicate any water quality sensitive information such as Source Water Assessments and Total Maximum Daily Loads that are relevant to the area proposed to be converted. The response should acknowledge that both the proposed future use and the interim condition of the land during the conversion will meet applicable water quality standards.
 - b) DSL: When a wetland is proposed to be filled, excavated, or altered, written approval from DSL as well as a 401 Certification from DEQ may also be required.
 - c) OPRD: When a conversion is within ¼ mile of a state scenic waterway written approval from OPRD is required regardless of waiver or modification of FPA requirements.
 - d) ODA: When a conversion from forest to agricultural use is proposed, the landowner must obtain a written response from ODA stating that the proposed conversion is consistent with the goals of the local Agricultural Water Quality Management Area Plan and in compliance with the Area Rules established to implement the Area Plan. The landowner must provide sufficient information to establish the proposed activity will be a farming practice as defined in ORS 30.930