

OREGON DEPARTMENT OF FORESTRY (ODF)
SB 762 RULEMAKING ADVISORY COMMITTEE (RAC)
CERTIFIED BURN MANAGER PROGRAM
Charter and Collaboration Principles (Charter)
(v. 9-15-2021)

For any collaborative process, the participants should establish procedures to govern the committee and its members. Such agreement increases success and decreases meeting time by assuring a good faith process that explores competing needs and leads to balanced recommendations to the sponsor.

I. Background

The Oregon Department of Forestry has current prescribed burn policy that describes how the State Forests Division will safely conduct prescribed burn activities on forestland it manages for the Board of Forestry, and under contract for the Department of State Lands. This policy outlines the establishment of burn objectives and standards for prescribed burns. The prescribed burn policy draws from the following authorities:

- ORS 477.515 – Permits required for fires on forestlands
- ORS 477.625 – Permit to use fire or power-driven machinery
- ORS 526.360 – State Forester to assist in developing forestland for agricultural uses.
- ORS 526.425 – Management assistance to nonindustrial private forest landowners.
- ORS 526.510 –Department to provide technical assistance to governmental units
- ORS 530.050 – Management of lands acquired; power of forester.
- ORS 530.500 – Authority of State Forester in management, protection, utilization and conservation of lands and waters.

Senate Bill 762, passed in the 2021 legislative session and signed by Gov. Kate Brown on July 19th, revises Oregon Revised Statutes (ORS) 477 and ORS 526 in Section 25 of the bill.

The Bill requires the Oregon Department of Forestry to establish by rule a Certified Burn Manager Program. Requires ODF to consult with the Oregon Prescribed Fire Council concerning best practices for conducting the program, initiate rulemaking to establish the program, and provide a progress report to the Legislative Assembly by December 1, 2021.

II. Scope & Charge

This Rule Advisory Committee (RAC) is not a decision-making body. It is a recommendation-making group pursuant to ORS Chapter 183 and DOJ Model Rule 137-001-0007 (Public Input Prior to Rulemaking.) The RAC is charged with providing perspective, input, and assistance to ODF so ODF can develop administrative rules surrounding SB 762 section 25 for its presentation to the Board of Forestry.

The deliverable for the Certified Burn Manager RAC is to recommend the criteria by which the Certified Burn Manager Program is developed and conducted as described in ORS 526.360.

ODF asks the RAC to consider the fiscal impact of its proposed rules (see generally, ORS Chapter 183 and OAR 137-001-0018) including:

- whether the rules will have a significant adverse fiscal impact, and if so, what the extent of that impact will be, and,
- whether the rules will have a significant adverse fiscal impact on small businesses likely to be affected by the rules, and if so, how ODF can mitigate the cost of compliance.

ODF will consider the recommendations of the RAC when drafting its rules. ODF will then follow the rulemaking procedures identified in ORS Chapter 183 and DOJ Model Rule 137-001-0011 through 137-001-0100. Ultimately, the Board of Forestry will decide on the rules, and subsequently, ODF will issue contract specifications consistent with those rules.

III. Guiding Principles

The RAC should consider the following guiding principles and/or policies, among others, in the development of administrative rules regarding SB 762.

- The use of objective, scientific, quantifiable data is the cornerstone of the recommendation and decision-making.
- Administrative rule development discussions will pertain exclusively to the requirements of Section 25 of Senate Bill 762.
- ORS 477.005 Policy provisions, which follow, are paramount:
 - The preservation of the forests and the conservation of the forest resources through the prevention and suppression of forest fires hereby are declared to be the public policy of the State of Oregon.
 - In order to accomplish the purposes of the policy stated in this section:
 - The need for a complete and coordinated forest protection system is acknowledged and the primary mission of the State Forestry Department in such a system is protecting forest resources, second only to saving lives. Structural protection, though indirect, shall not inhibit protection of forest resources; and
 - This chapter shall include all persons and activities designated in this chapter, irrespective as to whether or not such person or activity is concerned with the harvesting, cutting, removal or marketing of trees, timber or other forest products.
- The relevant section of ORS 526.360.
- Relevant policy considerations

IV. Membership

The following members will provide their diverse perspectives on policy proposals and fiscal impacts of the program as voting members.

Organization	RAC Member / (Alternate)	Voting
Associated Oregon Loggers	Amanda Astor	X
Confederated Tribes of Grande Ronde	Colby Drake	X
Oregon Forest Industries Council	Rick Allen/Kyle Williams	X
The Nature Conservancy	Katie Sauerbrey/Pete Caligiuri	X
Oregon State University	Christopher Adlam	X
Sustainable Northwest	Jenna Knobloch	X
Oregon Prescribed Fire Council	Amanda Rau	X
Oregon Small Woodlands Association	Roger Beyer	X
Oregon Department of Environmental Quality	Michael Orman/Margaret Miller	X

Each member is allowed to assign an alternate by providing written notice to Tim Holschbach in advance of the meeting the primary member will miss. sb762.rulemaking@oregon.gov.

While not part of the Certified Burn Manager Program RAC, Board of Forestry Members may be present to listen. Advisory members, including Brenda McComb (BOF), Jason Simmons (BLM), and Jason McGovern (USFS) may be present. Additionally, ODF staff Tim Holschbach, Jenna Trentadue, Adam Meyer, and others will be present during the meetings as resources, but they are not part of RAC.

Government to government tribal consultations are ongoing.

V. Non-Committee Member Attendees

The public is welcome to attend all meetings. ODF will manage the meetings to accommodate both members and non-members who wish to provide input, but priority will be given to committee members. There will be time on the agenda dedicated to receiving input from the public with time limits for each person.

After the RAC concludes, a formal public comment period will open on the proposed rules.

VI. Subcommittees

ODF, with the RAC's input, will evaluate the need for subcommittees, factoring in resource considerations, but none are planned at this time.

VII. RAC Material and Support

All committee materials will be provided electronically as a sustainability measure.

Meeting notices, agendas, materials, summary, and recordings <https://www.youtube.com/c/OregonDepartmentofForestry/featured>) will be posted on the following webpage: <https://www.oregon.gov/odf/board/Pages/rac.aspx>. The meeting recordings will be used as the formal meeting minutes, and they control, in the event of a conflict.

Technical input from agencies, organizations, or individuals with specialized expertise will be available to the RAC as issues arise.

VIII. Work Plan/Schedule

The Certified Burn Manager RAC will meet monthly through a two-hour zoom meeting, starting August 18, 2021, and running every third Wednesday of the month initially through July 2022. This schedule is subject to change.

X. Collaboration Protocols for RAC Recommendations

The RAC will follow these protocols.

- a) **Quorum:** 51% of RAC Organizations listed above.
- b) **Meetings:** Meetings of the RAC and its subcommittees, if any, are open to the public and will include an opportunity for public comment. Notice of RAC meetings will be posted in advance of meetings on the ODF project website.
- c) **Meeting Agendas and Meeting Materials:** ODF will develop working agendas for each meeting. Meeting agendas and meeting materials will be sent electronically to RAC members in advance of the meetings and will be posted on the project website.
- d) **RAC Commitments:** The RAC members, staff, and participants will participate in good faith, which means:
 - 1) Prepare for and set aside time for the meetings and the entire process,
 - 2) Participate fully, honestly, and fairly, commenting constructively and specifically,
 - 3) Speak respectfully, briefly, and non-repetitively; not speaking again on a subject until all other members desiring to speak have had the opportunity to speak,
 - 4) Allow people to say what is true for them without fear of reprisal,
 - 5) Avoid side conversations during meetings,
 - 6) Provide information as much in advance as possible of the meeting in which such information is to be used and share all relevant information to the maximum extent possible,
 - 7) Generate and explore all options on the merits with an open mind, listening to different points of view with a goal of understanding the underlying interests of other RAC members,

- 8) Consult regularly with their appointing/nominating bodies and provide their input in a clear and concise manner,
- 9) Each member agrees to work toward fair, practical, and durable recommendations that reflect the diverse interests of the entire RAC and the public,
- 10) When communicating with others, accurately summarize the RAC process, discussion, and meetings, presenting a full, fair, and balanced view of the issues and arguments out of respect for the process and other members,
- 11) Not attempt to affect a different outcome outside of the RAC process once the RAC has reached a “consensus” recommendation,
- 12) Strive vigorously for consensus and closure on issues, and
- 13) Self-regulate and help other members abide by these commitments.

XI. Public Comment

There will be public comment opportunities during the RAC process. Comments from the public will be limited in time to allow sufficient opportunity to conduct the other portions of the meeting. Typically, comments will be limited to a maximum of three minutes per person. Participants are encouraged to submit written comments via email addressed to sb762.rulemaking@oregon.gov or ODF, Tim Holschbach, 2600 State Street, Building D, Salem, OR 97310 in advance of the meeting so they can be circulated to the entire RAC for their consideration.

XII. Process for RAC Recommendations

ODF will assist the RAC and its members in identifying objectives, addressing the diversity of perspectives, and developing substantive, practical recommendations. Each voting RAC member will have one vote. A vote represents that the member will strongly recommend to their government, organization, or group that they should support or oppose the voted-upon proposal consistent with the member’s vote.

The RAC will strive for and use a “consensus” recommendation-making approach to determine their level of agreement on proposals. This allows RAC members to distinguish underlying values, interests, and concerns with a goal of developing widely accepted solutions. Consensus does not mean 100% agreement on each part of every issue, but rather support for a decision, *“taken as a whole.”* This means that a member may vote to support a consensus proposal even though they would prefer to have it modified in some manner to give it their full support. Consensus is a process of *“give and take,”* of finding common ground and developing creative solutions in a way that everyone can support. Consensus is reached if all voting members support an idea or can say, *“I can live with that.”*

When developing recommendations, the RAC will address each rule component individually, and in various combinations. The RAC will decide on whether it wants to make a package recommendation for the entire rule at the end of the process.

1) “1-2-3” Consensus Polling: ODF will assist the RAC in articulating points of agreement, as well as articulating concerns that require further exploration. The RAC will use a “Consensus Polling” procedure for assessing the group’s opinion and adjusting proposals. In “Consensus Polling,” ODF will articulate the proposal. Each RAC voting member will then offer “one,” “two,” or “three,” reflecting the following:

- “One” indicates full support for the proposal as stated.
- “Two” indicates that the participant agrees with the proposal as stated but would prefer to have it modified in some manner to give it full support. Nevertheless, the member will support the consensus even if his/her suggested modifications are not supported by the rest of the group because the proposal is worthy of general support, as written.
- “Three” indicates refusal to support the proposal as stated.

ODF will repeat the consensus voting process as reasonably practical and as time allows to assist the group in achieving consensus regarding a particular recommendation, so that all members are voting “one” or “two.” Either way, the result will be noted in the ODF Staff Report and/or the RAC Report.

- 2) No Consensus – Majority and Minority Recommendations:** If a consensus on an issue is not likely, as determined by ODF, the votes of those present at the meeting will be taken and recorded as a Majority – Minority recommendation in the meeting summary, which will include the specific majority recommendation, the specific minority recommendation, along with the names supporting each recommendation. Majority is defined as at least 51% of the RAC Organizations (members or alternates) noted above.
- 3) Summary of RAC Recommendations:** The meeting summaries will serve as the record of RAC recommendations as supplemented by the addition of RAC member statements who elect to submit additional information by the deadline to be established at the last RAC meeting. ODF will package all this information in its staff report to the Board.

XIII. Additional Provisions

The following provisions apply to the RAC process.

- a) Regular Communication with Affiliated Group:** There is an expectation of regular, two-way communication between RAC members and their appointing jurisdictions / organizations. This is intended to ensure meaningful representation of those interests. Time will be set aside on the RAC agenda for reports from this outreach.
- b) Transparency and Media:** Members agree that transparency is essential to all deliberations. In that regard:

- 1) RAC members agree to notify Tim Holschbach at sb762.rulemaking@oregon.gov of written communications with the media.
- 2) Members agree to direct public testimony about RAC work to Tim Holschbach at sb762.rulemaking@oregon.gov. These communications will be included in the public record and copied to all RAC members.
- 3) Individual members should not speak on behalf of the entire RAC.
- 4) Whenever reasonable, RAC members and staff will refer press, citizen, and other inquiries to Tim Holschbach at sb762.rulemaking@oregon.gov.

c) Disclosure of Public Official Conflicts of Interest:

- 1) Some RAC members may be "public officials." A public official is required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon.
- 2) The announcement needs to be made on each occasion when the public official is met with the conflict of interest, and the public official must disclose the nature of the conflict of interest.
- 3) For example, the public official would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the RAC. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting.
- 4) For guidance, please see
<https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf>

d) Open Meetings and Records: Meetings of the RAC and subcommittee meetings are open to the public. Notice to the public regarding the dates, times, and locations of all meetings will be provided in advance of a meeting.

RAC members can participate through telephonic conference calls. All records of the Body, including formal documents, discussion drafts, meeting recordings, and exhibits, etc. are public records.

"Communications" refers to all statements and votes made during meetings, memoranda, work products, records, documents, text messages, pictures, or materials developed to fulfill the charge, including electronic mail correspondence. The personal notes of individual members taken at public meetings might be public record to the extent they relate to the conduct of the public's business.

- e) **Amendment and Interpretation:** ODF shall lead a RAC discussion designed to reach a consensus on any proposed Scope & Charge, Guiding Principles, Collaborative Protocols, and Process for RAC Recommendations amendment(s) to this document. Any remaining amendments can be made informally. The terms of this document, except those required by law, are process guidelines – not binding mandates. Ultimately, ODF will make the final decision on the proposed amendments and interpretation issues.
- f) **RAC Member Agreement:** Participation in this process is agreement to abide by the terms of this document.