

BOARD ISSUES WORK PLANS

Title of Issue: 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 20th 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 are being converted to other uses, or 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. Industrial lands close to expanding population centers and working family forests are particularly threatened by these trends.

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 timberlands that are either being managed as a separate profit center, or sold to Timber Investment and Management Organizations and Real Estate Investment Trusts. 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. Studies indicate that the new generation often view the land differently than the previous generation and are much more likely to consider selling rather than managing the land for income.

Oregon's private forests at risk of parcellation and/or conversion have significantly expanded in recent years. As development pressures, population growth, and real estate values increase, more forestland will be at-risk of conversion. It is estimated 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. This type of forest fragmentation can lead to the loss of working forests as well as increases in fire suppression costs. Since 1974 Oregon has seen a 239% increase in the number of structures on forestland.
- Conversion from forest to development dramatically changes the way the surrounding landscape is managed, 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 local government services and education. With no workable 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 challenges are especially evident in central Oregon, where population growth and amenity values are high. Since 1990, about 60 percent of the industrial timberland in Deschutes and Jefferson counties has been sold or exchanged, and an additional 4,000 acres formerly owned by Crown Pacific Corp. have been optioned for development. Forestland has been divided into large lots (240 acres—the minimum ownership for placement of a dwelling in eastern Oregon zones) and sold for home sites. These changes could affect a broad array of forest values and cause further conversion of working forests to development.

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 forest land 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 program needs to strategically address these challenges. The outcome of the Board’s Private Forests Work Plan will ultimately guide how the Private Forests program will organize and respond to achieve the Board’s policy objectives for Oregon’s private forestlands.

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 2008¹)

Improve Timber Resource Economics	Improve Non-Timber Resource Economics
Compensate/Incentivize Landowners	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.

¹Oregon Forest Resources Institute. 2008. “The Future of Oregon’s Working Forests”. Oregon Forest Resources Institute. Portland, OR. 13 pp.

Current Private Forests Program Governing Policies

At the broadest level, the current policies governing landowner services provided by the Private Forests program are embodied in the following Oregon Revised Statutes:

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.

(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: 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 *2003 Forestry Program for Oregon* (FPFO), the Board of Forestry's framework for strategic planning, sets forth the next layer of Board policy and direction for the Department in the context of three broad guiding principles:

1. Widely recognized international criteria and indicators serve as a useful framework for discovering, discussing, and assessing the sustainability of Oregon's forests.
2. Sustainability requires maintaining a diversity of forestland ownerships and management objectives across the landscape and through time.
3. Cooperative, non-regulatory methods are strongly preferred in achieving public benefits on private lands.

The FPFO has seven broad strategies that provide the framework for establishing actions and for designing and implementing agency programs. The FPFO mission, vision, values, and strategies viewed together describe the future the board is striving to achieve. FPFO objectives form a pathway for achieving the Board's desired future.

PREVIOUS BOARD WORK

The approved 2009 Private Forest Work Plan had the following primary issue:

How will the Board clarify current Private Forests program policy governance—at the statutory level, Forestry Program for Oregon strategic planning level, or otherwise—to effectively address the current and emerging challenges on private forestlands in order to fully realize the Forestry Program for Oregon vision of sustainable forest management across all Oregon's forestlands? What, if any, changes to program funding sources and/or mechanisms are needed in order to best ensure desired outcomes are achieved?

Over the 2009 meetings, the Board of Forestry reviewed and finalized a set of policy objectives for Private Forests for the next two years. These objectives represent the Board's policy guidance to the Private Forests program to effectively address the current and emerging challenges on private forestlands in order to fully realize the Forestry Program for Oregon vision of sustainable forest management across all Oregon's forestlands (Primary Board Issue, part one). The Board approved the following list of Private Forests Policy objectives at the September 2009 Board meeting:

1. Identify 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.
2. Explore alternative, more stable funding mechanisms for the public share portion of the department budget directed at keeping forests in forests (i.e., alternatives to state general funds).
 - a. Infestations of insects, diseases and invasive species remain ongoing concerns of private forestland owners. Ensure adequate resources to meet goals of the Forest Health (Insects and Disease) program, including the protection of private forestlands from non-human pests.
 - b. The credibility of Forest Practices Act requires monitoring the effectiveness of best management practices and prescriptive rules. At a minimum, ensure adequate resources to meet statutorily required forest practices research and monitoring. Develop adequate funding streams to ensure a robust monitoring program to support the continuous learning vision of the Board.
3. Utilize non-regulatory methods as much as feasible to achieve public-policy goals on private forestlands, and consider the use of additional regulatory methods as a least-preferred option. The primary concern is achievement of public-policy goals and adequate evaluation of achievement over time is needed, regardless of the method used (regulatory or non-regulatory).
4. Support land-use planning and policies to ensure a stable forestland base and to encourage long-term investments in forestland. Examples include but are not limited to: a) promoting a statewide no net loss of forestlands policy, and b) supporting an effective system of transferrable development rights.
5. Place a high priority on long-term strategic investments to support Oregon's forest industry to ensure that Oregon maintains the flexibility necessary to achieve a competitive advantage and a diversity of forest products and new markets like forest biomass for energy production. Support investments that maximize economic viability (e.g., focus on wood quality vs. quantity). Oregon should continue to be a net exporter of wood product, and make a significant contribution towards meeting the nations wood product needs.

6. Place a high priority on dedicating resources towards the development and support of future non-timber markets that will increase forestland value, including biomass, carbon sequestration, and other ecosystem services.
7. Promote the development of a coordinated, statewide Oregon native plant and animal conservation policy addressing all land uses and ownership classes. The policy should clearly state public expectations for base-line resource site protection, as well as broader contributions of private forestland owners to achieve state conservation goals. The policy should also specify whether private forestlands would be held to an equal or higher standard as compared to other private land uses.
8. Rely on Forest Practice rule standards for resource site protections to meet the state of Oregon's contribution towards base-line public expectations of benefits from private forestlands (i.e., formally acknowledge existing levels of protection). Look to non-regulatory and market-based approaches to provide additional public benefits, combined with existing federal and state Endangered Species Act protections. Promote statutory changes and/or change Oregon Administrative Rules consistent with this objective.
9. Develop principles and standards, in collaboration with appropriate agencies and stakeholders, relating to the creation, measurement, accounting, marketing, verifying, registering, transferring, and selling of forestry carbon offsets from nonfederal forestlands (ORS 526.786).
10. Landslides and public safety: promote fulfillment of shared responsibility for any additional action to reduce public safety risks (existing statutes). Effective protection of the public requires the shared responsibilities of homeowners, road users, forestland owners, and state and local governments to reduce the number of persons living in or driving through locations prone to shallow, rapidly moving landslides during periods when they are likely to occur. Promote statutory changes consistent with this objective.

Having specified key Private Forests policy objectives, the Board provided direction on Private Forests Program budget and financing in the context of the broader department-wide budget effort, with a goal of reducing vulnerability to economic cycles and increasing the consistency of funding and resources. For detail on this work, see March 3, 2010, Board agenda item 3, and associated Intermediate Board Issue 5 - Strengthen Links to Forestry Work Outcomes. The Board will address this new issue under Board Work Plan 1, Strategic Planning, Implementation and Monitoring.

BOARD'S PRIORITY SET OF ISSUES FOR 2010 AND 2011

At the November 2009 meeting, the Board considered Department of Forestry Leadership Team recommendations for procedures for Board strategic planning, implementation, and monitoring, consistent with the Board's Work Plan. The Board directed Department staff to clarify the expectations for Board actions in the procedures document. The Strategic Planning, Implementation, and Monitoring Work Plan and draft procedures documentation also calls for the Board to use this information as the basis for setting priorities and providing direction for

other Board work planning for the following two calendar years. The resulting product is a Priority Set of Issues for Board of Forestry Work.

At the January 2010 meeting, the Board adopted the Priority Set of Issues for Board of Forestry Work in 2010 and 2011. The Board directed the Protection from Fire, State Forests, and Private Forests Division Chiefs to provide recommendations for adding, deleting, or modifying Board of Forestry Work Plans based on approved Priority Set of Issues for Board of Forestry Work. This work plan reflects the direction given by the Private Forests policy objectives and priority set of issues.

PRIMARY BOARD ISSUE

How will the Board monitor Private Forests program policy implementation to effectively address the current and emerging challenges on private forestlands in order to fully realize the Forestry Program for Oregon vision of sustainable forest management across all Oregon's forestlands?

Board Products

The Board will review current program delivery priorities and expectations with reduced resources, focusing on the following:

- Articulation of the program vision, ensuring future success and greater level of public support.
- Specific functions and actions directed at keeping working forests working.
- Customized program delivery:
 - Urban interface
 - Family forestland
 - Industrial and investment forests
- Assessment of the adequacy of current statutes and rules to support the program vision.

Based on the Board approved Private Forests policy objectives and priority set of issues, the department has developing the following guiding purpose for the private forests program:

The Private Forests program guiding purpose is to maintaining working forests and the social, economic and ecological viability of those forests into the future. This will be accomplish through the development and implementation of new and emerging innovative programs; effective administration, educational assistance, and enforcement of the Oregon Forest Practices Act; and the delivery of state and federal incentive programs.

Timeframe with Milestones

June 2010 Board review and discussion on Private Forests Program policy implementation, articulating the program vision, specifying functions and actions directed at keeping working forests working, and providing customized program delivery.

Status The Board reviewed of The Private Forests Program Policy Implementation Report sections on articulating the vision and mission of the Private Forests program, specific functions to keep working forest working, and current challenges to implementing the mission with limited resources.

July 2010 Continued Board discussion on the Private Forests Program, including assessment of adequacy of current statutes and rules to support the program vision.

Status The Board reviewed of The Private Forests Program Policy Implementation Report section on customized program delivery for the urban interface, family forestland, and industrial and investment forests.

As needed Continued Board review, discussion, and agreement on progress of Private Forests policy implementation, statutory / rule changes, and emerging issues.

Status Completed. At the November 2010 meeting, the Board reviewed of The Private Forests Program Policy Implementation Report section on adequacy of current statutes and rules to support the program vision. Board work on primary issue completed.

Monitoring Achievement of this Primary Board Issue

During completion of this work plan for the Private Forests Program, the department will develop and report on the progress made over time on success. This process will use the agency Key Performance Measures and the Oregon Indicators of Sustainable Forest Management as starting points, with further development and refinement of specific program-level performance measures for evaluating success in achieving the Board's direction.

INTERMEDIATE BOARD ISSUES

Intermediate board issues include tasks carried out principally at a staff level, utilizing current Board policy and direction to-date. These issues require Board attention for implementation, but the policy basis of the work is considered to be in place. If during work on intermediate issues it is determined that additional Board clarification of policy / direction are needed to complete staff work, the issue will be elevated to the Board.

INTERMEDIATE BOARD ISSUE 1

The Board will focus on water quality topics, including RipStream research and paired watershed studies, turbidity (e.g., road sediment), and toxics.

Background

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. Basically the EQC sets water quality standards and the BOF 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). See the January 2011 water quality issue paper for more details (Agenda Item 6).

Over the past 11 years, ODF, DEQ, the Board, and EQC have been working through the 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 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 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 ongoing 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 in the Coast Range. 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.

Over the past year, concerns regarding water quality policy have increased due to the settlement of the 2009 Coastal Zone (CZARA) lawsuit; the Ninth Circuit ruling in Northwest Environmental Defense Center (NEDC) v. Brown forest roads lawsuit; and the EQC toxics rulemaking process.

The CZARA lawsuit and settlement focuses on the Environmental Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) assertion that the rules under the FPA are not adequate and contribute to the failure of some coastal basins to meet standards. The EPA and NOAA identified three forestry areas needing additional management measures, riparian protection, landslide prone areas, and road management/maintenance, particularly on "legacy roads." As part of a settlement process, the DEQ agreed to develop a basin-specific Total Maximum Daily Loads (TMDL) approach to resolving water quality issues in the coastal zone. If the basin-specific analysis indicates the need for additional forestry measures, the Board would be looked to first to develop adequate source-specific BMPs or control measures that can be implemented by ODF.

In response to the CZARA lawsuit and consistent with our history of cooperation, the department and DEQ will review the 1998 Memorandum of Understanding (MOU), which further defines the roles and responsibilities of the EQC, DEQ, the Board, and ODF in preventing, controlling, and reducing non-point source discharges to achieve and maintain water quality standards. The MOU also explains the processes for addressing water quality limited streams, ensuring interagency coordination on revising FPA rules, and promoting voluntary and incentives-based regulatory solutions. The department and DEQ will also cooperate on a work plan for developing and implementing the basin-specific TMDL approach in the coastal zone. The RipStream research and paired watershed studies provide relevant science for this process.

Functionally, the NEDC forest roads lawsuit has less to do with improving water quality, and more to do with changing the regulatory framework for managing forest roads. The NEDC alleged that a National Pollutant Discharge Elimination System (NPDES) permit is required for stormwater runoff from forest roads. A Ninth Circuit Court panel ruled that the EPA rules cannot exclude logging road discharges from NPDES permitting and that logging road discharges are industrial stormwater discharges subject to EPA Phase I NPDES permitting. Oregon and private defendants have requested a rehearing in front of the full Ninth Circuit Court, and are awaiting the outcome of that request.

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. The department recommended that the Board provide input on the work and Board products to be produced over the next year under the Private Forests work plan. After discussing the paper, the Board directed the department to:

“Add focus on water quality to the Private Forests work plan, using an integrated approach including, but not limited to:

- *RipStream research,*
- *Paired watershed studies,*
- *Road sediment issues, and*
- *Toxics - including both risks to human health and ecological health.*

Ask staff to advise the Board of Forestry on how best to do this work.”

The 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 (FPFO), stated policy objectives for private forests, and the current statutory framework for regulating forest practices.

Depending on how broadly construed, the topic of toxics and risks to human health represents a new policy area for the Board. The 2003 FPFO and draft 2011 FPFO do not specifically identify human or public health as key objective of the Board. The FPA does not have a statutory requirement that the Board adopt rules specific to public health, except in the case of landslides and public safety. The FPA does have a nexus with public health given the Board’s responsibility to develop BMPs and rules to insure the achievement and maintenance of water quality standards and the protection of drinking water. In these cases, water quality standards are set by the EQC under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532, and the drinking water standards are set by Department of Human Services under ORS 448.273 to 448.990. The Board fulfils its responsibilities by adopting forest practices rules and BMPs to meet these standards, and is required to consult with these agencies or any of its political subdivisions before adopting rules.

The toxics topic also relates to this work plan’s issue on forest pesticides, which will be addressed in the March 10, 2011 Board workshop and April 29, 2011 Board meeting (see below). The current Board principles related to the chemical rules state that the “board shall primarily rely on FIFRA and Oregon’s pesticide control laws for protection of public health and safety.” During the revision of the chemical rules, the Board recognized that protection of human life, health, and property was important, but that such protection was more properly provided by the pesticide product label requirements and by Oregon’s Pesticide Control Law (ORS 634). The department proposes that the best way for the Board to address the human health topic is to complete the Board review of pesticide policy, and decide if the current principles on chemical rules are still the desired Board policy. Pending the outcome of this discussion, the Board could choose to reexamine the Board’s role in addressing human health risks, e.g., directly assessing risks to human health versus working within the integrated multi-agency approach to water quality standards and the toxic reduction strategy led by DEQ.

Board Products

The Board will review an updated water quality issue paper. The issue paper will provide additional information on the outcomes of recommendations from the 2002 ODF/DEQ Sufficiency Analysis.

The Board will provide policy input and review on the revision of the DEQ-ODF MOU on water quality standards and protection. The Board will review the work plan for the basin-specific TMDL process, and address the need for additional forestry measures identified in the process.

The Board will continue to review and discuss the outcomes from the NEDC forest roads lawsuit, and provide direction as appropriate.

The board will continue to review research results from the RipStream project in regard to the adequacy of the FPA rules and BMPs in meeting water quality temperature standards.

Timeframe with Milestones

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|------------|--|
| June 2011 | Board review and discussion of updated water quality issue paper. Board review and discussion on their approach for addressing risk to human health. |
| Sept. 2011 | Board review and discussion of findings from the Riparian Function and Stream Temperature (RipStream) monitoring project. |
| As needed | Board review and discussion of outcomes from the NEDC forest roads lawsuit. |
| As needed | Board review, discussion, and approval of a revised MOU between the DEQ and ODF. |
| As needed | Board review, discussion, and policy input on the basin-specific TMDL process. |

INTERMEDIATE BOARD ISSUE 2

The Board will conduct an overall rule enforcement policy review, including a focus on landslides and public safety, forest pesticides, and special resource site authorities.

Background

The Board identified this priority issue and specified three specific focus areas:

1. Landslides and Public Safety
2. Forest Pesticides
3. Special Resource Sites

Topic 1. Landslides and Public Safety:

Background

At November 2008 meeting, the department presented draft permanent rule language for the intermediate risk category for landslide and public safety rules. The proposed rule is intended to maximize operational flexibility within the constraints of providing for public safety. The Department also changed 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 rules implement the provisions of ORS 527.710 (10) but do not result in new or increased standards for forests practices. Therefore, scientific-findings and economic-analysis under ORS 527.714 (5) and (7) are not required. However, given that analysis done in the process of developing the proposed rules indicates 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. The Board also directed the Department to meet with stakeholders, landowners and Regional Forest Practices Committees to ensure that the Department considers sufficient alternatives in developing the proposed rules.

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, has raised issues regarding the direction and scope of the rule revision process. The primary issues involve the scope of rule changes and the Department's interpretation that the proposed draft rules do not result in new or increased standards for forests practices. Issues raised about the process and rule changes suggest 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 has determined that there is a need to broaden the scope of the rule revision process.

Board Products

The board will review information on alternatives approaches for broadening the scope of the rule revision process and addressing issues with the landslide and public safety rules. The Board will provide direction to the Department on how to proceed with rule revision.

Timeframe with Milestones

Significant reductions in geotechnical specialists in the Private Forests program have slowed the analysis of alternatives. The department will continue to work on the development of alternatives approaches and present to the Board when available.

Topic 2. Forest Pesticides:

Background

The department's 2007 Issue Scan Workgroup listed pesticides as one of seven "standout issues", though it was given a ranking of medium to low importance. The Board has discussed a third-party literature review of pesticide impacts and the department's ongoing participation in broader, interagency discussions on pesticide use statewide as requested by the Governor's Office. Based on these discussions, the Board requested the following information:

- A summary of current Board and Department responsibilities and commitments, including existing policies most relevant to topic.
- A summary of ongoing and future initiatives around pesticides, and the Department's role in those initiatives relative to forestry.

At the April 2009 meeting, the Department provided summary of Board and Department roles and responsibilities in terms of policy and monitoring, proactive participation, and maintaining current scientific information on pesticides.

As in 2007, a substantial number of comments in the 2009 issue scan addressed the topic of pesticide use on forestlands. Many comments were highly localized to Lane County. The work group recommended the Board and Department develop responses to the pesticide issues that have been raised, and to support those agency responses. Additionally, further clarification of the relationship established by a 1995 Memorandum of Agreement between the Board of Forestry and Department of Agriculture on the interagency approach regarding pesticide regulation in the State, would be helpful.

The Board approved the following summary of Board conversations over the last 18 months, focusing on the aspects of topics for which the Board has direct responsibility.

1. The Board has responsibilities related to pesticide use.
2. It is important to be mindful of what responsibilities we do have and do not have.
3. To fulfill responsibilities we need knowledge and it must be reasonably complete and up-to-date.
4. Staying current is complicated by divided responsibilities between State and Federal agencies.
5. We are not as current as we need to be.
6. We are committed to becoming current – either by working in cooperation with other agencies, or, if need be, doing the work within the Department, with support from willing, capable experts.
7. Results, in terms of updated knowledge, both now and into the future, are necessary. There is flexibility in how we get there; getting results is non-negotiable.

The Board directed staff to advise the Board where to best connect with work plans to ensure follow-through.

Board Products

The board will review a staff report outlining a process during 2010 and 2011 to ensure the Board and Department are current in its understanding of forest pesticides issues, the roles and responsibilities for policy and monitoring, proactive participation, and maintaining current scientific information on pesticides. The process will be designed clarify the current state of scientific knowledge, state and federal responsibilities for addressing issues, and the ongoing efforts related to pesticides.

Research and Information Needed

Staff will outline a Board process and schedule involving presentations by relevant state and federal agencies to allow the Board to understand and meet its responsibilities regarding forest pesticides.

Timeframe with Milestones

April 2010 Board review, discussion, and decision on process designed clarify the current state of scientific knowledge, state and federal responsibilities for addressing issues, and the ongoing efforts related to pesticides.

Status The Board discussed a draft outline of the workshop and directed the State Forester to schedule and further refine the agenda with Board members Peter Hayes, Steve Wilson, and appropriate stakeholders. The Department refined the agenda for the workshop, and began work on a follow-up Board agenda topic.

March 2011 Board workshop with the goal to develop a better understanding of the Board of Forestry's authority, roles, responsibilities, and relationships regarding pesticide policy.

April 2011 Board agenda topic to provide an opportunity for the Board to hear presentations by non-agency experts on the effectiveness of current policies and strategies related to toxics, public testimony, and to have a discussion and decision on current policy.

Topic 3. Special Resource Sites:

Background

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 circumstance for private forests in Oregon and species protection efforts. Changes include the development of a Federal recovery plan for spotted owl, 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.

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

- 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?

During 2009, the Board approved two revised policy objectives (7 and 8 above) directly related to the work on special resource sites. The Department will use the policy objectives to review existing statutes and rules and their implementation.

Board Products

The board will review a staff report and issue paper analyzing the implementation of current policy in light of changing economic, social, and environmental conditions and changes in Private Forests program staffing. The Board will evaluate alternatives for meeting the policy objectives and possible statutory and/or rule changes needed to implement these alternatives.

Timeframe with Milestones

Sept. 2010 Board review and discussion of implementation of current policy in light of changing economic, social, and environmental conditions and changes and alternatives for meeting the policy objectives.

Nov. 2010 Continued Board review, discussion, and agreement on recommended alternative(s) for special resource sites policy implementation, statutory changes, and initial discussions on next steps.

Status No Board work has been completed on this topic. Private Forests staff reductions have limited the progress on policy work related to special resource sites. The department will work on the development of staff report and issue paper as resources allow, and present to the Board when available.