

## STAFF REPORT

Agenda Item No.:	7
Work Plan Title & #:	State Forests Work Plan 2
IBI # & Title:	IBI 10 Review and Revise OAR 629 Division 35 Rules
Presentation Title:	Background Report for Greatest Permanent Value and Forest Management Planning Administrative Rule Revision
Date of Presentation:	November 6, 2009
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### SUMMARY

The following briefly provides background for proceeding with a review of the administrative rules that guide state forest planning and management. The Board has wide policy discretion in this regard and staff proposes that any review focus on the likelihood that these rules, or proposed new rules, will create a desired mix of forests benefits, as well as an efficient and effective decision-making process.

### CONTEXT

At the June 3, 2009 meeting the Board of Forestry directed that the Department begin a review of Oregon Administrative Rules pertaining to the definition of "Greatest Permanent Value," the development of state forest management plans and any other portions of *OAR 629-035* deemed pertinent to this review and the development of potential changes.

Concepts for proposed changes are to be provided to the Board no later than the April, 2010 meeting. A process to gather stakeholder input and develop recommendations will be implemented under this time frame.

This staff report provides background on the legal framework of the state forest administrative rule.

### BACKGROUND AND ANALYSIS

State law regarding the management of state forests is found in *ORS Chapter 530*. Administrative rules previously adopted by the Board to further guide this function are found in *OAR Section 629, Division 35*.

#### *ORS Chapter 530*

Over time the State Department of Justice has issued a number of legal opinions and advice to help the Board interpret their legal responsibilities for managing these lands.

The most recent opinion was prepared in October, 2006 and discussed “The existence and nature of fiduciary relationship between Forestry and the counties with respect to conveyed forest lands.”

At the root of each of these opinions were questions by the Board around how to balance the use of these lands to produce revenues for the counties with a desire to, at the same time, produce other forest values.

In reviewing these documents it is safe to say that producing revenue is a requirement and that producing other values is permitted. There appears to be no simple answer regarding the question as to what extent Board policy can reduce revenues in order to increase the production of other values. Generally, the Board has broad discretion around this question, with a caution that the more Board policy serves to reduce revenues, the more likely it is that county beneficiaries could successfully challenge such a decision.

*OAR Section 629, Division 35*

Without repeating the current administrative rule verbatim, salient portions include:

- A policy goal to provide healthy, productive, and sustainable forest ecosystems that produce a full range of benefits;
- A “management focus” on active management to provide timber harvest that must be pursued within a broader context that:
  - o Results in a high probability of maintaining and restoring properly functioning aquatic habitats for salmonids;
  - o Protects, maintains and enhances wildlife habitat;
  - o Protects soil, air and water; and
  - o Provides outdoor recreation;
- Specific requirements around the content and approval of forest management plans;
- A requirement that the Board approve maps designating all lands as either “silviculturally capable” as defined in the Oregon Forest Practices Act, or “non-silviculturally capable;” and
- Detailed standards for the Department to use in allocating lands into one of three classifications (General Stewardship, Focused Stewardship or Special Stewardship) and for further allocating lands among a list of sub-classifications intended to set boundaries around management approach and emphasis.

Within the rule’s various lists of benefits and uses, timber production is typically mentioned first. Still, there is no explicit statement that would infer a hierarchy that makes timber the most important use. In fact, the word “must” was underlined in this staff report in order to highlight a list of outcomes that would appear to also be required by the current greatest permanent value rule.

Neither timber management nor the other outcomes are expressed in terms that allow a straight-forward quantification of success in meeting the Board’s expectations for achieving “greatest permanent value.”

The current rules were adopted in 1998 and explicitly call for Board review of the “management focus” at least every ten years.

In looking at how current rules may or may not be revised, clearly the management of state forests must adhere to state and federal laws such as the federal Endangered Species Act or the state Forest Practices Act. Management must also produce revenue for the counties. Past legal advice would also suggest that the Board is obligated to use rule-making authority to further refine the broad mandates set out in state law.

Beyond that, any guidance the Board wishes to establish in administrative rule involves policy choices to set the mix and relative importance of other forest benefits, as well as the extent to which administrative rule will be used to prescribe specific decision processes.

### **RECOMMENDATION**

Staff recommends that:

- 1) Review of current administrative rule proceed as directed in June;
- 2) This review should include consultation with the Forest Trust Land Advisory Committee;
- 3) This review should also include a process to solicit input from the general public through the use of a public advisory committee (PAC);
- 4) The review should focus on the extent to which those providing input feel current rule is likely to lead to the most desired set of forest benefits; and
- 5) The review should also evaluate whether processes prescribed by the current rule lead to a suitably effective and efficient system of decision-making.

### **NEXT STEPS**

Assuming adoption of this recommendation staff will proceed with the rule review. As information from input processes becomes available it will be shared with the Board. Based on public, staff and Board member input, proposed concepts for any rule revision will be presented no later than the April Board meeting.

### **ATTACHMENT**

none