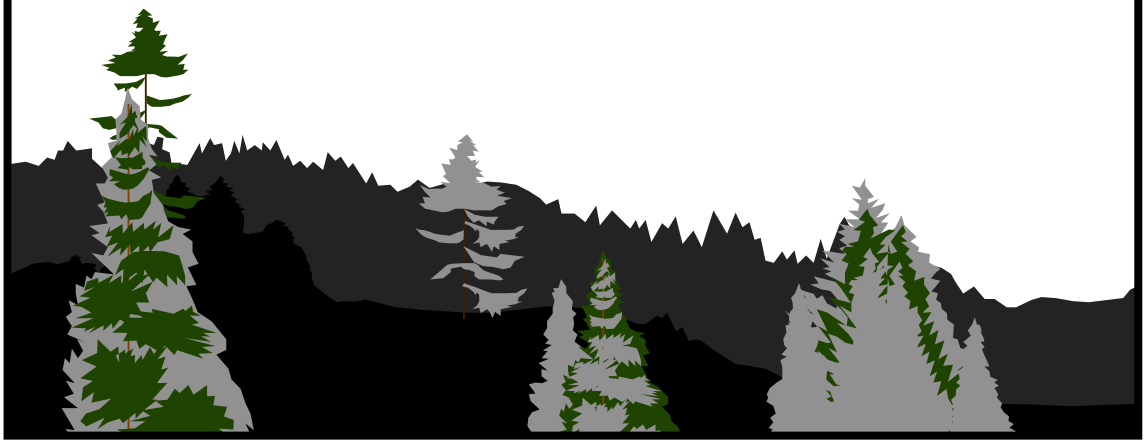
Appendix D
Legal and Policy Mandates



This appendix describes legal and policy mandates that affect state land management.

Common School Forest Lands

History

The majority of the Elliott State Forest consists of Common School Forest Lands (CSFLs). The history of CSFLs can be traced to the Land Ordinance of 1785, the creation of the Territory of Oregon in 1848, and the Admission Act of 1859. The federal government's policy was to grant sections 16 and 36 of every township to the new state for the use of schools. Oregon's grant included 3.5 million acres of grazing and forest lands. Eventually, all but 130,000 acres of forest land was either sold for the benefit of schools or lost through fraudulent land deals.

Governor Oswald West and State Forester Francis Elliott conceived the idea of creating Oregon's first state forest by consolidating 70,000 acres of remaining grant lands that were located within national forests. The process of finding an equivalent tract of federal land lasted from 1912 until 1927. The federal government included 6,800 acres of public and revested Oregon and California Railroad lands to balance the exchange, and the final deeds for the exchange were acquired in 1930.

In the 1960s, another 7,700 acres of land owed to the state through school indemnity claims, otherwise known as "lieu lands," were added to the Elliott State Forest. The federal government offered lieu lands to compensate for grant lands with conflicting claims, such as those which were already settled or occupied by townsites. Lieu lands also compensated for grant lands inside federal ownerships with no likelihood of being surveyed.

Between 1970 and 1990, a series of land exchanges enlarged the forest by 7,000 acres. This addition brought the total CSFLs in the Elliott State Forest and scattered tracts up to the present 87,934 acres.

Federal law stipulated that the grant lands be managed for the use of schools and not for other public needs. Permanent investment trusts were established to protect the financial principal derived when grant lands were disposed. Lands that were retained were to be managed by the states in accordance with the beneficiary trust interest. These obligations are spelled out in the Oregon Constitution and the Admission Act of 1859.

Legal Mandates

The Oregon Constitution

The Oregon Constitution (Article VIII, Section 5) authorizes the State Land Board to manage CSLFs. The State Land Board is directed to "manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management." This responsibility has been clarified through the 1992 opinion of state Attorney General Charles S. Crookham (discussed below).

The Oregon Constitution provides for revenues derived from CSFLs and other specified sources to be deposited into the Common School Fund (CSF). It also authorizes the State Land Board to withdraw money from the CSF to carry out its powers and duties to manage the lands. The State Land Board has implemented its authority through a contract with the Oregon Department of Forestry (ODF) to manage CSFLs.

1992 Attorney General's Opinion

A description of the Oregon Constitution's mandates for managing CSFLs is found in a July 24, 1992 opinion of Oregon Attorney General Charles S. Crookham. (46 Op. Atty. Gen. 468 (1992), Opinion No. 8223, July 24, 1992) (Crookham 1992). This opinion addresses the lawful uses of Admission Act lands and the effect of federal or state regulations on such uses. The issue at hand was the State Land Board's compliance with the federal and state Endangered Species Acts (ESAs).

Admission Act lands are those lands offered by the federal government to the State of Oregon for the use of schools upon Oregon's admission to the United States in 1859. The Attorney General's opinion discussed the restrictions that Congress intended to impose on Oregon's use of these lands.

According to Crookham, a binding obligation was imposed on Oregon when it accepted the Admission Act lands "for the use of the schools." The Oregon Constitution dedicates the proceeds of Admission Act lands to the CSF and gives the State Land Board responsibility to manage these lands in trust for the benefit of the schools. The State Land Board has a further constitutional obligation to manage lands under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management." Crookham noted that the "greatest benefit for the people" standard requires the State Land Board to use the lands for schools and the production of income for the CSF.

In Crookham's opinion, the resources of Admission Act lands are not limited to those, such as timber, that are currently recognized as revenue generators for the CSF, but include all of the features of the land that may be of use to schools. Other resources, such as minerals, water, and plant materials that may offer revenue for the fund should be considered.

The State Land Board may incur present expenses or take management actions that reduce present income if these actions are intended to maximize income over the long term. Lands may be temporarily set aside for the purpose of "banking" an asset while its economic value appreciates if the State Land Board has a rational, non-speculative basis for concluding that such action will maximize economic return to the CSF over the long term.

Neither the Oregon Admission Act, nor the Oregon Constitution exempts the State Land Board from complying with the federal and state ESAs, in the opinion of the Attorney General.

Crookham felt it is unlikely that the courts would exempt the State Land Board from complying with the federal ESA. Even if the grant of Admission Act lands were viewed

as a contract or trust arrangement between the state and the federal government, Congress retains the authority to alter the terms of the arrangement by virtue of its sovereign power to legislate.

Because the state ESA does not explicitly require or prohibit any particular action with respect to the management of Admission Act lands, Crookham felt that the state ESA does not restrict the State Land Board's exercise of its constitutional powers over the disposition and management of Admission Act lands. The State Land Board must comply with the state ESA unless it unduly burdens the State Land Board's constitutional responsibility to manage the Admission Act lands. Only if the state ESA fundamentally impaired the State Land Board's ability to maximize revenue over the long term from the Admission Act lands would there be an undue burden on the State Land Board's management and powers.

Finally, the Attorney General said it is not possible to predict whether the application of the federal ESA to Admission Act lands could result in a claim against the federal government for a taking of property. However, the state ESA definitely could not result in a taking because the State Land Board would not be required to comply with a law that prevented it from its constitutional responsibility to maximize revenue from Admission Act lands over the long term.

Oregon Revised Statutes

Statutes concerning CSFLs are found in Oregon Revised Statutes (ORS) 530.450 through 530.520. ORS 530.450 gives the name "Elliott State Forest" to any lands in the national forests on February 25, 1913 that were patented to the State of Oregon for the purpose of establishing a state forest. Besides the Elliott State Forest, other lands under the jurisdiction of the Department of State Lands (DSL) are suitable for use as state forest lands. These include some lands in the western Oregon state forests plan area. ORS 530.460 and 530.470 describe the process by which the DSL and the State Board of Forestry (BOF) may "designate" these lands for the primary purpose of "growing timber and other forest products." Lands so designated are named "Common School Forest Lands." Through a similar process, these lands may be reverted to their original status.

Under ORS 530.490, the State Forester is directed to manage CSFLs so as to "secure the greatest permanent value of the lands to the whole people of the State of Oregon." Although the statutes again refer to timber production as the dedicated use of the land, much of the statutory language has been found to be inconsistent with constitutional mandates. Oregon's Attorney General has stated that the various other natural resources must also be considered as long-term sources of revenue.

The statutes call for "long-range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability in each management region" (ORS 526.255).

Funding

Receipts from the CSFLs enter the CSF. The ODF is reimbursed on a quarterly basis for management expenses incurred on these lands. The ODF's biennial budget request is subject to the approval of the State Land Board and the Governor. Final authorization of the budget is determined by vote of the state legislature. The budgets of the CSFLs and Board of Forestry Lands (BOFLs) are considered as a whole, and are categorized as "other funds" that are separate from the state's general fund. They are accounted for separately within the ODF.

Board of Forestry Lands

History

The BOFLs were acquired by the BOF in two ways: 1) through direct purchase; and 2) through transfer of ownership from counties in exchange for a portion of the future revenue produced by these lands.

Under the BOF's supervision, the DOF manages BOFLs to provide healthy, productive, and sustainable forest ecosystems that over time and across the landscape, provide a full range of social, economic, and environmental benefits to the people of Oregon.

Legal Mandates

Forest Management Planning

The Oregon Revised Statutes refer to forest management planning in ORS 526.255, which calls for "long-range management plans based on current resource descriptions and technical assumptions, including sustained yield calculations for the purpose of maintaining economic stability in each management region." Oregon Administrative Rule (OAR) 629-035-0030 provides more specific direction on what information these forest management plans must contain and the mechanisms for BOF approval.

Other Key Statutes and Rules

ORS 530.010 through 530.170 guide the acquisition, management, and development of state forests that are under the jurisdiction of the BOF. The statutes are discussed below and on the next page.

1. ORS 530.010 authorizes the BOF, in the name of the State of Oregon, to acquire lands that are chiefly valuable for forest crop production, watershed protection and development, erosion control, grazing, recreation, or forest administrative purposes. The lands may be acquired by purchase, donation, devise, or exchange from any public, quasi-public, or private landowner. All land acquisitions are subject to the prior approval of the county commissioners of the county in which the lands are located. The lands so acquired are designated as "state forests."

2. ORS 530.030 deals with the conveyance of county forestlands to the state. This statute recognizes that BOFLs are managed to produce income for the counties. Most of these lands were originally acquired by the counties through foreclosure of tax liens. Under county ownership, the lands provided revenue to the counties. The statute maintains this revenue source by allowing ownership to be conveyed to the state "in consideration of the payment to such county of the percentage of revenue

derived from such lands." The percentage distribution of revenue between counties and the state is addressed in ORS 530.110.

3. ORS 530.050 directs that BOFLs shall be managed so as "to secure the greatest permanent value of such lands to the state." To this end, the State Forester, under the authority and direction of the BOF, is given the latitude to:

    - Sell forest products
    - Reforest and protect the lands from fire
    - Execute mining leases and contracts
    - Sell rock, sand, gravel, pumice, etc.
    - Produce minor forest products
    - Grant easements, and charge fees for road use
    - Permit the lands to be used for other purposes (e.g., fish and wildlife environment, landscape effect, flood and erosion protection, recreation, domestic livestock, and water supplies), provided such uses are "not detrimental to the best interest of the state" in the opinion of the BOF
    - Do all things and make all rules necessary for the "management, protection, utilization, and conservation of the lands"

OAR 629-035-0000 through 629-035-0110 provide direction for state forest management policy and planning, and further define how the lands are to be managed to achieve "greatest permanent value" to the citizens of Oregon.

The rules provide the following direction:

- As provided in the statutes, "greatest permanent value" means healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon.
- To secure the greatest permanent value, the lands are to be maintained as forestlands and actively managed in a sound environmental manner to provide sustainable timber harvest and revenues to the state, counties, and local taxing districts. This management focus is not exclusive of other forest resources, but must be pursued within a broader management context.
- Forest management plans are to be developed and implemented that will secure the greatest permanent value.

Analysis of Legal Mandates

The BOF's legal mandates for managing BOFLs include the dual obligations of sharing income with the counties (ORS 530.030) and conserving, protecting, and using a variety of natural resources (ORS 530.050). The administrative rules governing state forest

management policy and planning provide direction on how to balance these dual obligations. The rules' primary findings and directions are summarized below.

- These lands must be managed to achieve the greatest permanent value to the state.
- The counties in which these forestlands are located have a protected and recognizable interest in receiving revenues from these forestlands; however, the BOF and the State Forester are not required to manage these forestlands to maximize revenues, exclude all non-revenue producing uses on these forestlands, or to produce revenue from every acre of these forestlands.
- Based on existing BOF principles and policies, and current scientific and silvicultural information, the uses set forth in the rules are compatible over time and across the landscape, when the lands are actively managed in an environmentally and silviculturally exemplary manner.
- Based on existing BOF principles and policies, and current scientific and silvicultural information, forestlands that are actively managed as provided for in the rules can produce economic value over the long term and promote healthy, sustainable forest ecosystems.
- Actively managing forestlands for the purposes described in the rules is in the best interest of the state.

Funding

Out of the revenues derived from BOFLs, 36.25 percent is used by the DOF to pay for the management and protection of the land. ORS 530.110 and 530.115 provide that counties receive 63.75 percent of the revenues (15 percent of the total revenues to the State Forests Protection Subaccount; 75 percent of the remaining revenues distributed to the counties—i.e., 75 percent of 85 percent, which is 63.75 percent).

The ODF's budget request is subject to the approval of the BOF and the Governor. Final approval of the budget is determined by vote of the state legislature. The budget for all state forest lands is categorized as "other funds" that are separate from the state's general fund. The budgets and expenditures for the BOFLs and CSLFs are accounted for separately within the DOF.

Other Legal Mandates

Federal Endangered Species Act

The federal ESA was enacted in 1973 to preserve species that are at risk of becoming extinct. The ESA has been modified several times since 1973. Administration of the ESA falls under the authority of the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) (jointly referred to as "the Services").

The ESA protects species that have been designated as "threatened" or "endangered" through a listing process. The ESA defines an "endangered" species as one which is in danger of extinction throughout all or a portion of its range. A "threatened" species is likely to become an endangered species within the foreseeable future.

Species may be proposed for listing as threatened or endangered, or may be termed "candidate species," for which the USFWS and NOAA Fisheries have sufficient information on hand to support proposals to list as threatened or endangered. Some species are "federal species of concern," an informal term that refers to species the Services believe might be in need of concentrated conservation actions. These species receive no legal protection, and will not necessarily be proposed for listing as threatened or endangered.

As explained below, various provisions of the ESA may distinguish between federal and non-federal lands, plant and animal species, and species listed as threatened or endangered.

The ESA directs federal agencies to carry out programs for the conservation of threatened and endangered species. Federal agencies are prohibited from jeopardizing the existence of any threatened and endangered species, and from destroying or adversely modifying "critical habitat." Neither of these provisions distinguishes between plant and animal species.

The designation of critical habitat occurs at the time a species is listed. Only federal lands are directly subject to the restrictions pertaining to critical habitat. However, critical habitat designations on non-federal lands could have indirect effects on management of those lands, if an Incidental Take Permit (ITP) is requested.

Critical habitat is defined in section 3(5)(A) of the federal ESA as "(i) the specific areas within the geographical area occupied by the species, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management or protection ..." Note that the actual presence of a listed species is not required for critical habitat designation, only presence of features that the species would use if it were present. Critical habitat designations are not necessarily limited to federal lands.

"Critical habitat receives consideration under Section 7 of the ESA with regard to actions carried out, authorized, or funded by a federal agency. Federal agencies must ensure that

their actions do not result in destruction or adverse modification of critical habitat." (Federal Register, Vol. 59, No. 18, page 3816). Issuance of an ITP is a federal action. As such, USFWS is required to do a Section 7 consultation (within agency) prior to issuing the permit. This combination of legal requirements would likely lead to USFWS being unable to grant an ITP that would involve timber harvest on lands designated as critical habitat.

The ESA prohibition against "take" applies equally to non-federal and federal lands, and specifically to fish and wildlife species. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The USFWS has further defined "harm" as an act which actually kills or injures wildlife. Such acts may include significant habitat modifications or degradation when it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering (50 CFR & 17.3).

A significant revision of the ESA occurred in 1982, when provisions allowing for "incidental take" were added. Such taking must be incidental to, and not the main purpose of, the carrying out of an otherwise lawful activity. To obtain an ITP, an applicant must submit a conservation plan, sometimes known as a Habitat Conservation Plan (HCP). An ITP may be granted if the following conditions are satisfied: 1) the taking will be incidental; 2) the applicant will minimize and mitigate the impacts of taking; 3) there will be adequate funding to implement the HCP; and 4) the likelihood of the survival and recovery of the species will not be reduced.

The ESA does not merely protect surviving populations; it directs the Secretaries of Commerce and the Interior to develop a recovery plan for each threatened and endangered species. The objective is to enable each species to recover to the point that protection under the ESA is no longer necessary and the species can be taken off the list.

State Endangered Species Act

The state ESA was passed in 1987 and included both plant and animals. Revisions that outline listed species protection requirements were added by 1995 legislation. The bald eagle, northern spotted owl, and marbled murrelet were listed as threatened species under the ESA in the following years: the bald eagle in 1987, the spotted owl in 1988, and murrelet in 1995. The American peregrine falcon was listed as an endangered species in 1987.

For threatened or endangered species listed after 1995, the Fish and Wildlife Commission must establish quantifiable and measurable guidelines considered necessary to ensure the survival of individual members of the species. These survival guidelines may include take avoidance and measures to protect resource sites, such as nest sites, spawning grounds, etc. Because the bald eagle, northern spotted owl, marbled murrelet, and peregrine falcon were all listed in or prior to 1995, state survival guidelines were not developed for these species. In the absence of survival guidelines, ODF will rely on measures in the HCP to comply with the federal ESA and as the means of protecting state listed species.

Oregon Forest Practices Act

Activities on lands managed by the ODF are subject to the Forest Practices Act (FPA), which is found in Chapter 527 of the Oregon Revised Statutes, and the Oregon Administrative Rules pursuant to these statutes.

The FPA declares it public policy to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species consistent with sound management of soil, air, water, fish, and wildlife resources, as well as scenic resources within visually sensitive corridors. The BOF is granted the exclusive authority to develop and enforce rules protecting forest resources and to coordinate with other agencies concerned with the forest environment.

The FPA has developed in an evolutionary manner since the original act was passed in 1971. The 1971 law established minimum standards for reforestation, road construction and maintenance, timber harvesting, application of chemicals, and disposal of slash. Subsequently, administrative rules were written to define the "waters of the state" and to protect streams and riparian areas. Rules were adopted to prevent soil damage resulting from logging and to prevent mass soil movement.

The FPA was strengthened in 1987 with the passage of House Bill 3396. The concept of sensitive resource sites was introduced, along with the requirement that written plans be approved prior to operating near those sites. Provisions were added that allow interested citizens to review and comment on notifications of operations and written plans.

The 1991 legislature added new standards for reforestation, wildlife habitat, and scenic considerations. The new requirements included timeframes and trees per acre standards for reforestation, limits on the size and proximity of clearcuts, visual standards for logging in visually sensitive highway corridors, and specifications for wildlife trees and downed woody debris retained after logging. The BOF was directed to reclassify and develop appropriate protection levels for the waters of the state. In 1994, revised waters of the state rules were adopted by the BOF and assigned to Division 57 of the Oregon Administrative Rules.

In 1996, the BOF adopted administrative rules governing chemical rule applications. In 2002, the BOF adopted changes to administrative rules governing forest roads and harvesting that implemented many of the road recommendations from the Forest Practices Advisory Committee convened by the BOF. Also in 2002, the BOF adopted new rules developed from Senate Bills 1211(1997) and 12 (1999), covering shallow, rapidly moving landslides and assigned them to Division 623 of the Oregon Administrative Rules.

In 2003, the legislature removed authority for the BOF to adopt or enforce a rule under ORS 527.610 to 527.770 that requires the BOF or the State Forester to approve written plans as a required precedent to conducting a forest practice or operation. The legislature required that rules pursuant to these changes be adopted by July 1, 2005.

Oregon Land Use Laws

Since 1973, with the passing of The Oregon Land Use Act, Oregon's land use has been guided by local comprehensive planning under a number of Statewide Planning Goals (ORS 195, 196 and 197; OAR Chapter 660). State forest land management complies with this law by following the ODF's current State Agency Coordination Program, described in OAR Chapter 629, Division 20.

To date, 19 Statewide Planning Goals have been adopted by the Land Conservation and Development Commission (LCDC). These include goals on citizen involvement, the planning process, farm lands, forest lands, natural resources, development, and coastal resources (Oregon Department of Land Conservation and Development 2005). These goals are quite detailed and have the force of law. As part of the 1973 law, the Department of Land Conservation and Development was established to implement the policies and goals of the LCDC. In 1979, the legislature created the Land Use Board of Appeals to rule on matters involving land use.

State law requires each city, county, and special district to have a comprehensive plan, as well as the zoning and ordinances needed to put the plan into effect (ORS 197.175). Locally adopted land use plans are reviewed by LCDC to ensure that they are consistent with the statewide goals. After LCDC has officially approved a local government's plan, the plan is said to be "acknowledged." An acknowledged local comprehensive plan is the controlling document for land use in the area covered by the plan. Thus, management of state lands must be compatible with local comprehensive plans and land use regulations (ORS 197.180).

In 1978, LCDC approved the ODF's State Agency Coordinating Agreement. This agreement, required of all state agencies, describes the ODF's rules and programs that affect land use, and spells out how the agency will coordinate its functions with local governments, other state and federal agencies.

In 1987, the Oregon Legislature passed House Bill 3396, which resolved issues between the FPA and the land use programs. Specifically, the statewide planning goals do not apply to programs, rules, procedures, decisions, determinations, or activities carried out under the FPA (ORS 197.180 and 197.277). The FPA prohibits local governments from regulating, prohibiting, or limiting forest practices in any way on forestlands outside an urban growth boundary unless an acknowledged exception has been taken to a forestland goal (ORS 527.722). In 1991 LCDC certified that the ODF's new State Agency Coordination Program (OAR 629-20) was compatible with the statewide planning goals.

Key Terms

Acknowledgment—Approval by the LCDC of a city or county's comprehensive plan; acknowledgment of compliance with the Statewide Planning Goals.

Certification—Approval by LCDC of a state agency program found to be consistent with the Statewide Planning Goals.

Department of Land Conservation and Development—State agency that administers Oregon's statewide planning program and provides professional support to the LCDC.

Land Conservation and Development Commission—A seven-person commission that sets the standards for Oregon's statewide planning program. Members are volunteers appointed by the Governor and confirmed by the State Senate.

Land Use Board of Appeals—Established in 1979 essentially as a state court that rules on matters involving land use. Appeals from the Land Use Board of Appeals go to the State Court of Appeals and finally to the Supreme Court.

State Agency Coordination Program—Required under law for each state agency to establish procedures to assure compliance with statewide land use goals and acknowledged city and county comprehensive plans and land use regulations.

Statewide Planning Goals—Statewide planning goals are adopted by the LCDC to set standards for local land use planning. They have the force of law.

Goal 4 of the statewide planning goals, "Forest Lands," is "to conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources, and to provide for recreational opportunities and agriculture" (Oregon Department of Land Conservation and Development 2005).

Goal 4 allows the following land uses on forest land: "(1) uses related to and in support of forest operations; (2) uses to conserve soil, water and air quality, and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment; (3) locationally dependent uses; (4) dwellings authorized by law." In addition, "Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in ORS 527.722" [the Forest Practices Act] (Oregon Department of Land Conservation and Development 2005).

Two other statewide planning goals are of particular interest. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) is "to conserve open space and protect natural and scenic resources." Goal 6 (Air, Water and Land Resources Quality) is "to maintain and improve the quality of the air, water and land resources of the state."

The ODF has established procedures under OAR 629-20, its State Agency Coordination Program, to assure that land use programs comply with statewide land use planning goals, and are compatible with acknowledged city and county comprehensive plans and land use

regulations. In the case of a state FMP, the District Forester will notify local governments when an FMP is being developed, and will request their review and comment on the compatibility of the draft FMP with the local governments' comprehensive plans. If a conflict is found between the ODF's statutory obligations and land use compatibility, OAR 629-20-050 describes the dispute resolution process to be followed. OAR-629-20 also describes procedures to be followed if land use classifications are updated; land is acquired, sold or exchanged; non-forest uses must be approved; or when block plans, Annual Operations Plans, and transportation plans are developed. OAR 629-20-000 states that "it is not the intent of these rules to prevent either the BOF or the Department of Forestry from carrying out their statutory responsibilities."

Mandates for Specific Resources

Legal and policy mandates apply specifically to forest resources. These resources are listed below in alphabetical order, with relevant information under each heading.

Agriculture and Grazing

Agricultural activities are permitted under ORS 530.050(4) and ORS 530.490(2). These laws authorize the State Forester to grant easements on BOFLs and CSFLs. BOF Policy No. 3-1-4-002 allows non-exclusive permits to be granted for special uses. Agriculture is considered a special use, and is allowed when it does not interfere with forest management activities. Any revenue from agriculture permits is shared with the county where the activity takes place.

Grazing on BOFLs is permitted by ORS 530.010, 530.030, and 530.050. These statutes allow the State Forester to permit domestic livestock grazing in order to secure the greatest permanent value to the state, as long as this use is not detrimental to the best interest of the state. There are no administrative rules to regulate livestock grazing on BOFLs. The ODF manages any grazing that occurs on BOFLs, and shares any income from grazing leases with the county where the land is located.

The ODF manages CSFLs under a contract with the State Land Board. The contract describes the roles of the ODF and the DSL for these lands. Under this contract, grazing and mineral leases on CSFLs are managed by the DSL.

Air Quality

The federal Clean Air Act, as amended in 1977 and 1990 (42 U.S.C. 7401, et seq.), is the main law regulating air quality. The goal of the law is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Under the law, the U.S. Environmental Protection Agency (EPA) sets air quality standards known as the National Ambient Air Quality Standards (NAAQS).

The authority to implement the law is delegated to the states. In Oregon, the Department of Environmental Quality (DEQ) develops and carries out programs to meet the NAAQS , through the State Implementation Plan. Sub-plans have been developed by other state agencies to address specific air quality concerns. Two air quality plans affect forest management directly: the Oregon Smoke Management Plan and the Oregon Visibility Protection Plan.

The Oregon Smoke Management Plan—ODF districts issue site-specific and time-specific burning permits under conditions adjusted daily to the weather. The conditions are designed to avoid smoke contamination of certain population centers (designated areas) and popular recreation areas (smoke-sensitive areas). These burning instructions specify geographic locations and fuel to be consumed. Permits may also specify fire protection and mop-up criteria. During burning, smoke behavior is monitored from the

ground and at times from the air, and results are compiled on an annual basis by ODF smoke management staff. The Smoke Management Plan has established special protection zones for some cities.

The Oregon Visibility Protection Plan—Prescribed burning strategies to protect visibility are implemented under the Oregon Visibility Protection Plan. Visibility is a consideration for wilderness areas, such as the Mount Hood, Mount Jefferson, Mount Washington, and Three Sisters wilderness areas. Due to fire season restrictions and ODF policy, no prescribed burning takes place from May/June until approximately November when the rainy season begins.

Cultural Resources

Several federal and state laws, and one statewide land use planning goal regulate cultural resource management on state forestlands. Goal 5, Open Spaces, Scenic and Historic Areas, Natural Resources, and Cultural Resources, requires counties and local governments to inventory cultural resources, and manage them to preserve their original character if there are no conflicting uses or consequences. Administrative rules that apply to cultural resources on state forestlands are OAR 690-51-240 (1991) and OAR 736-51-070. Archaeological sites are defined as sites over 75 years old. Some sites over 50 years old qualify for limited protection. Oregon statutes do not mandate archaeological surveys, or mitigation of impacts by state agencies as part of conducting land management activities. However, artifacts and sites found on public lands must be protected from harm, alteration, or removal. If a sacred object is found, the State Historic Preservation Office and appropriate group or tribe must be notified. Anywhere in Oregon, state law protects Native American cairns and graves.

Information relating to the location of archaeological sites and objects is usually not released to the public unless the public interest requires the disclosure, or if the governing body of a Native American tribe requests the information.

The State Historic Preservation Office, which is part of the Oregon Parks and Recreation Department, administers the Statewide Plan for Historic Preservation and submits Oregon's nominations for the National Register of Historic Places.

Energy and Mineral Resources

Several state laws regulate energy and mineral resources on state forests, including ORS 273.551, 273.780, and 273.785. The DSL has jurisdiction for the leasing of oil, gas, and minerals on state-owned lands. Before a lease is issued, the law directs DSL to consult with the State Department of Geology and Mineral Industries and to obtain concurrence from the state agency responsible for the surface rights of the land involved. Leases are auctioned when more than 40 acres are involved. On less than 40 acres, leases are handled through negotiations. The DSL also administers a prospecting permit system that could eventually lead to applications for leases.

The ODF does have the right to use gravel, sand, stone, and soil from state forestlands to repair or construct roads or other state facilities without approval by the DSL.

Fish and Wildlife

The primary laws specific to fish and wildlife are the state and federal ESAs (discussed in an earlier section of this appendix).

Land Base and Access

Land Base

The following laws and rules provide direction for the acquisition, exchange, and management of state forestlands.

ORS 530.450 through ORS 530.520 Acquisition, Management and Development of the Elliott State Forest Common School Forest Lands. These statutes give the DSL and the BOF authority and means to designate, set aside and exchange CSFLs for the Elliott State Forest.

ORS 530.010 through ORS 530.040 Acquisition, Management and Development of State Forests. These statutes give the BOF authority and means through the ODF to acquire forest land by "purchase, donation, devise or exchange." Any acquisition of forest land must be approved by the board of county commissioners in the county where the lands are located.

OAR 629-033-0000 through OAR 629-033-0055 and OAR 629-035-0070 Forest Land Exchanges and Acquisitions. These administrative rules describe the procedures and public review required when lands are added to or removed from the state forest land base.

Access

The following laws and policies provide direction for access to roads on state forestlands.

Forest Practices Administrative Rules, Chapter 629, Division 24—State forest land is subject to all the Oregon Forest Practices Administrative Rules. Rules 629-24-520 through 629-24-524 specifically address road location, road design, road construction, and road maintenance. These rules recognize the necessity of roads for forest management and protection, and set minimum construction and maintenance standards intended to protect water quality, forest productivity, and fish and wildlife habitat.

Motorized Recreation Administrative Rules, Chapter 629, Division 26, 629-26-005 through 629-26-025—These rules govern the use of recreational off-road vehicles on state forestlands and give the State Forester the authority to designate off-road riding areas, to close riding areas, and to permit organized recreation events.

Oregon Vehicle Code, Off-Road Vehicles, ORS 821.010 through 821.320—These statutes govern the use of recreational off-road vehicles on all lands in Oregon, including state forestlands. They set standards for registration, equipment, and operation, and also set penalties for violations, including penalties for off-road vehicle-caused damage to trees, vegetation, or soil.

Oregon Department of Forestry, Forest Road Manual for State Forests, Forest Roads Policy—The Forest Roads Policy states that roads will be developed and maintained to provide access for the sale of timber and other forest products, for timber management activities, for protection from fire, and for public access. It further states that forest roads will be designed, constructed, and maintained to meet or exceed rules of the FPA. The road manual sets road standards, gives design guidelines, sets an excavation and appraisal policy, and provides a wide variety of specifications and costs (Oregon Department of Forestry 2000).

Plants

Federal Endangered Species Act

The federal ESA was enacted to preserve plant and animal species that are at risk of becoming extinct. The federal ESA is administered for plants by the USFWS. For endangered plants, the federal ESA prohibits the removal, damage, or destruction of plants on federal lands; and certain other activities on non-federal lands. Prohibited activities on non-federal lands include removing, cutting, digging up, damaging, or destroying any endangered plant species in known violation of any law or regulation of any state, or in the course of any violation of a state criminal trespass law. The activities prohibited for endangered plants are not automatically prohibited for threatened plants. However, according to the federal ESA, such prohibitions may be established for threatened plants through regulation, if they are found to be "necessary and advisable for the conservation of such species."

State Endangered Species Act

The Oregon laws covering threatened and endangered plants are found in ORS 564.010 through 564.994. Further legal requirements are given in the Oregon Administrative Rules (OAR Chapter 603, Division 73).

The state ESA was first passed in 1987. Oregon's threatened and endangered plant species are managed under the authority of the Director of Agriculture, with administrative responsibilities delegated to the Oregon Department of Agriculture (ODA). Protection and conservation programs are established through administrative rules. State agencies such as the ODF, are directed to cooperate in furthering conservation programs for threatened or endangered species.

In determining if listed species occur, or are likely to occur on lands where management activity is planned, the ODF consults with the Natural Heritage Program of Oregon as well as the ODA. If the determination should be positive, a process that is detailed in the administrative rules must be followed to conserve the species.

The term "action" has been defined by administrative rule to include activities that disturb the ground or vegetation or suppress plant growth. A sale or exchange of state-owned land, such that a listed species would be removed from state jurisdiction, would also be considered an action.

Recreation

Recreational Use of State Forest Land, Chapter 629, Division 25, establishes standards for recreational use of state forestlands by the public. The rules regulate off-road vehicle use, camping, firearm use, disposal of garbage and human waste, and other activities associated with recreational activity.

Scenic Resources

Generally, most state forest land adjacent to visually sensitive highway corridors is considered to be of high scenic quality. Along major highways, the immediate visual foreground is protected either by Department of Transportation-owned scenic buffers or by scenic statutes and FPA rules. For areas farther back from highways but still visible from the road, which are considered mid-ground and background scenic areas, some acres are designated as scenic, allowing management activities for these areas to be adjusted for visual considerations.

The highways in the vicinity of the Elliott State Forest are designated as scenic for the purpose of visual corridor management. The visually sensitive corridor is defined as the area within 150 feet of the outermost right-of-way boundary along both sides of the highway. Special rules apply to timber harvest in this corridor.

State Scenic Waterways Program

There are no state scenic waterways in the Elliott State Forest. The program is designed to protect and enhance the special attributes and natural values of designated scenic waterways. These values include recreation, fish, wildlife, water quality, geology, historical and botanical resources, aesthetics, and the freeflowing character of the rivers. Dams, reservoirs, impoundments, and placer mining are prohibited. The Oregon Department of Parks and Recreation has general administrative rules for scenic waterways, and has developed specific administrative rules for some individual scenic waterways. Administrative rules for the Nestucca Scenic Waterway were published in July 1994 (OAR 736-40).

A review and approval process for land uses may noticeably alter or modify property within the scenic waterway corridor. Land uses that require review and approval include timber harvest and road construction, among others. The Department of Parks and Recreation must be notified one year in advance of activities requiring review and approval. Approval is based on criteria established in the administrative rules.

Soils

The ODF manages state forestlands in accordance with the FPA rules, Division 24, for soil protection. These rules define best management practices for protecting soil and forest productivity when conducting timber harvest, prescribed burning, or road construction activities. The ODF uses the professional expertise of foresters, geotechnical specialists, soil scientists, and forest engineers to evaluate proposed activities.

Water Resources

In 1909, the Oregon Legislature declared that all water in the state belongs to the public. In the years since then, many state agencies have been given the job of helping manage the public's water.

The WRC is responsible for the development of an integrated, coordinated state program for managing Oregon's water (ORS 536.300). Other state agencies and public corporations are directed to conform to statements of water resources policy (ORS 536.360). Oregon Revised Statutes, Chapters 536 through 543 guide the WRC on water-management policies.

Oregon Administrative Rules, Chapter 690, contains rules developed by the WRC that address water management. In addition, the Water Resources Department is in the process of proposing new rules for the protection of instream flows for certain fish species.

Oregon Revised Statutes, Chapter 527, known as the FPA, regulates forest operations. For protecting water resources, the primary focus of the regulations is on controlling activities around all types of water bodies and stream channels.

Water Resources Department Programs

Streamflow Restoration Priorities — The state Water Resources Department and Department of Fish and Wildlife have jointly identified priority areas for streamflow restoration in basins throughout the state. These priority areas represent watersheds in which there is a combination of need and opportunity for flow restoration to support fish recovery efforts under the Oregon Plan for Salmon and Watersheds. The Water Resources Department is focusing its efforts to aid in recovery of salmonids on these priority areas. The South Coast, Umpqua, and Rogue are the three basins in the planning area (Oregon Water Resources Department 2005).

Water Quality

Water quality protection is mandated by both federal and state laws. The most important federal law for water resources is the Clean Water Act (CWA), first passed in 1972 and amended several times since then. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters to protect beneficial uses such as public water supply, recreation in and on water, and propagation of fish and wildlife. The states are responsible for implementing the law and meeting its water quality standards.

Oregon forest practices rules are approved as sufficient to implement water quality standards under the CWA. Section 303(d) of the CWA requires states to identify and list threatened and impaired bodies of water. Rules describing beneficial uses, policies, standards and treatment criteria (OAR Chapter 340, Division 4) are enforced by the DEQ.

The state's water quality is under the authority of the Environmental Quality Commission, and is regulated by the DEQ. ORS 468B contains the state laws pertaining to water pollution control. OAR Chapters 40 through 55 contain water quality regulations. DEQ's water quality program for forestlands is administered by the BOF through the administrative rules of the FPA. These rules specify best management practices for forest operations, which ensure that water quality will meet DEQ standards. Any forest operation that complies with the rules is deemed to comply with the state's water quality standards. ORS 527.710, 527.765, and 527.770 contain the FPA rules to achieve these water quality standards.

The WRC is responsible for the development of an integrated, coordinated state program for managing Oregon's water. Other state agencies and public corporations are directed to conform to statements of water resources policy. Oregon Revised Statutes, Chapters 536 through 543, guide the WRC on water-management policies. Oregon Administrative Rules, Chapter 690, contains rules developed by the WRC that address water management. The state's laws and administrative rules are designed to achieve the goals of the federal CWA, as well as to achieve state goals for water resources.

The Oregon Plan for Salmon and Watersheds is Oregon's cooperative effort to restore salmon runs, improve water quality, and achieve healthy watersheds and strong communities throughout the state. Many state agencies, including the ODF, are involved in carrying out the plan. The mission of the Oregon Plan is "Restoring our native fish populations and the aquatic systems that support them to productive and sustainable levels that will provide substantial environmental, cultural, and economic benefits."

Wetlands

Federal Laws and Policies—At the federal level, the U.S. Army Corps of Engineers regulates the discharge of materials into waters of the United States, which includes wetlands. This authority is derived from Section 404 of the CWA. Key exemptions exist under federal law for obtaining individual dredge and fill permits for: 1) normal farming, ranching, and forestry activities, such as plowing, minor draining, and harvesting; 2) constructing or maintaining stock ponds or irrigation ditches; and 3) constructing or maintaining farm, forest, or mining roads. Essentially, all normal silvicultural activities are exempt as long as they do not convert a wetland to an upland.

State Laws and Policies—The DSL administers several aspects of regulation and management of wetlands, that are relevant to state forestlands. These statutes include the state's Removal-Fill Law, Senate Bill 3, and the Mitigation Bank Act.

The Removal-Fill Law (ORS 196.800-196.990) requires permits from the DSL for removal, fill, or alteration involving 50 cubic yards or more of material in any water of the state, including wetlands.

Senate Bill 3, passed in 1989, is primarily intended to promote protection and conservation of wetlands, and is in many ways an adjunct to the Removal-Fill Law.

The Mitigation Bank Act of 1987 is a state statute that provides for the acquisition and protection of wetlands, and for the establishment of wetlands mitigation banks by the DSL.

The ODF, FPA, identifies three major types of wetlands: significant wetlands, stream-associated wetlands, and other wetlands. The FPA also regulates activities that affect these areas. The Water Protection Rules (ORS 629-645 and 629-655) in the Forest Protection Rules identify the protection measures required for riparian areas and wetlands.