

**Forest Resource Trust Advisory Committee**  
**Meeting Minutes**  
**August 8, 2006**

Pat Norris, Chairman, called to order the meeting of the Forest Resource Trust Advisory Committee at 10:00 a.m. on August 8, 2006 in the Oregon Department of Forestry's Santiam Room located in Building D, 2600 State Street, Salem, Oregon.

Members Present:

John Breese, Rick Brown for Sara Vickerman, Ken Everett, Rick Fletcher, Patrik Norris, Jim Reeb, Keith Baldwin, Steve Vaught, *Mike Haaskin, Bob Young, and Jennifer Wright*

Members absent:

Mike Atkinson, Jack Carter, Matt Delaney, Douglass Fitting, Tom Stoops, Sara Vickerman, Ilene Waldorf, *Bob Johnson, and Stuart Otto*

Others present:

*Bernie Bochsler, Linda Ellis, Jeremy Pertuis, Lena Tucker, Lanny Quackenbush*

**Agenda Items:**

1. Review the Minutes from June 28<sup>th</sup> meeting
2. Review the Trust Time line
3. Review the Draft Statute Revisions
4. Explore Issues and Recommend Rulemaking for the Loan Program
  - a. How much financial security is necessary?
  - b. How much money should be repaid to the Trust?
  - c. What is a realistic contract length?
  - d. What are reasonable tree stocking standards?
  - e. What should be the acreage eligibility?

**Additional Items:**

1. Draft Language, Agency No./Concept No. 629-14 (Attachment A)
2. Statue Revisions and Rulemaking Options, PowerPoint (Attachment B)
3. Security Instruments-Weighing the Trade Offs, PowerPoint (Attachment C)
4. Some 2006 Rulemaking Options for the Loan Program, matrix (Attachment D)
5. Comments from Advisory Committee members (Attachment E)

**Meeting:**

- There were no comments or corrections to the June 28<sup>th</sup> meeting minutes
- Lanny reviewed the Trust time line, see Attachment A. Sometime in August, the committee will have an opportunity, through e-mail, to review the Legislative Council draft bill of the statues. Staff and the committee will have ten days to review and make edits before sending it back to the Legislative Council.
- Keith reviewed the draft statue revisions, see Attachment A and B. The purposes of the Trust are to provide financial and technical assistance for the establishment and improvement of forest stands, which provide the landowner and society the benefits of timber, wildlife, water quality, biodiversity, jobs, recreation, soil conservation, carbon sequestration and storage and scenic quality. The statute revisions simplify, clarify and add to the ways the Trust can provide incentives for non-federal forestland owners with various forestland conditions.

**Issues and Recommendations:**

**1. How much financial security is necessary?**

Pat opened up the discussion, see Attachment B and C. The Department of Justice has made it clear that without the lien the State is in a pool of unsecured creditors. There needs to be some sense of security. The timber deed is like a mortgage. Mortgage lenders want the lien removed for property sale. A second mortgage may not leave anything for the State, because of the other creditors. The Trust lien has priority on the date it is filed. Ideally, a perpetual second lien could be created, but it would be difficult. The Trust lien can and has been subordinated on

some projects to facilitate property sale transactions. Rewording the lien language in the statutes wouldn't add anything.

There are statutes and administrative procedures to collect delinquent payments, which would use the Department of Revenue or a private collection agency. A court judgment would be required before initiating the collection process. The Department works with the landowner to repair failing projects and at the last resort, the Department would only use a collection process in a breach of the contract. The process has not been used for the incentive programs administered by the Department.

A buyout option at anytime, instead of currently ending at 25 years, might help the lien issue. Those who use the Trust are using it as the last resort. They don't have the cash flow for the stand establishment costs. The Trust should allow up to 100% financing, though it could be funded partially by the Trust and partial by the cost share or reforestation tax credit. In eastern Oregon, realtors don't care about the condition of trees on forestland; they only care about the land. On the Westside, trees eventually have more value than the forestland.

Need to develop criteria when to use or not use a Trust lien and review it with the committee. The criteria could recognize: 1) the landowner's vested interest in their land through the use of environmental incentive programs, exceeding the Forest Practices Act and tenure of ownership; and 2) the project cost threshold above the average Trust project cost.

**Committee recommended rulemaking:**

*Provide the option for the State Forester to use the lien, as structured. The contract would only mention the lien if required. Add the collection processes under the rule section for Remedies for Breach of Contract.*

**Staff work to do:**

*Establish criteria when the lien would or would not be used by the State Forester.*

## **2. How much money should be repaid to the Trust?**

Pat opened up the discussion, see Attachment B. The compound interest rate is punitive on the landowner. The interest should be simple and the buyout should be allowed anytime. The interest rate could be reset every five years or based on a rolling five year average at the time the contract is executed. Landowners have a desire for certainty in the climate of uncertainty (rule changes, risk to fire, insects and diseases). Douglas County loan program for forest practices has used a flat four percent, simple interest since the late 1970s.

The Trust administrative cost are not being currently met with the 6.8% original rate and 4.6% current rate, compounded annually. The legislative concept is requesting lottery money from the economic development funds that would fund administrative cost and projects.

The flat rate and simple interest would make the program easier to market to landowners; provide an improved financial investment to establish stands on underproducing forestlands; and make administration of the program much easier.

The amount of payback to the Trust could be a modified growout option. Two options of descending repayment based on stand age were reviewed. Using the stand age does not adequately address the complexity of site class productivity. Justifying a descending repayment plan based on ascending environmental service credits over time is too theoretical, since the environmental service credits are not currently quantifiable. One member suggested that the environmental services credits may not be something that is around in the future. Another member said landowners are now receiving carbon credit payments for forestry projects. Going to a zero repayment balance was not acceptable. A repayment of project cost plus interest was acceptable.

Is the Trust trying to create a sustainable program? Financially, it isn't possible because the buyout options that are exercised do not recover enough money to pay for the administrative cost to setup the next project. Establishing forest stands on underproducing forestland could come to an end, theoretically. But there are many examples of failing or failed stand establishment projects from incentive programs and landowner investments where reforestation is required under the Forest Practices Act (FPA). There are also failed land use change practices. The failing and failed efforts could use the Trust funds under the loan program or cost share program. If reforestation is required under the FPA, and the first year planting effort are

failing, the loan program could be used with a required repayment. Criteria would need to be established for other examples for using the loan program when reforestation is required, such as multiple changes in land ownership and failing stand establishment projects. If a landowner harvest timber, then part of the revenue should be used for stand establishment. Landowners who put their money into building big homes after a forest operation, instead of using some of it for stand establishment, should not get a financial break to meet the FPA reforestation requirement. Douglas County has a board that review each project proposal and does not approve projects that have a FPA reforestation requirement.

When building a home, there are energy credits for exceeding the building standards. A similar approach could be used for exceeding the minimum FPA tree stocking standard. Cost share funds have been used for the portion above of the costs what would be planted to meet the FPA reforestation requirement.

If the Trust is only addressing the backlog of underproducing forestlands, then the amount to payback the Trust could be less than the project cost plus interest, because the backlog of underproducing forestland would trend towards a zero balance. If the Trust is looking at other opportunities to address failing or failed stand establishment projects, then the project cost plus interest should be the minimum, to help finance future projects.

A buyout option at anytime would provide more options for the landowner. The Trust actually creates a favorable debt or a tax shelter that may improve estate planning. The Growout option becomes obsolete with the buyout option available at anytime. The timber based financial instruments allow a 50% partial payment from intermediate harvests, which is a simpler process than the existing Growout Option.

**Committee recommended rulemaking:**

*Use a flat 4% simple interest for a buyout at anytime. The amount to payback the Trust when there is a harvest, would be 100% if the harvest created a clear-cut condition, as defined by the Forest Practices Ac. The payback would be 50% of the net harvest revenues for all other harvest, to be applied first to the principal (project cost) and applied last to the accumulative interest until the balance is zero. Drop all references to the Growout Option.*

**Committee Chair investigation:**

Average US Treasury Bond Rates 1993 -2006: 20-Year Bond: 1993 - 2005, 6.01%, 2006 YTD, 5.06%; 30-Year Bond: 1993-2005, 5.93%, 2006 YTD, 4.92%. Our 4% proposed rate is very attractive. Historically, banks have advanced funds for harvest loans based upon a loan to standing timber stumpage value of 50-65%. This is for mature harvestable timber, and in order to maintain the loan to value to protect the collateral position, or potential collateral position for unsecured lending, as the timber is harvested, banks still normally require payments of 50-65% of the stumpage value as the timber is cut and sold. Requiring a payment of 50% of the stumpage value is in line with bank policies. Pat Norris

**Staff work to do:**

*Revisit the issue of using the loan program, with a required repayment, to finance stand establishment projects under the FPA reforestation requirement.*

**3. What is a realistic contract length?**

Keith opened up the discussion, see Attachment B. The current contract length is 200 years, which for some landowners is unattractive. The 200 figure was used originally as the age of old growth. The Department's State Forest Program uses 175 years for the age of old growth. At what age does the public believe the Trust funds invested have created enough public benefits that the contract could end? A forest stand that is 200 years old has a different biological value than a 65 year old stand. A forest stand that is 10 or 25 years old along a stream has value as well.

The loan, cost share and environmental services program each many have different contract lengths tied to financial incentives. A 200 year contract with the loan program does not prevent the landowner from buying out of the Trust during the life of the contract.

**Committee recommended rulemaking:**

*Add "up to maximum of 200 hundred years, or as specified in the contract"*

**Committee recommended guidance change:**

*Described the contract lengths in rule guidance for the various Trust programs.*

#### **4. What are reasonable tree stocking standards**

Keith opened up the discussion, see Attachment B. The current tree stocking standard for Site Class 1, 2 and 3 is 65% over the FPA standard and for Site Class 4 and 5 it is 140% above the FPA standard. The stand tables for low site lands are not adequate for the Growout Option, which results in a very high payback requirement for the landowners. Consequently, few landowners participate in the Trust with low site land, even though there are opportunities.

What are the goals of the Trust? The goal of the loan program is forestation for timber and carbon sequestration; the cost share program goal is forestation and some environmental enhancement; and the environmental services program goals are more wildlife, fisheries and watershed values. Make the tree stocking requirements fit the program goals rather than dilute the tree stocking standards to partially meet all programs. A landowner could have a project that uses different Trust programs to meet the landowner's objectives, while making the best use and investment of the Trust funds.

The environmental services program may allow a lower tree stocking standard to create open spaces for wildlife habitat goals, but the loan program would have a higher tree stocking standard to meet timber and carbon sequestration goals. The Oregon Department of Fish and Wildlife can now authorize a wildlife habitat tax deferral status for several Oregon counties, which allows the tree stocking standard to be below the FPA. The Trust projects generally expend a lot of money in site preparation to convert brush lands to forest stands; it isn't a good investment to use the minimum Forest Practices standard of 200 trees per acre on site class 1, 2 and 3 lands.

There are some tree plantations that are adequately stocked for the site, but below the Trust tree stocking standard. At some point, the Trust is not prudent to keep financing an expensive project to reach an tree stocking standard that exceeds what the Stewardship Forester considers is an adequately stocked stand for the site conditions.

**Committee recommended rulemaking:** Add "as specified in the contract".

**Committee recommended guidance:** Site Class 4 @ 175 TPA; Site Class 5 @ 150 TPA; and as certified free-to-grow by the State Forester. Tree stocking must meet the minimum reforestation free-to-grow tree stocking standards of the FPA.

#### **5. What should be the acreage eligibility?**

Keith opened up the discussion, see Attachment B. Eligibility is currently between 10 and 5,000 acres. *Some large acreages on low site forestlands in Central and Eastern Oregon do not have sufficient annual harvest revenues to manage their lands.*

**Committee recommended rulemaking:** Exceptions may be available for Central and Eastern Oregon for ownerships up to 15,000 acres of low site forestlands.

#### **Marketing or Educational Opportunities:**

1. Inform landowners, with burned over forestland, that they may qualify for financial assistance, if the net harvest revenues from salvage operations do not exceed the cost to establish a new forest stand, as described in the Suspension of Reforestation Rules in the Forest Practices Act.
2. The contract length of 200 years has many advantages to the landowner and society:
  - The landowner retains the right to end the contract at anytime, through the buyout option.
  - There is a potential to create mature forest conditions on private nonindustrial forestlands, that generally exists only on federal lands.
  - The Trust assumes the risk of catastrophic losses from fire, insects, disease, etc.