

**Forest Resource Trust Advisory Committee  
Meeting Minutes  
November 6, 2006**

Pat Norris, Chairman, called to order the meeting of the Forest Resource Trust Advisory Committee at 10:00 a.m. on November 6, 2006 in the Oregon Department of Forestry's Santiam Room located in Building D, 2600 State Street, Salem, Oregon.

Members Present:

Mike Atkinson, Matt Delaney, Ken Everett, Douglass Fitting, Mike Heath, Patrik Norris, Tom Stoops and Sara Vickerman.

Members absent:

John Breese, Jack Carter, Rick Fletcher, Jim Johnson and Ilene Waldorf

ODF staff present:

Keith Baldwin, Mike Barsotti, Bernie Bochsler, Jim Cathcart, Mike Haasken, Linda Price, Lanny Quackenbush, Steve Vaught and Bob Young.

**Agenda Items:**

1. Recommendations, Advisory Committee minutes, August 8<sup>th</sup>
2. Status reports;
  - a. Board of Forestry, September 6<sup>th</sup>
  - b. Public hearing on amended rules, October 31<sup>st</sup>
  - c. Legislative Counsel's draft bill of the revised statutes
3. Issue 1: What criteria should determine when to require the timber lien?
4. Issue 2: Should existing contracts be amended? What terms? How?
5. Issue 3: Should the FRT retain credits for carbon and environmental services after early repayment of the financial obligation? How?
6. Issue 4: When a landowner uses a FRT Program in conjunction with the Reforestation Tax Credit or the Afforestation Incentive Program, should the application fee be paid by the FRT? How?
7. Issue 5: When should a FRT marketing plan be implemented?
8. Issue 6: Should the Loan Program be used when reforestation is required by the Forest Practices Act if the landowner didn't benefit from the harvest? How?

**Additional Items:**

1. Briefing Document and Legislative Concept 879 (LC 879) (Attachment A) Mailed prior to the meeting
2. Draft Language, LC 879(Attachment B)?
3. PowerPoint Presentation (Attachment C)
4. Current Forest Resource Trust Contract Template (Attachment D)
5. Comments from Advisory Committee members (Attachments E and F)

**Meeting:**

- There were no comments or corrections to the August 8<sup>th</sup> meeting minutes.
- Pat reported that some members of this Committee presented information to the Board of Forestry at its meeting on September 6. The Board approved proposed administrative rule amendments and a public hearing was held October 31. No members of the public attended the hearing. The committee will recommend to the Board of Forestry at its meeting in January to adopt the proposed amendments to the administrative rules (see Attachment C, slides 3-5).
- Lanny reported on the status of LC 879 and shared the Legislative Counsel's draft bill with the committee; see Attachment B., the deadline for agency review was November 1. Keith briefly reviewed LC 879 and example projects for each program, see Attachment C slides 11 and 12. Sara pointed out that on page 2 (of Attachment B), Sections 2 and 3 "environmental services" should be defined since it has different meanings to different

interest groups. The draft bill left out the phrase in the environmental services program that referred to projects that exceed the Forest Practices Act. Sara requested that the phrase be more general, to limit eligibility to projects that exceed any laws.

- Steve reviewed the “Cycle of Public Benefits”. Oregonians provide the financial and technical assistance and forestland owners provide the land and commitment to project success. The investments pass through the landowner to the forestland to create and improve forest. The new and improved forests then return benefits to landowners and Oregonians with improved environmental, economic and social values. Of the three FRT programs, the loan program provides the opportunity for invested moneys to return to the FRT for future projects. (See Attachment C, slides 7-9).
- Keith, Steve and Jim presented the six issues, which the committee discussed and made recommendations.
- The next committee meeting will be late January or early February after the Board of Forestry meeting in January. The Board is expected to adopt the amended rules which were approved in September. Jim Cathcart will send an e-mail to the committee to set a date. Pat said he cannot meet the last week in January.

## **Issues and Recommendations:**

### **1. What criteria should determine when to require the timber lien?**

Keith opened the discussion about using the timber lien for the loan program by reviewing, Attachment C, slides 10-11, see also Attachment A pages 1-5.

Pat added that 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.

There are statutes and administrative procedures to collect delinquent payments, which would use the Department of Revenue or a private collection agency. Those who use the loan program are using it as the last resort. They don't have the cash flow for the stand establishment costs. The loan program allows up to 100% financing, though it could be funded partially by the FRT and partially by the cost share or reforestation tax credit. Any criteria used to determine if a lien is used should keep in mind the administrative workload generated in reviewing a proposed project.

The lien criteria in Option A are a simple review to determine if the project is a low risk or a high risk. High risk projects include reforestation failure, resource damage; projects cost over \$50,000 and low credit score. The lien criteria in Option B is a comprehensive review. It uses a scoring system based on criteria that has a landowner focus or a project focus

Prior to this meeting, Keith and Jack Carter discussed scoring systems in general. Jack used scoring systems for years in his job with the USFS, but found that most of the systems ended up not used and stored in a file drawer. Selection of criteria can be objective, but the point system for scoring tends to be subjective and agreement is difficult. The review is only a “snapshot in time” of the current owner's situation, which is bound to change over time. Jack prefers Option A.

Pat said the values on the scoring worksheet (see Attachment A, Option B) assigned are good and include solid criteria for evaluation. Sara thinks Option B is clearer.

Jim said for the FRT Program to expand, the lien must be eliminated. The lien only has value when the timber is mature and harvested. He said the memorandum of contract is the recorded document with “teeth” as it includes the covenants and restrictions. He suggests if there is a lien, it should not be recorded until the timber is 30 years old, when it may be ready for commercial thinning. Timber mills pay attention to the lien and would not ignore the Trust interest in the timber. Mike Atkinson said timber mills do not check for liens or timber deeds even though timber theft is common. Ken Everett agreed with Mike's statement.

Pat said there is a “springing lien” which is not recorded unless there is a problem. The loan program could ignore the lien initially but use the “springing lien” if necessary. Jim liked the “springing lien” idea.

Sara suggested that high risk projects should not receive funds and the scoring criteria in Option B should be used to select projects. Matt agreed with Sara and asked what is the

failure rate with the Trust and other incentive programs. Steve said failure rate is less than 5-10% with the Trust and federal incentive programs.

The Douglas County's loan program uses a second mortgage on the land and has had no failures since it started in the 1980s. Sara said the lien scares away potential projects. Keith mentioned that the scoring criteria worksheet already exists for reviewing project priority but has not been used because there are so few applications for FRT funds. Jim said the FRT could be used to correct FPA civil penalty problems, which is discussed in Issue 6.

**Committee recommended:**

As a general rule, the timber lien would not be used. A springing lien would be used when there is a problem – such as the landowner defaulting on an obligation of the contract.

High risk projects would not be funded by the loan program; owners would be directed to other incentive programs, which could be the cost share or environmental services program under the FRT.

**Staff work to do:**

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

**2. Should existing contracts be amended? What terms? How?**

Keith reviewed the issue, see Attachment A page 6 and Attachment C slide 12-13. At the first committee meeting, Jack Carter, also a FRT landowner, asked if existing contracts could be amended. Jack had done some environmental improvement projects on his land and was wondering if that could lower his repayment obligation. Currently, existing contracts can be amended if the landowner and FRT agree in writing.

Steve emphasized that amending existing contracts is a low priority task and would be done as higher priority workload (including processing new contracts and payment for practices on existing contracts) allowed. Steve added that amending contracts would also depend on receiving additional funds for Trust administration. Pat said that he has looked at financial numbers for Site Classes 4 and 5 lands and is convinced that it is fair to amend the contracts. He suggested that we offer amendments on existing contracts to include all the amended rules. Amendments to existing contracts could be effective the date the Board of Forestry adopts the rules in January, 2007 or after January, 2007, on the date when the landowner and FRT sign the amended contract.

**Committee recommended rulemaking:**

The committee recommend that the landowners with existing contracts be sent a letter offering a contract amendment effective the date of the amended rules are adopted and if landowner request it, the amendment would be processed as workload and funds allow (low priority task).

Amendments would include all the adopted rule amendments, which include 1) changing to a simple interest rate of 4%, recalculated on the date the rules are adopted, but not retroactive prior to the date of adoption of the new rules and 2) changing the adequate stocking requirement from 300 TPA on Site 4 to 175 TPA and from 300 TPA on Site 5 to 125 TPA.

Amendments would not include credit for environmental improvements. These will be addressed in rule when the Environmental Services Program is developed later. When rules are adopted allowing for environmental improvements, credit would be given for future landowner investments but not for past investments (when there were no rules covering such improvements).

**Staff work to do:**

Draft a letter about amending existing contracts, to be sent to landowners after the rules are adopted in January, 2007.

### **3. Should the FRT retain credits for carbon and environmental services after early repayment of the financial obligation? How?**

Jim gave background information to open the discussion, see Attachment C, slides 14 and 15, explaining that when contracts are paid off or released early there are no carbon credits to transfer to the Board of Forestry. There is a carbon credits “stuttering gap” between free-to-grow and age 35. Under a stock-flow accounting methodology (which Jim acknowledged has not universally been accepted by the scientific/policy community), the carbon credits for a project are generally considered to begin accruing around age 15 and completely captured at about age 35. Until carbon credits are measured and reported, they remain the property of the landowner – hence, buyouts executed prior to the measurement and reporting of carbon credits effectively remove the Forest Resource Trust’s claim to those carbon credits. Periodic measurements are required to document additional carbon credits before they can be transferred to the BOF. The BOF then transfers carbon credits to the entity that funded the project. Currently there is no process in place for measuring and reporting the carbon credits accruing to Forest Resource Trust stand establishment projects, although there are several emerging standards for it. Matt said that in Europe there is no process either. There are many protocols but no one approach is accepted as the standard. Jim said more research is needed to determine what process to use. The issue is whether to measure stands or to use lookup tables such as those used by U.S. Department of Energy’s voluntary reporting of greenhouse gases. If we measure stands periodically while the FRT contract is in effect, we can book (i.e., transfer ownership of) the carbon credits. The stock-flow accounting system relies on that after the final harvest of the stand created under the FRT, successful establishment of a subsequent forest occurs for the next (i.e., 2<sup>nd</sup>) rotation.

Tom said when the Klamath Cogeneration Plant (KCP) was licensed; it required KCP to donate funds to the FRT in order to get acres planted. This left the KCP vulnerable to not getting carbon credits when projects are paid off early or declared catastrophes. An alternate licensing method is the requirement for a utility company to pay a certain amount to a qualified program and does not depend on performance (e.g. acres planted) of the program. Tom said he would prefer not to amend KCP’s site certification (a formal process) but rather work within the parameters of their unique certification.

Pat said that the favorable loan program is available to landowners in exchange for their carbon credits. Originally, the FRT understood carbon credits could have value in the future. The positive outcome is that trees are planted and buyout dollars will be reinvested in new FRT projects, even though KCP is not quickly achieving its original goal of acres planted by the FRT.

Sara asked if the FRT could pay landowners to have longer rotations using carbon funds. Jim said we are not there yet. The environmental services program in LC 879 could provide financial incentives for landowners to extend harvest rotations. The KCP expected to get a specific number of carbon credits, using old “look-up tables” with Douglas fir on Site Class 3 grounds with some adjustments. Buyouts could have a purchase agreement saying FRT would buy carbon credits when they reached a certain level.

Keith directed the committee’s attention to slide 15 options, for retaining carbon credits: B) Establish a carbon credit deed that is not affected by early repayment and C) Establish a Carbon Credit Agreement at the time of repayment. Someone mentioned that mineral rights can be retained by an entity other than the landowner, which could be another model used by the FRT to retain carbon credits.

Pat asked did KCP’s site certification assume that projects would last 200 years. Jim answered “no” but it did assume that trees would be harvested, monies repaid and trees replanted on the original site as well as the repaid monies used to create an additional site (effectively, doubling the amount of acres credited to the KCP funds). We have already told KCP that we will not meet expectations for carbon credits but we do need to measure and report carbon credits. Matt directed the committee to look at an e-mail (see Attachment E) he sent to Keith regarding the question of when carbon credits can be claimed by an investor. A suggestion was made that FRT contracts could be amended to retain carbon credits even if the buyout occurs before year 35. KCP donated funds in exchange for carbon credits and landowners should not retain carbon credits when buying out. A problem regarding co-mingling of funds exists if there are projects with different cc requirements based on funding source. Mike

Barsotti asked what if a landowner wanted to retain carbon credits when non KCP funds were used. It would add another layer of administrative complexity to the program. Perhaps a higher interest rate could be charged if carbon credits are not retained by FRT. Tom said utility companies want carbon credits registered which is the reason for the favorable interest rate for their funds. The existing contracts could be renegotiated to say that the carbon credits belong to the FRT even before they are measured or trees are free to grow.

Tom said that utility plants typically exist for only 30 years and they generate a certain number of tons of carbon based on a formula used by Department of Energy. Funds paid back are KCP funds in perpetuity (long after the KCP's existence). Jim said we could include the requirement that carbon credits are retained even when there is a buyout when the existing contracts are amended (see discussion under Issue 2). A carbon accounting protocol needs to be adopted by ODF, which Jim plans to develop. Matt said utility companies prefer using 50% of forecast of carbon credits rather than continuously amending reports etc. Tom said he prefers not changing KCP site certification but he does want ODF to retain the KCP funds and change the FRT program so that it works.

**Staff work to do:**

**Look into the mineral rights model for retaining carbon credits. Draft contract and rules language for retaining carbon credits for all FRT programs.**

**4. When a landowner uses a FRT Program in conjunction with the Reforestation Tax Credit or the Afforestation Incentive Program, should the application fee be paid by the FRT? How?**

Steve presented this issue to the committee (see Attachment A, page 8 and Attachment C, slides 16 and 17).

The Oregon Reforestation Tax Credit pays up to 50% of the cost to establish a forest, which the landowner receives reimbursement over a four year period.

The afforestation incentive program encourages establishing trees on previously nonforested lands. Most of the trees planted are not prohibited from harvest during the first rotation, other than a 20 foot buffer along certain protected streams.

Bob Young, Mike Atkinson, Pat Norris and others commented: don't pay the application fees with FRT funds; the FRT is already too complicated to administer; and the application fees for the incentive programs are nominal, so landowner should pay them.

**Committee recommended guidance:**

**Do not use FRT funds to pay the application fees for the Oregon Reforestation Tax Credit or Afforestation Incentive Program.**

**6. Should the Loan Program be used when reforestation is required by the Forest Practices Act if the landowner didn't benefit from the harvest? How?**

Pat requested the committee review Issue 6 before Issue 5.

Keith introduced the issue; see Attachment A, page 10 and Attachment C, slide 23. There are landowners that purchase forestland, harvested by a previous landowner, and they are unaware of a reforestation requirement. Sometimes reforestation efforts have started but failed, and other times no reforestation has taken place. Currently, the FRT prohibits participation if there is a FPA reforestation requirement. Allowing a landowner to participate in the loan program would provide the Stewardship Forester another tool besides writing a citation to get trees planted. Some landowners have sued to recover the cost of reforestation.

Mike Atkinson said it is not fair to bail out landowners who bought land with FPA reforestation obligation. Buyers should be aware of the value of forest acres and they probably

paid less than that value. It is unfair to exempt the reforestation law for some, while other landowners paid for replanting.

Jim prefers to allow some projects with FPA requirement to be eligible for FRT funds. He reminded the committee that ODF needs to show KCP that acres are being planted and failed reforestation projects provide another opportunity. There could be an exception to the requirement that reforestation has not started when FPA obligation exists.

Pat said though landowners may be unaware of the reforestation requirement, the purchase price may have included the cost of reforestation. It would be difficult to determine if the land was sold with an adjusted price to reflect the cost of establishing a forest stand.

Keith directed the committee to slide 23, Attachment C, which describes "strings" that could be included when approving projects with reforestation requirements. The landowner could be required to repay the FRT funds after the forest stand is certified stocked and free to grow. The landowner would not be able to repay funds prior to certification. Or the interest rates could be increased. The projects would be low priority, especially when there are limited funds.

Tom said we need to know why the reforestation was not completed before an exemption could be made. Tom Stoops suggested that the advisory committee could be used to review exemption requests, which others agreed was a good idea. The Department of Energy uses a committee for this purpose among other things. Guidelines described in administrative rules would be used to screen exemption requests. The revised statutes should include a general exemption process, which could be similar to the exemption clause for the Department of Energy's in ORS 469-320.

Sara said we need to know which lands the FRT is targeting since not all lands are suitable for Douglas fir or intensive forest management. Mike Barsotti said that GIS allows us to identify areas that are better suited for uses other than forestland.

**Committee recommendation:**

**Provide eligibility exemptions under certain financial conditions and require approval by the advisory committee.**

**Staff work to do:**

**1) Draft statutory language for LC 879 that could be introduced during the legislative committee process, which would include a section for general exemptions to FRT eligibility and contingent upon approval by the FRT Advisory Committee.**

**2) Draft rule language for situations where eligibility requirements would be exempted under certain financial conditions and describe the review and approval process by the FRT Advisory Committee.**

**5. When should a FRT marketing plan be implemented?**

Keith presented this issue, See Attachment A page 9 and Attachment C, slides 18-22. At the September BOF meeting, one of the members asked if there was a FRT marketing plan. Another member asked if you build it will they come? The Department's media notice for the public hearing on the amended rules prompted the Eugene Register Guard to interview Keith. The newspaper article generated about two dozen inquiries.

There are some general marketing strategies that could be implemented while a comprehensive marketing plan is developed. There are two timeline paths: 1) the amended rules for the loan program, which will be adopted in January, 2007 and 2) LC 879 will hopefully be reviewed and approved by the 2007 legislature, which could mean new rules adopted in January, 2008. There are three areas of marketing focus; those providing technical assistance to landowners (stewardship foresters and consultants), those receiving assistance (landowners) and those funding the financial assistance (private, state and federal). There are three marketing strategies: 1) market the amended rules, 2) market the approved LC 879 and 3) market the new rules based on the approved LC 879. Keith said that these timelines and strategies are to help the committee focus on what needs to be done now.

Looking at the timeline on slide 20, Mike Atkinson commented that we should keep in mind that by the time the revised statutes and new administrative rules are in effect (January, 2008), the soonest new projects would be planted would be January 2009. Keith said that funds are committed to new projects when the contract is signed and before the projects are implemented. He added that this timeline is a skeleton (framework) with details to be added as we go along. (Ideally, the \$700,000 balance currently in the FRT fund could be committed to new projects, which would demonstrate to the various funding sources that the FRT is a viable program worth additional financial investments).

Another comment on the key marketing messages in slide 22 was to move the third bullet "Provides jobs and revitalizes rural communities" to the first bullet to help sell the program to the public.

Sara said to attract many landowners we should change the wording of the first bullet (FRT provides incentive tools for forestland owners to create healthy forests in partnership with Oregonians) to attract owners whose motivation to plant trees is wildlife improvements.

Pat said the Department's Public Affairs will market the FRT but this committee needs to give them ideas. This was done when the FRT was marketed in 2001. Pat also suggested the committee look at the Metropolitan Group's marketing plan, which previously made some efforts to market the FRT. Keith, said that Public Affairs made a slick brochure in 1994, which could be updated with new information. Bob Young said that he hasn't talked to landowners about the FRT because the program was too cumbersome. He wants landowners to know ahead of time what they are getting into. He thinks the improvements to the loan program are better than the old program.

Keith added that the FRT could seem complicated if someone tries to explain the original program and the improved program. He suggested to just explain the new improved loan program.

**Committee recommended rulemaking:**

**Market the amended rules now to create interest.**