Oregon Forest Law and Policy Update

1 General CLE credit

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Chapter 4A
Forest Litigation and Policy Review

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Potential Forest & Wildfire Bills for 2021 Session

The following list is a roundup of possible forest policy changes that have been discussed by various legislators for the upcoming session.

1) Eliminate OFRI and Dedicate Resources to Critical Needs

- Redirect portion of Harvest Tax that had supported OFRI to critical needs, including: enforcement of OFPA, drinking water protection, fire & life safety, pesticide regulation and climate change adaptation-mitigation

2) Restoration of Forest Severance Tax - Fair Taxation Bills

- Timber Tax Fairness, Revenue Restoration, Water, Wildfire Security Act. This concept was submitted by a group of doctors, nurses, teachers, foresters, water managers to restore the severance tax so that it is comparable to neighboring states.
- The Timber Tax Fairness would concept would provide significant money to counties for essential services. Timber Tax Fairness also redirects funding from OFRI to provide for watershed protection, home safety from wildfire.
- Harvest Tax adjusted and/or extended. This concept would lengthen or eliminate the sunset to create greater certainty and independence for agency funding, transparency in budget making, and reduces the influence of third parties.
- Reboot of HB 2495 - Rep. Holvey Presentation

3) Wildfire Related Bills - Focus on Public Safety Solutions, Home Ignition Zone

- Policy: Wildfire council recommendations and associated concepts. See 2019 Legislation SB 1536B Engrossed - Home Hardening, Smoke, Utilities, First Response
- Budget: Ensure that ODF resources are not all reallocated to fire suppression activities in the wake of 2020 fire season, expand prioritization of home hardening, infrastructure hardening and community preparedness activities.
- Revenue: Implement a wildfire insurance premium assessment to generate funding for wildfire preparedness in at risk areas (Eg. WA legislative concept from 2019).
- Revenue: Lift the cap on the Oregon Forest Land Protection Fund or create a separate fund for additional revenue beyond the $13.5 million cap so that funds will be able to invest in alternative management, preparedness, and mitigation approaches.

4) Post-Fire Recovery and Planning

- Insurance markets and liability issues - Class Action Lawsuit against Pacificorp
- Site recovery and public safety: landslides, flooding, drinking water, replanting, etc.
- Future land use and community resiliency planning and rebuilding considerations
August 31, 2020

Secretary of State Bev Clarno
900 Court Street NE
Capitol Room 136
Salem OR 97310-0722

Dear Secretary Clarno:

With this letter the Governor requests a timely audit by the Secretary of State. Facts recently disclosed in public records indicate that activities at the Oregon Forest Resources Institute (OFRI) warrant investigation, and media reports allege a variety of statutory and ethical concerns. Moreover, allegations that OFRI employees engaged in partisan political activity while on the job remain deeply disturbing.

The Governor requests that the Secretary of State conduct a thorough performance audit of OFRI. An audit is necessary to bring transparency to whether OFRI conducts its mission in keeping with its statutory authority, including the clear prohibition on OFRI influencing, or attempting to influence state policy, but also to determine whether there is any public benefit to OFRI. ORS 526.640 states OFRI shall enhance the practice of forestry by providing education and cooperative efforts to practice good stewardship and protect water and other public resources to the maximum extent practicable. ORS 526.645 states OFRI may disseminate reliable information based on research. Media reports raise questions on how OFRI is pursuing this mission. The Governor trusts the audit will reveal whether and how OFRI complies with its statutory charge.

Sincerely,

Jason D. Miner
Natural Resource Policy Director
Office of the Governor
Timber Fairness, Revenue Restoration for Rural Oregon Jobs, Water & Wildfire Security Act

Restores the contribution that large Wall Street and privately-owned timber companies once paid to support rural Oregon communities and public services like schools, roads, job training and drinking water infrastructure in those communities.

A forestland owner may reduce the severance tax by managing its lands in a way that protects public health, safety drinking water supplies, fish, and wildlife. Redirects public funds from timber industry marketing and promotion to support outdoor education, job training and scientific study.

Background

Prior to 2000, large corporate and privately held timber companies in Oregon paid what was known as a privilege or severance tax. The tax was based on the value of the trees large timber companies logged. In the late 1990s, large corporate owned and privately-held timber companies hired lobbyists who successfully pushed for the tax to be eliminated, creating a huge windfall for executives, Wall-street investors and wealthy landowners and creating a significant hole in local government budgets. Schools suffered from a lack of adequate support, roads fell apart, Oregon’s social services infrastructure collapsed, water infrastructure is decaying and investments in needed infrastructure, like rural broadband internet, became impossible.

The total value of timber logged on private lands since 1991 is approximately $67 billion when adjusted for inflation, according to an analysis of data from Oregon’s Department of Forestry. If the state’s privilege tax had not been phased out, corporate timber companies and Wall-street backed real estate trusts would have paid an estimated $3 billion during the same period. Instead, cities and counties collected less than a third of that amount, or roughly $871 million, and the rest went into the pockets of wealthy landowners, timber executives and Wall Street investors. The reduction in revenue has caused significant damage to Oregon communities. These community impacts are detailed in the recent story by OPB and the Oregonian (June 11, 2020).


For example, in fiscal year 1999–2000, the state collected $32,843,222 in timber severance taxes. In fiscal year 2010-2011, the state collected $252,687 a decline of 99.3 percent. Not only did the timber industry executives profit mightily, they also eliminated local jobs because they over cut Oregon forests, mechanized factories and moved operations to other states to avoid Oregon’s worker protections.

Today, instead of paying the tax, timber companies pay a small harvest tax and almost all of the money is now directed to programs that directly benefit the companies, many of which are owned by Wall Street investors or closely held by wealthy individuals, families and investment trusts that shield them from paying their fair share. In addition, a significant amount of money is taken from rural communities...
Timber Fairness, Revenue Restoration
for Rural Oregon Jobs, Water & Wildfire Security Act

and directed towards the annual marketing campaigns of the Oregon Forest Resources Institute to further benefit large corporate and privately held companies who sit on and control the Oregon Forest Resources Institute’s operations.

In 2019, OFRI had a budget of nearly 5 million dollars and in 2020 it has an approved budget of nearly 5.5 million dollars. OFRI is entirely controlled by the timber industry, and by law that the industry wrote no member of OFRI's board may have a known affiliation with an environmental or conservation organization. OFRI spends public money to promote Oregon’s timber industry with marketing focused on convincing the public that Oregon’s forest laws are the most advanced in the nation, when in fact they fall far behind those of Oregon’s neighboring states. Recently, OPB and the Oregonian investigated OFRI’s activities and found it had engaged in extensive political activity in violation of its charter.

Overview:

The intent of this legislation is to ensure fairness and to restore revenues to rural Oregon by reinstating the privilege/severance tax to an amount that is derived from or equivalent to the formula that was applied between 1990-1996. The money will be directed to benefit local communities, job creation, rural workforce training, drinking water protection and job creation focused upon addressing the harms caused by decades of excessive clearcutting, aerial spray of toxic chemicals and landslides so as to ensure the greatest permanent value of Oregon's forests for all Oregonians.

This act reinstates the privilege/severance tax for all large forestland owners who own more than 1,000 acres of land so as to provide revenues for all Oregonians and support rural habitat restoration focused job creation focused on protection for drinking water, public health, safety and welfare. This Act would direct the millions of dollars that currently go to the Oregon Forest Resources Institute to support K-12 outdoor education and rural job training programs.

Drinking Water, Public Health & Safety Conservation Measures

1. All large forestland owners who own more than 1,000 acres of forestland shall pay a privilege/severance tax in the form of a yield tax on the value of the harvested timber derived from or equivalent to the formula that produced the levels of revenue from 1990-1996. The funds collected shall be collected by and distributed by the State of Oregon to benefit the people of Oregon as follows:

   a. Half of the severance tax collected from timber harvest shall be applied to pay for drinking water protection and watershed assessments, drinking water infrastructure, rural broadband expansion, K-12 teacher training, rural college scholarships and rural job training programs. The funds shall be distributed on a pro rata basis to benefit the residents of the County from which the privilege tax is
collected. Drinking water assessment may include, but shall not be limited to, programs and actions to monitor, test, and address the impacts of industrial forestry operations, including the impacts on public health, waters supplies, fish, and wildlife from the application of chemicals, landslides and water quality and quantity.

b. One-quarter of the severance tax collected from timber harvest within that county shall be applied to pay for the acquisition of available forestland by the State of Oregon specifically for watershed protection, fisheries enhancement, wildlife, recreation, air quality and the maintenance of old forests that retain the highest amount of living biomass in the trees and the soil.

c. One quarter of the severance tax collected from timber harvest within that county shall be applied to pay for school revitalization, teacher training, rural social services investment, 911 expansion, road and water and sewer infrastructure redevelopment, expanded fire protection and essential fire equipment purchases, home hardening and smoke adaptation.

2. All the costs of enforcement of the Oregon Forest Practices Act shall be borne by the General Fund, to avoid the appearance of a conflict of interest on the part of the Oregon Department of Forestry.

3. The Oregon Forest Land Protection Fund and firefighting associated with protecting private timber land shall not receive funding from the privilege tax and instead shall be funded exclusively with assessment of private timberland owners.

4. Any large forestland owner who owns more than 1,000 acres of land may receive a discount of 50% off the privilege tax, if and only if they agree to:

a. Employ local people to control competing vegetation by manual or mechanical means without the use of toxic chemicals, including herbicides, pesticides, rodenticides which may drift, migrate or otherwise impact people, pets, livestock schools and drinking water supplies; and

b. Grow older forests that are at least 80-years old prior to harvest on wet forest types and grow older forests that are at least 80 years-old combined with variable retention harvest to preserve forest productivity on dry forest types; and

c. Protect rivers, streams from pollution and the ensure the safety of homes and communities by not logging on steep, unstable slopes or landslide prone areas; and

d. For large forest landowners, including all parents, subsidiaries, affiliates, that own 25% or more of a sub watershed, defined as a Hydrologic Unit.
Chapter 4A—Forest Litigation and Policy Review

Timber Fairness, Revenue Restoration for Rural Oregon Jobs, Water & Wildfire Security Act

Code 12, commit to retaining at least 50% of the land in the sub watershed in a forested age class greater than 60 years old.

5. A large forestland owner may secure a discount of half off the severance tax if the large forestland owner commits and restrains the property, through a deed restriction, binding covenant or other legally binding agreement that runs with the land, to the foregoing drinking water, public health and safety conservation measures set forth in subsection (4) above.

6. For purposes of collecting this tax and ensuring compliance, all forestland owners in the state shall disclose their ownership structures and all parent, subsidiary companies into a public database for purpose of calculating the 1,000 acres. All large forestland owners shall report their annual harvest revenue on a quarterly basis for purposes of collecting the tax and budgeting. Forestland owners may not break out the ownership into separate entities to avoid the severance tax.

Redirection of Revenues to Fund Fire Resiliency and Forest Waters Protection

7. The timber industry shall no longer benefit from the marketing efforts of the Oregon Forest Resources Institute or from the power of taxation by the State for their budget and, specifically this Act amends ORS 321.017 to redirect the revenues that are allocated to the Oregon Forest Resources Institute so that:

a. one-third of the balance of the additional tax imposed under ORS 321.017 shall support outdoor education for K-12 students throughout Oregon.

b. one-third of the balance of the additional tax imposed under ORS 321.017 shall be redirected to the Department of Forestry for the purposes of enforcing and administering the provisions of this Act and for technical assistance

c. one-third of the balance of the additional tax imposed under ORS 321.017 shall be allocated to the Department of Forestry to reduce or eliminating hazards to critical built infrastructure as well as homes and public buildings that rely on forest waters as their drinking water source areas in wildfire hazard zones identified by the Department of Forestry. These measures may include the provision of information, technical assistance and financial assistance by the Department of Forestry for property owners and residents in wildfire hazard zones to undertake home hardening, smoke adaptation and reducing fuels within 100 feet of existing homes and otherwise following the guidance on fire safety issues by the Oregon Building Codes Division of the Department of Consumer and Business Services.
Timber Fairness, Revenue Restoration for Rural Oregon Jobs, Water & Wildfire Security Act

ORS 173.140 provides that:

The Legislative Counsel shall cooperate with the proponents of an initiative measure in its preparation when:

(1) Requested in writing so to do by 50 or more electors proposing the measure; and

(2) In the judgment of the committee there is reasonable probability that the measure will be submitted to the electors of the state under the laws relating to the submission of initiative measures.

I am a registered voter (elector) in the State of Oregon and I do hereby join with other electors to submit this concept to Oregon’s Office of Legislative Counsel and the Legislative Counsel Committee for preparation into an initiative under ORS 173.140. I appoint Pat Himes, Mary McGinnis and any other person(s) they shall designate as my representatives to work with Legislative Counsel to prepare statutory language:

Signed and submitted by:

Name   Signature   Date   Address   County of Residence
HB 249
Representative
Paul Holvey
April 17th, 2019

Revenue
Factors Impacting Timber
Harvest levels:
• **1990**: Endangered Species Act
• **1994**: Northwest Forest Plan
• **2007-2009**: Economic recession

Factors Impacting Timber Tax Revenue:
• **1997**: Passage of Measure 50
• **1999**: HB 3575 phased out of severance tax
Table 1: Historical Privilege Tax Rates Over Time

| Period | Eastern Oregon | | | Western Oregon | | |
|--------|----------------|-----------------|-----------------|-----------------|-----------------|
|        | Regular | Reforestation | Regular | Reforestation | Regular | Reforestation |
| Initial | 5.00% | 12.50% | 6.50% | 12.50% |
| 1991-92 | 4.35% | 8.00% | 5.85% | 8.30% |
| 1992-93 | 3.90% | 7.20% | 5.30% | 7.50% |
| 1993 2nd | 3.50% | 6.40% | 4.70% | 6.60% |
| 1994 | 3.30% | 5.61% | 4.40% | 5.75% |
| 1995 | 2.90% | 4.78% | 3.80% | 4.82% |
| 1996-99 | 1.80% | 1.80% | 3.20% | 3.20% |
| 2000 | 1.10% | - | 1.90% | - |
| 2001 | 1.10% | - | 1.90% | - |
| 2002 | 0.80% | - | 1.40% | - |
| 2003 | 0.00% | - | 0.00% | - |
Fire Budget

OR Department of Forestry (ODF)

- Protects approximately 16 million out of Oregon’s 30 million acres of forestland
- Cost associated with Base Fire Protection is allocated on a per-acre analysis
- Emergency fire costs are covered by:
  - General Fund
  - Other public funding
  - Federal funding
  - Insurance*
  - Private landowners

*Insurance only kicked in during the 2013 and 2014 fire season
Who Pays What for **Base** Fire Budget
2017-2019 Biennium

### Public Timberland Owners
- 100% Cost Allocation Paid by Landowners

### Private Timberland Owners
- 44%* Cost Allocation Paid by General Fund
- 56% Cost Allocation Paid by Landowners

* = 50% of cost allocation minus administrative costs, equates to approximately 44% of cost allocation.

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**Base Fire Protection Funding**

<table>
<thead>
<tr>
<th>Biennium</th>
<th>General Fund</th>
<th>Public Other</th>
<th>Federal Funds</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2019-21 Biennium</strong></td>
<td>43.5%</td>
<td>9.3%</td>
<td>15.9%</td>
<td>30.9%</td>
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<tr>
<td>$49,975,612</td>
<td>$9,010,530</td>
<td>$18,064,881</td>
<td>$35,131,144</td>
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</tr>
<tr>
<td><strong>2017-19 Biennium</strong></td>
<td>42.3%</td>
<td>9.7%</td>
<td>16.7%</td>
<td>31.2%</td>
</tr>
<tr>
<td>$44,255,447</td>
<td>$10,164,042</td>
<td>$17,405,801</td>
<td>$31,656,460</td>
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</tr>
<tr>
<td><strong>2015-17 Biennium</strong></td>
<td>41.7%</td>
<td>9.4%</td>
<td>16.5%</td>
<td>32.4%</td>
</tr>
<tr>
<td>$41,255,447</td>
<td>$9,297,448</td>
<td>$16,299,397</td>
<td>$31,979,573</td>
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</tr>
<tr>
<td><strong>2013-15 Biennium</strong></td>
<td>42.2%</td>
<td>9.0%</td>
<td>16.0%</td>
<td>32.7%</td>
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<tr>
<td>$50,086,318</td>
<td>$7,935,370</td>
<td>$14,046,231</td>
<td>$28,544,623</td>
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</tr>
</tbody>
</table>

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4/17/2019  
Data retrieved from Legislative Fiscal Office
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Total Fire Funding 2013-2018

- General Fund $286,422,308 (36%)
- Federal Funds $243,381,617 (31%)
- Public Other $35,736,657 (5%)
- Insurance $50,000,000 (6%)
- Private $172,012,932 (22%)

Total Fire Funding 2013-2018

4/17/2019 Data retrieved from Legislative Fiscal Office

Forest Products Harvest Tax

Per MBF

4/17/2019 Data retrieved from Legislative Revenue Office
How Oregon compares to Washington

Similar forests
Similar climate

2017 Timber Harvest: OR vs WA

<table>
<thead>
<tr>
<th></th>
<th>Oregon</th>
<th>Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Forest Acres in the State</td>
<td>8,618,948</td>
<td>6,213,349</td>
</tr>
<tr>
<td>Harvest Volume (MBF) in 2017</td>
<td>3,851,000</td>
<td>2,644,425</td>
</tr>
<tr>
<td>Harvest Value ($) in 2017</td>
<td>$1,944,755,000</td>
<td>$897,705,614</td>
</tr>
</tbody>
</table>

MBF – Thousand Board Feet
### 2017 Cutting Taxes per Thousand Board Feet

<table>
<thead>
<tr>
<th>Oregon</th>
<th>Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3.77/mbf</td>
<td>$16.97/mbf</td>
</tr>
</tbody>
</table>

MBF – Thousand Board Feet

4/17/2019  
Data retrieved from Legislative Revenue Office

### 2017 Timber Taxes: OR vs WA

<table>
<thead>
<tr>
<th></th>
<th>Oregon</th>
<th>Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cutting Taxes</td>
<td>$14,504,236</td>
<td>$44,885,265</td>
</tr>
<tr>
<td>Property Taxes</td>
<td>$23,258,388</td>
<td>$25,800,000</td>
</tr>
<tr>
<td><strong>TOTAL Tax in 2017</strong></td>
<td>$37,762,624</td>
<td>$70,685,265</td>
</tr>
<tr>
<td>(Property and Cutting)</td>
<td></td>
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</tr>
<tr>
<td>Taxes per acre in 2017</td>
<td>$2.70</td>
<td>$4.15</td>
</tr>
</tbody>
</table>

MBF – Thousand Board Feet

* – estimate
Data is annual

4/17/2019  
Data retrieved from Legislative Revenue Office
2017 Timber Taxes: OR vs WA

<table>
<thead>
<tr>
<th></th>
<th>Oregon</th>
<th>Washington</th>
<th>Taxing by MBF</th>
<th>Taxing on Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax/MBF</td>
<td>$3.77</td>
<td>$16.97</td>
<td>$16.97</td>
<td>$25.25</td>
</tr>
<tr>
<td>Cutting Taxes</td>
<td>$14,504,236</td>
<td>$44,885,265</td>
<td>$65,365,119*</td>
<td>$97,237,750*</td>
</tr>
<tr>
<td>Property Taxes</td>
<td>$23,258,388</td>
<td>$25,800,000</td>
<td>$23,258,388</td>
<td>$35,768,634*</td>
</tr>
<tr>
<td>TOTAL Tax in 2017</td>
<td>$37,762,624</td>
<td>$70,685,265</td>
<td>$88,623,507*</td>
<td>$133,006,384*</td>
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<tr>
<td>(Property and Cutting)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes per acre in 2017</td>
<td>$2.70</td>
<td>$4.15</td>
<td>$2.70</td>
<td>$4.15</td>
</tr>
</tbody>
</table>

MBF = Thousand Board Feet
* = estimate
Data is annual

A new proposal– a Fire Suppression Fund

HB 2495 (with amendments)
- Increases the Forest Products Harvest Tax to $16.00/MBF
- Directs increased tax to a newly created Wildfire Suppression Fund within the FPHT

OR
Apply a Severance Tax (while keeping the current FPHT)
- 3% Severance Tax would increase timber revenues by $58.3 million, to equal $96.1 million
- Supplements the outrageous costs that our GF is experiencing due to the large costs of forest fires
The End
PRIVATE TIMBER TAX REVENUE

Severance taxes and property taxes received by all Oregon counties from private timber companies. Dollars are adjusted for inflation. Data are the most recent available.

$1.83 per acre
B-Engrossed

Senate Bill 1536

Ordered by the Senate March 3
Including Senate Amendments dated February 14 and March 3

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Office of the Governor)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires electric company to operate in compliance with risk-based wildfire protection plan approved by Public Utility Commission. Requires periodic submission of new plan. Specifies minimum required contents for plan. Creates plan exception. Requires submission of initial plan no later than December 31, 2020. Requires consumer-owned utility to operate in compliance with risk-based wildfire mitigation plan approved by governing body of utility. Requires periodic submission of new plan. Creates plan exception. Requires submission of initial plan no later than December 31, 2021. Requires consumer-owned utility to conduct wildfire risk assessment of utility facilities. Requires review and revision of assessment as required by governing body of utility. Requires Public Utility Commission workshops to develop and share information for best practices regarding wildfire. Requires Oregon Health Authority to establish standards for smoke filtration systems in certain buildings. Requires authority to establish program to increase availability of systems among vulnerable persons residing in areas susceptible to wildfire smoke. Authorizes authority to issue grants to increase availability of systems. Requires Oregon Health Authority to establish Wildfire Smoke Abatement Fund. Requires State Forestry Department to develop and maintain statewide map of wildfire risk. Requires Office of Emergency Management to establish personnel positions related to wildfire. Requires State Forester to establish baseline levels of wildfire protection for lands susceptible to wildfire. Requires Public Utility Commission workshops to conduct wildfire risk assessment of utility facilities. Requires periodic submission of new plan. Establishes Forestland and Rangeland Treatment Fund. Requires Oregon Health Authority to establish Wildfire Smoke Abatement Fund. Requires State Forestry Department to contract for services of private consultant to evaluate and make recommendations on specified issues regarding wildfires. Requires consultant to report to Governor and legislative committees no later than February 1, 2021. Requires State Forestry Department to report regarding map development to legislative committee no later than February 1, 2021. Requires State Forester to establish baseline levels of wildfire protection for lands susceptible to wildfire. Requires State Forestry Department to establish program for reducing fuel load on forestlands and rangelands. Requires State Forestry Department to establish program for reducing fuel load on forestlands and rangelands. Establishes Wildfire Defensible Space Fund. Requires State Fire Marshal to maintain map of defensible space requirements and compliance. Requires State Fire Marshal to administer and enforce program to provide assistance to local governments for administration and enforcement of defensible space requirements. Establishes Wildfire Defensible Space Fund. Requires State Fire Marshal to establish minimum defensible space requirements. Requires State Fire Marshal to establish minimum defensible space requirements. Requires Oregon Health Authority to establish standards for smoke filtration systems in certain buildings. Requires authority to establish program to increase availability of systems among vulnerable persons residing in areas susceptible to wildfire smoke. Requires authority to issue grants to increase availability of systems. Establishes Wildfire Smoke Abatement Fund. Establishes task force to identify barriers to installation of smoke filtration systems in areas susceptible to wildfire smoke and provide advice to Oregon Health Authority. Requires task force report no later than September 15, 2021. Sunsets task force December 31, 2021. Requires Office of Emergency Management to establish personnel positions related to wildfire. Expresses state policy and goals for reduction of fuel loads on forestlands and rangelands. Requires State Forestry Department to establish program for reducing fuel load on forestlands and rangelands. Establishes Forestland and Rangeland Treatment Fund. Requires State Forester to establish baseline levels of wildfire protection for lands susceptible to wildfire. Requires county, State Forester and State Fire Marshal to assist landowners and jurisdictions to form, expand or change boundaries of jurisdiction that provides wildfire protection and assist jurisdiction in developing adequate wildfire protection facilities, equipment, training and other resources. Requires that county ensure lands susceptible to wildfire are provided with wildfire protection meeting or exceeding baseline level no later than January 1, 2025. Requires State Forestry Department to contract for services of private consultant to evaluate and make recommendations on specified issues regarding wildfires. Requires consultant to report to Governor and legislative committees no later than September 15, 2022. Allows Governor to authorize joint state-federal partnerships to direct wildfire strategy based on

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
New sections are in boldfaced type.

LC 83
recommendations of Governor's Council on Wildfire Response. Authorizes council duties. Requires council to report recommendations for stable funding to implement council wildfire strategy no later than October 31, 2020.]

Requires State Forestry Department and Oregon State University, in consultation with Department of Land Conservation and Development, to conduct study of regional wildfire risk within state.

Requires State Forestry Department, in collaboration with Department of Land Conservation and Development and advisory committee, to report to interim committee of Legislative Assembly no later than February 1, 2021, regarding possible means for implementing final recommendations produced by Governor's Council on Wildfire Response. Requires inclusion of regional wildfire risk information in report.

Requires State Forestry Department to establish projects for reducing wildfire risk on forestlands and rangelands. Requires department to report findings and recommendations based on project information.

Appropriates moneys to Department of Land Conservation and Development and State Forestry Department for biennium ending June 30, 2021, to carry out department activities under Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to wildfires; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

UTILITIES

SECTION 1. Sections 2 to 8 of this 2020 Act are added to and made a part of ORS chapter 757.

SECTION 2. (1) As used in this section, "electric company" has the meaning given that term in ORS 757.600.

(2) An electric company must have and operate in compliance with a risk-based wildfire protection plan approved by the Public Utility Commission.

(3) An electric company shall submit a risk-based wildfire protection plan to the commission every three years. The plan must, at a minimum:

(a) Identify areas within the service territory of the electric company that are subject to a heightened risk of wildfire.

(b) Identify a means for mitigating wildfire risk that is cost effective and reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk.

(c) Identify preventive actions and programs that the electric company will carry out to minimize the risk of company facilities causing a wildfire.

(d) Identify a protocol for the deenergizing of power lines and adjusting power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(e) Describe the procedures, standards and time frames that the electric company will use to inspect company infrastructure in areas that the company identifies under paragraph (a) of this subsection.

(f) Describe the procedures, standards and time frames that the electric company will use to carry out vegetation management in areas that the company identifies under paragraph (a) of this subsection.

(g) Identify the development, implementation and administration costs for the plan.

(h) Identify the community outreach and public awareness efforts that the electric company will use before, during and after a wildfire season.

(4) The commission, in consultation with the State Forestry Department and local
emergency services agencies, shall review a wildfire protection plan that an electric company submits under this section. The commission shall:

(a) Approve the submitted plan; or
(b) Disapprove the submitted plan and inform the electric company of the modifications necessary to obtain approval.

(5) The commission shall adopt rules for the implementation of this section.

(6) Nothing in this section prohibits the recovery of costs deferred under ORS 757.259.

SECTION 3. (1) As used in this section, “consumer-owned utility” and “governing body” have the meanings given those terms in ORS 757.600.

(2) A consumer-owned utility must have and operate in compliance with a risk-based wildfire mitigation plan approved by the governing body of the utility. The utility shall regularly update the risk-based wildfire mitigation plan on a schedule the governing body deems consistent with prudent utility practices.

(3) A consumer-owned utility shall conduct a wildfire risk assessment of utility facilities. The utility shall review and revise the assessment on a schedule the governing body deems consistent with prudent utility practices.

(4) A consumer-owned utility shall submit a copy of the risk-based wildfire mitigation plan approved by the utility governing body to the Public Utility Commission to facilitate commission functions regarding statewide wildfire mitigation planning and wildfire preparedness.

SECTION 4. The Public Utility Commission shall periodically convene workshops for the purpose of helping electric companies as defined in ORS 757.600, consumer-owned utilities as defined in ORS 757.600 and operators of electrical distribution systems to develop and share information for the identification, adoption and carrying out of best practices regarding wildfires, including but not limited to risk-based wildfire protection and risk-based wildfire mitigation procedures and standards.

SECTION 5. An electric company shall submit the first risk-based wildfire protection plan required of the company under section 2 of this 2020 Act no later than December 31, 2020.

SECTION 6. A consumer-owned utility shall submit the first risk-based wildfire mitigation plan required under section 3 of this 2020 Act to the utility governing body no later than December 31, 2021.

SECTION 7. (1) As used in this section, “electric utility” has the meaning given that term in ORS 757.600.

(2) The provisions of sections 2 and 3 of this 2020 Act do not affect the terms or conditions of easements held by an electric utility over private land as of the effective date of this 2020 Act.

SECTION 8. (1) As used in this section, “electric utility” has the meaning given that term in ORS 757.600.

(2) Sections 9 and 16 of this 2020 Act do not affect the terms or conditions of easements held by an electric utility over private land as of the effective date of this 2020 Act.

INSURANCE

SECTION 9. (1) Insurers may adopt coverage provisions and underwriting standards to encourage property protection approaches that:
(a) Harden structures against wildfire damage;
(b) Provide for the establishment and maintenance of defensible spaces;
(c) Create access for emergency vehicles responding to wildfires; or
(d) Create wildfire evacuation routes.

(2) Issuers of property insurance policies may use maps and data developed by the State Forestry Department or the State Fire Marshal for the purpose of determining terms and conditions of the policies.

(3) The Department of Consumer and Business Services may work with the State Fire Marshal and issuers of property insurance policies to develop property protection approaches reflecting best practices for wildfire risk mitigation.

DEFENSIBLE SPACE

SECTION 10. The State Forestry Department shall oversee the development and maintenance of a comprehensive statewide map of wildfire risk. The map must be sufficiently detailed to allow the assessment of wildfire risk at the property-ownership level. The department shall collaborate with the State Fire Marshal, other state and local governments and officials, other public bodies, insurance companies and any other information sources that the State Forestry Department deems appropriate to develop and maintain the map. The department shall make the map described in this section accessible to the public in electronic form.

SECTION 11. The State Forestry Department shall report regarding the development of the comprehensive statewide map described in section 10 of this 2020 Act to a committee of the Legislative Assembly related to natural resources in the manner provided in ORS 192.245 no later than February 1, 2021.

LAND USE AND WILDFIRE POLICY ADVISORY COMMITTEE

SECTION 12. (1) The Director of the Department of Land Conservation and Development, in consultation with counties and cities, shall organize a Land Use and Wildfire Policy Advisory Committee. The committee shall consist of members appointed as described in subsections (2) to (5) of this section.

(2) The director and the State Forester, in consultation with counties and cities, shall jointly appoint the following to be voting members of the committee:

(a) One member who is a representative of a city government serving a population of less than 10,000.
(b) One member who is a representative of a city government serving a population of 10,000 or more but less than 25,000.
(c) One member who is a representative of a city government serving a population of 25,000 or more.
(d) One member who is a representative of a county government serving a population of less than 30,000.
(e) One member who is a representative of a county government serving a population of 30,000 or more but less than 100,000.
(f) One member who is a representative of a county government serving a population of
100,000 or more.

(g) One member who is a city land use planning director.
(h) One member who is a county land use planning director.
(i) One member who is a representative of a utility company.
(j) One member who is a representative of environmental interests.
(k) One member who is a representative of special districts.
(l) One member who is a representative of farming landowners.
(m) One member who is a representative of ranching landowners.
(n) One member who is a representative of realty interests.
(o) One member who is a representative of land and housing development firms.
(p) One member who is a representative of citizen land use planning organizations.
(q) One member who is a representative of state or regional land use planning organizations.
(r) One member who is a representative of public health interests.
(s) One member who is a representative of small forestland owners.
t) One member who is a representative of large forestland owners.
u) One member who is a representative of economic development organizations.
v) One member who is a representative of federally recognized Indian tribes.
w) One member who is a representative of the Oregon Fire Chiefs Association.
x) Additional members as determined by the director in consultation with counties and cities.

(3) The director and the State Forester shall make the joint appointments under subsection (2) of this section from nominations submitted by entities related to the represented interest or entities. The related entities for appointments:

(a) Under subsection (2)(a), (b), (c) and (g) of this section is the League of Oregon Cities.
(b) Under subsection (2)(d), (e), (f) and (h) of this section is the Association of Oregon Counties.
(c) Under subsection (2)(i) of this section is any one or more of the investor-owned utilities and consumer-owned utilities in this state.
(d) Under subsection (2)(j) of this section is the Oregon League of Conservation Voters.
(e) Under subsection (2)(k) of this section is the Special Districts Association of Oregon.
(f) Under subsection (2)(l) of this section is the Oregon Farm Bureau.
(g) Under subsection (2)(m) of this section is the Oregon Cattlemen's Association.
(h) Under subsection (2)(n) of this section is the Oregon Association of Realtors.
i) Under subsection (2)(o) of this section is the Oregon Home Builders Association.
(j) Under subsection (2)(p) of this section is the Oregon Property Owners Association.
k) Under subsection (2)(q) of this section is 1000 Friends of Oregon.
l) Under subsection (2)(r) of this section is the Oregon Health Authority.
m) Under subsection (2)(s) of this section is the Oregon Small Woodlands Association.
n) Under subsection (2)(t) of this section is the Oregon Forest & Industries Council.
o) Under subsection (2)(u) of this section is Business Oregon.
p) Under subsection (2)(v) of this section is one or more of the tribal governing bodies for Indian tribes in this state.
(q) Under subsection (2)(w) of this section is the State Fire Marshal.
(4) In addition to the members described under subsection (2) of this section, the fol-
lowing shall serve as nonvoting members of the committee:

(a) One member appointed by the State Forester.
(b) One member appointed by the State Fire Marshal.
(c) One member appointed by the Director of the Oregon Health Authority.
(d) One member appointed by the Environmental Justice Task Force.
(e) One member appointed by the director of the Institute for Natural Resources.
(f) One member appointed by the Director of the Department of Land Conservation and Development.
(g) One member appointed by the Director of the Department of Consumer and Business Services from the Division of Financial Regulation of the Department of Consumer and Business Services.
(h) One member appointed by the Director of the Department of Consumer and Business Services from department staff having expertise in building codes.

(5)(a) The President of the Senate, in consultation with the Senate Minority Leader, shall appoint two members from among the members of the Senate to be nonvoting members of the committee. The two members appointed under this paragraph may not be from the same political party.

(b) The Speaker of the House of Representatives, in consultation with the House Minority Leader, shall appoint two members from among the members of the House of Representatives to be nonvoting members of the committee. The two members appointed under this paragraph may not be from the same political party.

(6) Members of the Legislative Assembly appointed to the committee are nonvoting members of the committee and may act in an advisory capacity only.

(7) The members of the committee shall elect a voting member to be chair of the committee and a voting member to be vice-chair, with all powers appropriate to those offices.

(8) The committee shall meet at times and places determined by the chair or by the Director of the Department of Land Conservation and Development. A majority of the voting members shall be a quorum for the conducting of business. Official actions by the committee require approval by a majority of the voting members.

(9) The Department of Land Conservation and Development shall provide staff services for the committee.

(10) Notwithstanding ORS 171.072, members of the committee who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the committee. Other members of the committee are not entitled to reimbursement for expenses and serve as volunteers on the committee. However, the Director of the Department of Land Conservation and Development may, in the discretion of the director, reimburse voting members of the committee for unforeseen expenses from moneys available for purposes of carrying out the functions of the committee.

SECTION 13. All agencies of state government as defined in ORS 174.111 are directed to assist the Land Use and Wildfire Policy Advisory Committee and the Department of Land Conservation and Development in the performance of committee and department duties under sections 14 and 15 of this 2020 Act.

REGIONAL WILDFIRE RISK
SECTION 14. (1) The State Forestry Department and Oregon State University, in consultation with the Department of Land Conservation and Development, shall for each wildfire risk region of this state jointly consult with fire protection agencies and districts, fire officials and personnel and cities and counties in the region. The departments and the university shall analyze the wildfire risk for each region to develop recommendations for reducing the wildfire risk to people, public and private property, businesses, infrastructure and natural resources in that region.

(2) The State Forestry Department and the university, in consultation with the Department of Land Conservation and Development, shall report the recommendations for regional wildfire risk reduction to the Land Use and Wildfire Policy Advisory Committee no later than October 1, 2020.

(3) The departments and the committee shall analyze and evaluate the material to develop recommendations regarding possible means for implementing the final recommendations produced by the Governor’s Council on Wildfire Response through the statewide land use planning program and local governments to minimize the risks from wildfires to people, public and private property, businesses, infrastructure and natural resources.

IMPLEMENTATION OF COUNCIL RECOMMENDATIONS

SECTION 15. (1) The State Forestry Department, in collaboration with the Department of Land Conservation and Development and the Land Use and Wildfire Policy Advisory Committee, shall report to an interim committee of the Legislative Assembly relating to natural resources in the manner provided under ORS 192.245 no later than February 1, 2021, regarding possible means for implementing the final recommendations produced by the Governor’s Council on Wildfire Response.

(2) The report must include, but need not be limited to, the following:

(a) The recommendations developed under section 14 of this 2020 Act.

(b) Existing state and local maps that identify wildfire risk.

(c) To the extent the Land Use and Wildfire Policy Advisory Committee and the departments deem appropriate, new map resources that account for regional differences in program information.

(d) Identification of state and local resources needed to develop, maintain and update wildfire risk maps.

(e) Multiple recommendations regarding possible means for using the statewide planning program and local governments including, but not limited to, recommendations regarding revisions and updates to the statewide land use planning program and local zoning codes.

(f) Planning goals related to natural hazards, including but not limited to Goal 7.

(g) Existing state and local programs that minimize wildfire risk, including, but not limited to, programs that identify wildlife risk through mapping or that define minimum defensible space.

(h) Identification of revisions to the statewide land use planning program and to local building codes appropriate to minimize wildfire risks, including, but not limited to, provisions regarding sufficient defensible space, safe evacuation, adequate access for wildfire fighting equipment and personnel, and considerations regarding development in areas of high wildfire risk that allow for regional differences in topography, vegetation, soil types and other rele-
vant factors.

(i) Funding, staffing and other administrative resources necessary for state, county and city governments to implement wildfire reduction programs, including, but not limited to, the costs of program development, implementation and ongoing operations and the need for stable long-term funding for the programs.

(j) A description of areas of agreement and disagreement among the departments and members of the Land Use and Wildfire Policy Advisory Committee.

**TREATMENT PROGRAM**

**SECTION 16.** (1) The State Forestry Department shall establish not more than 15 projects designed to reduce wildfire danger on public or private forestlands and rangelands through the restoration of landscape resiliency and the reduction of hazardous fuel levels. The department shall identify, design and oversee the implementation, administration, maintenance and evaluation of the projects. In carrying out its functions regarding the projects, the department shall, to the extent practicable, consult and cooperate with state and federal agencies, counties, cities and other units of local government, public and private forestland and rangeland owners, forest collaboratives and other relevant community organizations.

(2) The State Forestry Department shall:

(a) In collaboration with the Oregon State University Extension Service and other entities, identify strategic landscapes that are ready for treatment under the projects, giving priority to projects:

(A) On lands currently approved for treatment projects under the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

(B) On lands within areas identified as high fire risk areas in the Governor’s Council on Wildfire Response November 2019: Report and Recommendations; and

(C) That focus on treatments protective of human life, property, critical infrastructure or other public values;

(b) To the extent practicable, design the projects to:

(A) Evaluate varying types of fuel treatment methods;

(B) Leverage the collective power of public-private partnerships, federal funding and state funding; and

(C) Optimize the receipt of federal government investments that equal or exceed department investments;

(c) Design the projects to involve existing forest-based contracting entities;

(d) Design the projects to involve the Oregon Watershed Enhancement Board or other state agencies as needed;

(e) Affirmatively seek, and enhance opportunities for, collaboration from stakeholders holding a wide variety of perspectives regarding forest management and opportunities for significant involvement by communities in proximity to project sites; and

(f) Engage in careful monitoring of the project sites to produce useful information on which to base recommendations to the Legislative Assembly.

(3) A project under this section may not include commercial thinning on:

(a) Inventoried roadless areas;
(b) Riparian reserves identified in the Northwest Forest Plan or in Bureau of Land Management resource management plans;

(c) Late successional reserves, except to the extent consistent with the 2011 United States Fish and Wildlife Service Revised Recovery Plan for the Northern Spotted Owl (Strix occidentalis caurina);

(d) Areas protected under the federal Wild and Scenic Rivers Act (P.L. 90-542), national recreation areas, national monuments or areas protected under ORS 390.805 to 390.925;

(e) Designated critical habitat for species listed as threatened or endangered under the Endangered Species Act of 1973 (P.L. 93-205) or by the State Fish and Wildlife Commission under ORS 496.172, unless commercial thinning is already allowed under an existing environmental review or recognized habitat recovery plan; or

(f) Federally designated areas of critical environmental concern or federally designated wilderness study areas.

(4) The department shall give public notice, and allow reasonable opportunity for public input, when identifying and selecting projects under this section.

SECTION 17. Section 16 of this 2020 Act does not expand, diminish or otherwise affect any rights, privileges, duties or functions otherwise established under federal, state or local laws, rules or regulations that pertain to the management of private lands in this state.

SECTION 18. (1) The State Forestry Department shall complete the operation of projects under section 16 of this 2020 Act no later than June 30, 2021.

(2) The department shall report regarding progress in carrying out projects under section 16 of this 2020 Act and prescribed fire activities to an interim committee of the Legislative Assembly related to natural resources, in the manner provided by ORS 192.245, and to the Governor no later than December 1, 2020. The report shall include, but need not be limited to:

(a) A summary of project selection, the initial outcome of project implementation activities, anticipated time frames for project completions and any initial findings or recommendations resulting from project identification, design or implementation activities;

(b) A description of the funding source types and amounts secured by the department as matching funds to implement projects; and

(c) A summary of forestland and rangeland treatment activities using prescribed fire to reduce wildfire danger, the initial outcome of the prescribed fire activities, disincentives or other factors affecting the carrying out of the prescribed fire activities, management of the prescribed fire activities and any initial findings or recommendations resulting from the prescribed fire activities.

(3)(a) The department shall report its findings and recommendations regarding wildfire danger reduction on forestland and rangeland, based on information obtained from the projects described in section 16 of this 2020 Act and from prescribed fire activities to an interim committee of the Legislative Assembly related to natural resources, in the manner provided by ORS 192.245, and to the Governor no later than September 15, 2021. The report shall include, but need not be limited to:

(A) A qualitative and quantitative summary of the project outcomes that, at a minimum, states the number of acres treated, the treatment actions carried out, the amount and commercial value of timber harvested if not exempt from public disclosure and any resulting or anticipated changes in landscape conditions related to enhanced resiliency or the miti-
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...gation of wildfire risk to public values;

(B) The identification of barriers to more efficient implementation and achievement of goals in future wildfire danger reduction projects;

(C) Recommendations for creating optimal working relationships with forest collaboratives and other relevant community organizations regarding design, implementation and cost recovery for future wildfire danger reduction projects;

(D) A description of the funding source types and amounts secured by the department as matching funds to carry out projects;

(E) Recommendations for investment in future wildfire danger reduction projects;

(F) A qualitative and quantitative summary of the use of prescribed fire activities for wildfire danger reduction that, at a minimum, states the number of acres burned and any resulting or anticipated changes in landscape conditions related to enhanced resiliency or the mitigation of wildfire risk to public values;

(G) The identification of existing disincentives to the use of prescribed fire;

(H) Recommendations regarding the appropriate standard of care for the use of prescribed fire;

(I) Recommendations for facilitating the establishment of a statewide voluntary Prescribed Burn Manager Certificate program; and

(J) Recommendations regarding means for increasing the quantity of wildfire danger reduction projects to achieve the scale of reduction envisioned as a 20-year goal in the Governor's Council on Wildfire Response November 2019: Report and Recommendations.

(b) In developing the report required under this subsection, the department shall work in coordination with federal land management agencies, institutions of higher education and third parties to develop consistent performance measurements and condition-based metrics for monitoring and communicating the effectiveness of state investments, project actions and prescribed fire activities in reducing wildfire danger on public or private forestlands and rangelands.

APPROPRIATIONS

SECTION 19. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2021, out of the General Fund, the amount of $350,000, which may be expended by the department for carrying out department activities under this 2020 Act.

SECTION 20. In addition to and not in lieu of any other appropriation, there is appropriated to the State Forestry Department, for the biennium ending June 30, 2021, out of the General Fund, the amount of $24,438,279, which may be expended by the department for carrying out department activities under this 2020 Act.

CAPTIONS

SECTION 21. The unit captions used in this 2020 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 Act.
EMERGENCY

SECTION 22. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect on its passage.
State Forest Litigation & Policy Changes

**Center for Biological Diversity et al v. Daugherty et al. (Coastal Coho)**

- Alleges that State of Oregon is logging too much, on steep slopes and without adequate buffers causing take of Oregon Coastal Coho
- Case is currently pending in Federal District Court before Judge Mosman

“Oregon Department of Forestry has been promising they’re going to do more to take care of streams and coho salmon for a long time, and they’ve just really not come through,” he said. "They continue to do a lot of logging on steep steep, landslide-prone slopes that lead to serious sediment problems in streams for coho salmon.”


**Linn County et al. v. State of Oregon (Linn County Suit) (Filed 2017)**

- Alleges that the State of Oregon breached a contract with the Counties for not logging enough on state forest land. (2017)
- Linn County Jury awarded ~$1 billion against the state. (2019)
- Appeal filed (2020), opening brief expect to be filed November 2020

“Bottom line, if the verdict is upheld, the obligation falls to Oregon taxpayers...on a per-capita basis the damage award would effectively transfer money from Oregon's populous urban counties to their rural counterparts.”

“Washington County's taxpayers...[are] the third largest recipient of damages. But counting taxpayers' liability, Washington County ends up $90 million in the hole. Taxpayers in Benton, Clackamas, Douglas, Josephine, Lane, Marion and Polk counties would also be contributing more to the judgement than the county would receive in damages.”

State of Oregon Habitat Conservation Plan (September 2020)

- The goal of the HCP is to improve both financial and conservation outcomes over a 75-year permit term. The state has a duty to both provide sustainable timber harvest revenues to counties where state forests are located while also protecting habitat used by threatened and endangered species.


Memorandum of Agreement - Private Forest Lands (February 2020)

- Included passage of new legislation in 2020 special session that provided for (1) a real-time notification for aerial spraying and (2) expanded protected spray buffers around drinking water, homes, and schools.

- Rule change to expand no cut buffers in the Rogue-Siskiyou region along salmon, steelhead, and bull trout streams, aligning forest practices with the rest of western Oregon.

State will seek a Habitat Conservation Plan (Through Negotiation)
- Negotiation of HCP will lead to an update the Oregon Forest Practices Act
- For the first time, Oregon will seek endorsement of federal wildlife agencies that the state's forest practices are protective of threatened and endangered species, including salmon.
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State Forests Acquisitions Acts

From the first Acquisition Act in 1925 to the last one in 1967, the Oregon State Legislature identified the various multiple-use purposes and values to be provided by state forestlands:

- The 1925 Acquisition Act cited “forestry purposes or for the conservation of water or watershed protection, or for public parks or campgrounds.”
- From the 1931 Act provided for “any or all of the following purposes: growing forest crops, water conservation, watershed protection, recreation.”
- From the 1939 Act: for the “production of forest crops, watershed protection and development, erosion control, grazing, recreation or forest administration.”
- From the 1941 Act: that the state forests are resources of statewide concern and are to be managed for the greatest permanent value to the state, including growing forest crops, protecting waters and watersheds, and recreation.
- Additionally from the 1967 Act: for fish and wildlife environment, landscape effect, and protection of water supplies.

Linn County v. State of Oregon - Selected Issues:

- Whether the State has been and currently is in compliance with the Endangered Species Act and the Clean Water Act with respect to its forest practices on state land is a significant contested issue.

- Plaintiffs did not and cannot demonstrate across hundreds of thousands of acres of forestland, thousands of watersheds and for multiple species that the State could have and should have logged more.

- Oregon State law presents a classic multiple use mandate, there is no particular management approach that is required except that the State must meet the requirements of federal law (ESA, CWA),

- The approach the Oregon Department of Forestry has taken is inherently a site-specific determination based on where the threatened and endangered species are located, what activities are proposed, what best management practices are utilized, and when the activities are planned. It is not possible to go back in time and reconstruct the entirety of the State’s logging program to show that the State could have logged more volume and still have been in compliance with the ESA and the CWA. This would require a person to retrospectively redesign dozens of timber sales that were situated in watersheds that provide habitat for Oregon Coast coho (as well as Marbeled Murrelet and the Spotted Owl) and provide an analysis on a site-by-site, subwatershed-by-subwatershed basis for the entirety of the State forest system,
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Relevant References:

- In its briefing, Linn County stated that it “accounts for Federal Law, including the Endangered Species Act.” (Page 21-22 of Reply to MTD):

  “At trial, Linn County will offer evidence that the State’s decision to harvest at lower than anticipated levels constitutes a breach of contract with direct monetary consequences to the Counties and local taxing districts that rely on those revenues – even after taking environmental laws into account. Linn County will offer expert testimony showing the State’s management produced substantially lower harvests across the board than would have resulted in [sic] a wood products emphasis model which complied with all federal and state regulatory requirements.”

- The Fish and Wildlife Service, National Marine Fisheries Service both disagree that the State of Oregon has complied with its obligations under Section 9 of the ESA. Here are a few passages from the Listing decision retaining Threatened Status for Oregon Coast Coho (from 2011) 76 FR 35755 which discusses the efforts by the Oregon Department of Forestry to prepare an ESA section 10 habitat conservation plan and the response from NMFS who is charged with protecting fish as a trust resource. The decision states that: “On July 19, 2009, we notified the Oregon Department of Forestry that “we are unable to conclude the strategies would meet the conservation needs of our trust resources and provide for the survival and recovery of Oregon Coast (OC) coho salmon.” (Letter from Kim Kratz, NMFS to Jim Young, Oregon Department of Forestry, dated July 19, 2009). The decision goes on to state:

  “There is still significant disagreement over whether the proposed protective measures are sufficient to conserve OC coho salmon and their habitat. Since publication of our proposed rule, no additional progress has been made on this habitat conservation plan. We are as yet unable to conclude that the Elliot State and the Northwest Oregon Forest Management Plans provide for OC coho salmon habitat that is capable of supporting populations that are viable during both good and poor marine conditions.”

  With respect to the Clean Water Act, NMFS has the following to say and the Oregon Coast Coho Ecologically Significant Unit:

  “Despite the existing and enforcement of this law, a significant percentage of stream reaches in the range of the Oregon Coast coho salmon do not meet current water quality standards. For instance many of the populations of this ESU have degraded water quality identified as a secondary limiting factor. Forty percent of the stream miles inhabited by OC Salmon ESU are classified as temperature impaired. Although program carried out under the Clean Water Act are well funded and enforcement of this law occurs, it is unlikely that programs are sufficient to protect salmon habitat in a condition that
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would provide for viable populations during good and poor marine conditions.”

- In 2014, the State of Oregon received a notice of intent to sue from another conservation group alleging violations of the Endangered Species Act with respect to Oregon Coast Coho and the State is still operating without a safe harbor for its activities with respect to Coho.

- In 2017, the State of Oregon received a petition to list the Marbled Murrelet under the State Endangered Species Act.

- In a 2012 decision issued by Chief Judge Ann Aiken of the Federal District Court for the District of Oregon issued an injunction against multiple timber sales in the Elliot State Forests in response to an Endangered Species Act lawsuit filed by a coalition of conservation groups. In enjoining the timber sales, the Court stated that District Foresters and State Foresters can be held liable for take or for proximately causing take when they sell timber sale units that do not comply with the ESA. (The citation is Cascadia Wildlands v. Kitzhaber, 911 F. Supp. 2d 1075 (2012).

- It is unprecedented for the counties to ask a jury to implicitly rule on a federal ESA issue in the context of a class action breach of contract claim. Compliance with the ESA and the CWA is in the province of experts at the FWS, NOAA, among others. The Federal Courts are the gatekeepers for this determination, not the ODF or the State Courts.
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Lead Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, ET AL,
Plaintiffs,

v.

DAUGHERTY, ET AL,
Defendants,

and

OREGON FOREST INDUSTRIES COUNCIL, ET AL,
Defendant-Intervenors.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In this citizen suit under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 [hereinafter the “ESA” or “Act], id. § 1540(g) (citizen-suit provision), several conservation organizations seek relief for the unlawful take of a federally threatened population of coho
salmon from logging, log-hauling, and the construction, improvement, use, and maintenance of logging roads authorized by Defendants in the Tillamook and Clatsop State Forests of northwestern Oregon [hereinafter “State Forests”]. Plaintiffs seek declaratory and injunctive relief against Defendants Peter Daugherty, in his capacity as the State Forester of the Oregon Department of Forestry [hereinafter “ODF”], and the district foresters for the Tillamook, Forest Grove, and Astoria ODF districts [hereinafter the “District Foresters”], in their official capacities [collectively hereinafter the “Foresters” or “Defendants”], to remedy Defendants’ ongoing authorizations of timber sales on the State Forests that are reasonably certain to proximately cause the unpermitted take of Oregon Coast coho salmon, a protected species under the ESA, in violation of Sections 4(d) and 9 of the Act, see id. §§ 1533(d), 1538(a)(1)(B), (G).

2. Implementing their own multi-year management plans, Defendants sell approximately 180 million board feet of timber from the State Forests every year. The overwhelming majority of this volume is Douglas-fir that is cleared from the very remote, steep, and erosion-prone slopes of the Tillamook State Forest and Clatsop State Forests. These sales provide a steady stream of revenue that funds substantial portions of the Foresters’ budgets. However, as will be made evident by the exhaustively studied consequences of similar activities, these sales also unlock a series of events that ultimately cause the take of protected coho salmon, which at this time has not been authorized by the federal government through the lone legal mechanism for doing so under Section 10 of the Act, 16 U.S.C. § 1539.

3. Thus, by and through their planning, authorization, and sale of the 68 timber sales identified in Table 1 below, which align with Defendants’ decades-long and ongoing approach to management of the Tillamook, Forest Grove, and Astoria ODF Districts, Defendants directly authorize timber companies to clear-cut thousands of acres of State forestlands and to haul the
logs along roads that act as conduits for surface water runoff to enter streams. And, as conclusively documented in the relevant scientific literature and as Plaintiffs will prove in this case, these activities: increase flooding and the frequency and magnitude of landslides and debris flows; deliver fine sediment via hydrologically connected road segments to streams that are known to be utilized by coho salmon for spawning, rearing, and sheltering; and deplete large trees and woody debris that would otherwise form a critical component of their freshwater habitat.

4. The 68 timber sales listed in Table 1, below, have units and/or haulage routes that are adjacent to and/or upstream from stream reaches that are known to be occupied by coho salmon. In the last column (entitled “Impact”), sales that authorize the use of hydrologically connected roads for hauling logs and heavy equipment are denoted with the acronym “HCR.” Timber sales that present an increased risk of landslides and/or debris flows are denoted with the acronym “LS.” Use of “ALT” in the timber sale name refers to an “alternative” timber sale, i.e., one to be sold when primary sales threaten to fall short of the Foresters’ timber revenue objectives. “AOP” refers to the pertinent Annual Operating Plan. ODF Districts are abbreviated as follows: AST (Astoria); FG (Forest Grove); and TILL (Tillamook).

<table>
<thead>
<tr>
<th>Timber Sale</th>
<th>District</th>
<th>AOP</th>
<th>Acres Total</th>
<th>Acres Clear-Cut</th>
<th>Acres Partial-Cut</th>
<th>Road Const. (Miles)</th>
<th>Road Imprvd. (Miles)</th>
<th>Impact</th>
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</table>
5. As evident from the well-documented effects of similar activities in the past, it is reasonably certain—indeed, all but guaranteed—that Defendants’ authorization of the timber sales in Table 1 and all similar timber sales on the State Forests trigger a chain of entirely foreseeable consequences that causes death and injury of coho salmon and significantly impairs their ability to successfully spawn, forage for food, and take refuge from predators. By disrupting these essential behaviors, Defendants cause “take” of Oregon Coast coho salmon within the meaning of the Act in ways that have been exhaustively studied, are known to ODF as well as other State agencies, and were specifically identified by the National Marine Fisheries Service [hereinafter “NMFS”], the expert federal agency, as forms of prohibited take of this species. 50 C.F.R. § 223.203 [hereinafter “Special Rule”]; 73 Fed. Reg. 7816, 7830 (Feb. 11, 2008) (“[a]ctivities that . . . could potentially ‘harm’ salmon” include logging, “road construction in riparian areas” and areas that are “susceptible to mass wasting and surface erosion,” and the “removal of large woody debris and ‘sinker logs’ or riparian shade canopy”).

6. While ODF has taken some initial steps in the past toward securing an Incidental Take Permit [hereinafter “ITP”] from NMFS pursuant to ESA Section 10(a)(1)(B), see 16 U.S.C. § 1539(a)(1)(B), ODF has never completed a final “Habitat Conservation Plan” [hereinafter...
“HCP”] that would allow the Foresters to incidentally take Oregon Coast coho salmon in accordance with an ITP and the ESA. As of the date of this Amended Complaint, the State of Oregon and Defendants have yet to decide to do so.

7. Therefore, unless and until the Foresters obtain lawful authorization for such activities pursuant to an ITP from NMFS, Plaintiffs respectfully seek declaratory relief and an injunction to halt and prevent logging and logging-related activities on the Tillamook and Clatsop State Forests that are reasonably certain, as represented by the sales in Table 1 and all the evidence to be submitted in this case, to cause take of Oregon Coast coho salmon.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to the ESA citizen-suit provision, 16 U.S.C. § 1540(g), which also empowers the Court to enjoin Defendants from further violations of the ESA and its implementing regulations, id. § 1540(g)(1)(A).


PARTIES

11. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY [hereinafter “the Center”] is a non-profit organization that is dedicated to the preservation, protection, and
restoration of biological diversity, native species, and ecosystems. The Center is incorporated in California and headquartered in Tucson, Arizona with offices throughout the United States and Mexico. The Center has long advocated for coho salmon protection. The Center has previously brought litigation to ensure development of a plan to recover the Oregon Coast population of coho salmon. The Center has worked for conservation of streams occupied by coho salmon from development in California. The Center’s Portland, Oregon office and Endangered Species Program have advocated for protections for old-growth and private and Oregon forestlands by attending and testifying at Board of Forestry and State Land Board meetings, and by bringing litigation to secure greater protections for imperiled species on State forestlands. The Center has more than 63,000 members, including over 1,600 in Oregon, many of whom enjoy exploring Oregon’s forestlands and observing, studying, fishing for and photographing coho salmon. The Center’s members are injured by logging and road construction, improvement, use, and maintenance, and related activities, as authorized by Defendants and represented by the timber sales in Table 1, on high-risk or landslide hazard locations, erosion-prone slopes, or hydrologically connected areas, which causes sediment and debris to be delivered to coho salmon-bearing streams and take of Oregon Coast coho salmon.

12. Representing approximately 10,000 members and supporters, Plaintiff CASCADIA WILDLANDS is a Eugene, Oregon-based non-profit organization that is devoted to conservation of the Cascadia Bioregion, which extends from northern California to southeastern Alaska. Cascadia Wildlands uses a combination of education, organizing, outreach, litigation, advocacy, and collaboration to defend wild places and promote sustainable, restoration-based forestry. Cascadia Wildlands has long advocated for improved management of forests, for the protection of older forests, and for the recovery of imperiled species dependent on older forest
habitats such as Oregon Coast coho salmon. For over a decade, Cascadia Wildlands has campaigned for better protections for the Tillamook and Clatsop State Forests and imperiled species there, including Oregon Coast coho salmon. Cascadia Wildlands has members who regularly enjoy, view, study, and/or fish for coho salmon on the Clatsop and Tillamook State Forests, and who are injured by logging and road construction, improvement, use, and maintenance, and related activities, as authorized by Defendants and represented by the timber sales in Table 1, on high-risk or landslide hazard locations, erosion-prone slopes, or hydrologically connected areas, which causes sediment and debris to be delivered to coho salmon-bearing streams and causes take of Oregon Coast coho salmon.

13. Plaintiff NATIVE FISH SOCIETY is the leading science-based native fish conservation organization in the Pacific Northwest, with over 3,700 members and supporters and 87 River Stewards. Dedicated to utilizing the best science available, Native Fish Society is a 501(c)(3) non-profit corporation that advocates for the recovery and protection of wild, native fish, including Oregon Coast coho salmon, and promotes the stewardship of the habitats that sustain them. Native Fish Society has members who regularly enjoy, view, study, and/or fish for coho salmon on the Tillamook and Clatsop State Forests and who are injured by logging and road construction, improvement, use, and maintenance, and related activities, as authorized by Defendants and represented by the timber sales in Table 1, on high-risk or landslide hazard locations, erosion-prone slopes, or hydrologically connected areas, which causes sediment and debris to be delivered to coho salmon-bearing streams and causes take of Oregon Coast coho salmon.

14. Defendant PETER DAUGHERTY, Ph.D., is the State Forester of Oregon. The State Forester: develops, reviews, and approves written plans; and develops, reviews, authorizes,
and sells timber sales that allow logging, road construction, improvement, use, and maintenance, and related activities, on the State Forests. Defendant Daugherty is sued in his official capacity.

15. Defendant KATHERINE SKINNER is the District Forester for the Tillamook District, which includes a large portion of the Tillamook State Forest. District Forester Skinner: develops, reviews, and approves written plans that govern the Tillamook District; and develops, reviews, authorizes, and sells timber sales that allow logging, road construction, improvement, use, and maintenance, and related activities, on the Tillamook District. Ms. Skinner is sued in her official capacity.

16. Defendant MICHAEL CAFFERATA is the District Forester for the Forest Grove District, which includes a portion of the Tillamook State Forest. District Forester Cafferata: develops, reviews, and approves written plans that govern the Forest Grove District; and develops, reviews, authorizes, and sells timber sales that allow logging, road construction, improvement, use, and maintenance, and related activities, on the Forest Grove District. Mr. Cafferata is sued in his official capacity.

17. Defendant DANIEL GOODY is the District Forester for the Astoria District, which includes the Clatsop State Forest. District Forester Goody: develops, reviews, and approves written plans that govern the Astoria District; and develops, reviews, authorizes, and sells timber sales that allow logging, road construction, improvement, use, and maintenance, and related activities, on the Astoria District. Mr. Goody is sued in his official capacity.
## Summary of Fire-Related Senate Bills 9/19/2020

<table>
<thead>
<tr>
<th>Name</th>
<th>Link to Bill</th>
<th>Quick Summary</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 2882 Community Defense Bill</td>
<td><a href="https://www.congress.gov/116/bills/s2882/BILLS-116s2882is.pdf">https://www.congress.gov/116/bills/s2882/BILLS-116s2882is.pdf</a> Introd. 1/20</td>
<td>Invest $1 billion/year to establish guidelines for communities on creating Wildfire Defense Plans. Plans focus on: improving emergency response, home hardening, defensible space, land use planning and education.</td>
<td>Focused on emergency response, home and community defense.</td>
<td>None, these are the solutions that work to deal with large wind and drought driven fire events.</td>
</tr>
<tr>
<td>National Prescribed Fire Act</td>
<td><a href="https://www.wyden.senate.gov/imo/media/doc/National%20Prescribed%20Fire%20Act%20of%202020%20Bill%20Text.pdf">https://www.wyden.senate.gov/imo/media/doc/National%20Prescribed%20Fire%20Act%20of%202020%20Bill%20Text.pdf</a> Introd. 9/20</td>
<td>Provides $300 million to FS/BLM to facilitate controlled burns on federal, state and private land. Establishes a $10 million collaborative program based on successful CFLRP to implement prescribed burning on state, county and private lands. Establishes a FS/BLM workforce development program.</td>
<td>Includes measures for air issues and human resources.</td>
<td>May promote Thinning-logging before burning and chaparral burning could be abused.</td>
</tr>
<tr>
<td>Bill</td>
<td>URL</td>
<td>Description</td>
<td>Benefits</td>
<td>Concerns</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>S. 3684</td>
<td><a href="https://www.congress.gov/116/bills/s3684/BILLS-116s3684is.pdf">https://www.congress.gov/116/bills/s3684/BILLS-116s3684is.pdf</a></td>
<td>Provides $5.5 billion for FS/BLM fuels/thinning, prioritizing NEPA-ready projects. $7 billion for rec. guides with permits. $9 billion fund for conservation corps &amp; job training. $150 million more for Collaborative Forest Landscape Restoration Program, $6 billion for FS capital improvements &amp; maintenance backlog and $500 million to FS State/Private Forestry program, including $100 million for Firewise. $10 billion for on farm water/habitat and $100 million for PPE.</td>
<td>Retains environmental law. Includes job training. funds firewise work.</td>
<td>Spends limited funds on logging-thinning projects that may not have any affect on fire behavior. May be used to fund questionable commercial logging.</td>
</tr>
</tbody>
</table>

Sponsors: Senator Wyden

Sponsors: Senators Daines Feinstein
### Impacts on Conservation Safeguards

<table>
<thead>
<tr>
<th>Name</th>
<th>Increases logging</th>
<th>Focused Near Communities</th>
<th>Funding</th>
<th>NEPA</th>
<th>ESA</th>
<th>Impacts other laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 2882 Community Defense Bill</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>National Prescribed Fire Act</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>CAA</td>
</tr>
<tr>
<td>S. 3684 21st Century CCC Bill</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>S. 4431 Emergency Wildfire and Public Safety Act</td>
<td>Yes</td>
<td>No.</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Wildfire Defense Act

As our country faces the climate crisis, we must speak the truth that widespread catastrophic wildfires are a growing threat to the safety of our communities. Over the past two decades alone, California has seen 15 of the 20 largest wildfires in its history, some of which have wiped out entire communities. The federal government has a responsibility to treat these wildfires with the same level of seriousness as hurricanes and other natural disasters and to empower communities to implement science-based methods for mitigating wildfire damage and defending life and property.

We cannot stop the threat of wildfires entirely, but we can do much more to prepare our communities for worst-case scenarios while working to address the structural issues that have caused these fires to burn more quickly and more intensely than ever before. In the long term, California must address its history of mismanaging fire, the expansion of residential communities into natural areas, the greed and misplaced priorities of corporations, and the pumping of greenhouse gases into the atmosphere. We must also acknowledge that not all wildfires burn in the forest. Wildfires are also burning through shrubland across Southern California and the oak woodlands that stretch across the state. In all environments, the best way to protect communities from wildfire is to focus on the communities themselves.

U.S. Senator Kamala D. Harris (D-CA) is introducing the Wildfire Defense Act to ensure that local communities are able to defend themselves from the growing danger of wildfires. This responsibility should not fall on any one individual, but should instead be shared among entire communities with the understanding that a threat to any one home is a threat to every neighbor.

Specifically, the Wildfire Defense Act will invest $1 billion per year to:

- Establish guidelines for communities to conceptualize new Community Wildfire Defense Plans (CWDP) that are developed in coordination with community members, first responders, and relevant state agencies. CWDPs will focus on implementing strategies and activities relating to:
  - Improving evacuations and access for first responders
  - Addressing vulnerable populations, including the elderly, those with disabilities, and the homeless
  - Hardening critical infrastructure and homes
  - Applying defensible space projects to create a buffer between communities and the forest
  - Building local capacity to implement and oversee the plan
  - Deploying distributed energy resources like microgrids with battery storage
  - Implementing strategic land use planning
  - Educating community members
  - Coordinating with existing wildfire plans like a Community Wildfire Protection Plan
- Provide grants of up to $250,000 to develop a CWDP and grants of up to $10 million to implement a CWDP
  - Grants will be prioritized for low-income communities that are in a wildfire hazard area and communities recently impacted by a major wildfire
- Study how a CWDP could be used as certification for insurance companies assessing a community resilience.
- Complete a report on all federal authorities and programs to protect communities from wildfires.
- Continuously update wildfire hazard maps.
- Assess impediments to emergency radio communications across departments and agencies.
AMENDMENT TO
RULES COMMITTEE PRINT 116–63
OFFERED BY MR. SCHRADER OF OREGON

At the end of subtitle H of title I, add the following:

SEC. 1806. HOME WILDFIRE RISK REDUCTION REBATE PROGRAM.

(a) IN GENERAL.—The Secretary of Energy shall establish a program, to be known as the “Home Wildfire Risk Reduction Rebate Program”, to provide rebates to homeowners to defray the costs of retrofitting an existing home to be wildfire-resistant.

(b) AMOUNT OF REBATE.—In carrying out the Home Wildfire Risk Reduction Rebate Program, the Secretary shall provide a homeowner a rebate of up to—

(1) $10,000 for the retrofitting of roof features, including the roof covering, vents, soffit and fascia, and gutters, to be wildfire-resistant;

(2) $20,000 for the retrofitting of exterior wall features, including sheathing and siding, doors, and windows, to be wildfire-resistant;

(3) $5,000 for the retrofitting of a deck, including the decking, framing, and fascia, to be wildfire-resistant; and
(4) $1,500 for the retrofitting of near-home landscaping, including mulch and landscape fabric in a 5-foot zone immediately around the home and under all attached decks, to be wildfire-resistant.

(c) INCLUSION.—For purposes of this section, the cost of a retrofit shall include all costs associated with the retrofit, including the purchase and installation of wildfire-resistant products and components.

(d) LIMITATION.—The amount of the rebate under this section shall not exceed 50 percent of the cost of the retrofit.

(e) PROCESS.—

(1) FORMS; REBATE PROCESSING SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Treasury, shall—

(A) develop and make available rebate forms required to receive a rebate under this section;

(B) establish a Federal rebate processing system which shall serve as a database and information technology system that will allow homeowners to submit required rebate forms; and
(C) establish a website that provides information on rebates provided under this section, including how to determine whether particular measures qualify for a rebate under this section and how to receive such a rebate.

(2) SUBMISSION OF FORMS.—In order to receive a rebate under this section, a homeowner shall submit the required rebate forms, and any other information the Secretary determines appropriate, to the Federal rebate processing system established under paragraph (1).

(f) MODERATE-INCOME HOUSEHOLDS.—

(1) CERTIFICATIONS.—The Secretary shall establish procedures for certifying that the household of a homeowner is moderate-income for purposes of this section.

(2) LIMITATION FOR MODERATE INCOME HOUSEHOLDS.—Notwithstanding subsection (d), for households of homeowners that are certified pursuant to the procedures established under paragraph (1) as moderate-income, the amount of the rebate under this section shall not exceed 80 percent of the cost of the retrofit.

(3) OUTREACH.—The Secretary shall establish procedures to—
(A) provide information to households of homeowners that are certified pursuant to the procedures established under paragraph (1) as moderate-income regarding other programs and resources relating to assistance for upgrades of homes, including the weatherization assistance program implemented under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.); and

(B) refer such households, as applicable, to such other programs and resources.

(g) DEFINITION.—In this section, the term “wildfire-resistant” means meeting or exceeding the specifications of the International Code Council’s 2018 International Wildland-Urban Interface Code (IWUIC).

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000,000 for each of fiscal years 2021 through 2025.
Key Scientific Findings on Forests, Fire, Carbon and Climate (April 26, 2019)

Dr. Beverly Law, Professor Global Change Biology & Terrestrial Systems Science, Oregon State University
Dr. Mark E. Harmon, Emeritus Professor, Forest Ecosystems & Society, Oregon State University
Dr. Tara Hudiburg, Assoc. Professor, Dept. Forest, Rangeland and Fire Sciences, University of Idaho

Carbon in forests is carbon that is not in the atmosphere.

- Young forests do not take up more carbon from the atmosphere annually than older forests (Luyssaert et al. 2008). The first 10 to 20 years after harvest or stand-replacing disturbance, young forests are a net emission to the atmosphere (Amiro et al. 2010, Law et al. 2001).


Fires:

- **Wildfire is an essential ecological process.** The dominant fire regime is mixed severity (Law & Waring 2015). Such burned landscapes have shown prolific recovery and diversity of species (Tingley et al. 2016, Fontaine et al. 2009).

- Most Oregon fires release a small fraction (~5%-10%) of the biomass carbon (Law & Waring 2015). Fire emissions are <10% of OGWC reported non-forest emissions (Law et al. 2018).

- **Broad-scale thinning of forests conflicts with carbon sequestration goals** and would result in higher emissions (Law et al. 2013, Hudiburg et al. 2011). The amount of carbon removed is often much larger than that saved, and more area is harvested than would actually burn (Mitchell et al. 2009, Rhodes et al. 2009, Law & Harmon 2011).

- **Post-fire logging** frequently damages ecosystems, particularly on steep slopes. Impacts include soil erosion and degraded river hydrology (Karr et al. 2004).

Summary:

- **First priority is to protect the public in the wildland-urban interface** (Radeloff et al. 2005). Studies suggest focusing on residential loss in the home ignition zone rather than treating the larger WUI, because home materials, design and maintenance in relation to surroundings were main factors in residential losses (Calkin et. al 2014).

- **To meet climate mitigation goals and conserve forest carbon and the co-benefits to forest ecosystems**, there is the potential to keep carbon in existing forests and store more carbon in forests by reducing harvest and afforestation of areas that used to be forests long ago. Forests play an important role in offsetting fossil fuel emissions.
Citations


Chapter 4A—Forest Litigation and Policy Review

TOTAL U.S. WILDFIRE ACRES 1926-2017

Source: National Interagency Fire Center; nifc.gov

MILLION ACRES BURNED

Warm, dry climate period
Cool, wet climate period
Global climate change

TOTAL U.S. WILDFIRE ACRES 1926-2017

Source: National Interagency Fire Center; nifc.gov

FIRE SUPPRESSION GOT A HELPING HAND

Source: National Interagency Fire Center; nifc.gov, ncdc.noaa.gov/teleconnections/pdo; Dr. Paul Hessburg, May 2019 testimony to Oregon’s Wildfire Response Council
Chapter 4A—Forest Litigation and Policy Review

**Fate of Carbon from Harvested Wood**

- **Live Tree:** 100%
- **Cut:**
  - Logging residue: 46%
  - Tree trunk: 54%
- **Milled:** 32%
- **Delivered:** 17%
- **Net Carbon Stored:** 15%

**The Carbon Debt Created by Industrial Forestry**

- **Native Old-Growth Forest:**
  - Average carbon stored: 323 tons per acre (nature's baseline)
- **Industrial Timberland:**
  - Average carbon stored: 113 tons per acre (net transfer of carbon from forest to atmosphere)

Sources:
- Goldt et al. 2011. Multiscale Drivers of Spatial Variation in Old-Growth Forest Carbon Density Disentangled with Lidar and an Individual-Based Landscape Model
- Keith et al. 2009. Re-evaluation of forest biomass carbon stocks and emissions from the world’s most carbon-dense forests
- U.S. Forest Service. Based on 2017 Oregon’s forest resources, 2001–2012; ICF forest inventory and analysis report.
- Photos by Francis Esthervang and Charles Reineau (courtesy of Oregon Wild)

2020 Environmental Law: Year in Review
Chapter 4A—Forest Litigation and Policy Review

**THINNING THE FOREST TO INFLUENCE FIRE BEHAVIOR IS A SHOT IN THE DARK**

Only (1%) of fuel treatments happen to encounter wildfire each year (20 billion acres)

- **Annual burned forest:** 3 million acres
- **Fuel treatments (2005-2013) (thinning, prescribed burns):** 7 million acres

*Sources:*
- Schoennagel et al. 2017, Adapt to wildfire in western North American forests as climate changes.
- Barnett et al. 2016, Beyond fuel treatment effectiveness: Characterizing interactions between fire and treatments in the US.

Forests in the West: 350 million acres

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**Holiday Fire - McKenzie River Region**

Previously Logged Forests

[Map of the McKenzie River Region with logged forests highlighted]
Thinning: A Shot in the Dark.

- 1 million acres
- annual burned forest
- unsuccessful treatment (2005-2013)
- annual successful treatment

7 million acres of forests are thinned between 2005 and 2013 to manage fires.

3 million acres of forests burn from wildfire each year.

Only 1% of fuel treatments encounter wildfire each year.

SOURCE: SCHENNGEL ET AL., BARNETT ET AL.

Wildfire Damage in California (2017)

- 4 fires (0.06%)
  - $13.7 billion in damage claims (99%)

- 9,210 fires (99.94%)
  - $1.09 billion in damage claims (99%)

SOURCE: CALIFORNIA DEPARTMENT OF INSURANCE
          CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Wildfire Damage in California (2018)

- Wildfire
- Damage Claims

A single fire, the Camp Fire, accounted for nearly 68% of total claims for 2018.

5 fires (0.06%)
$12.245 billion in damage claims (99%)

7,619 fires (99.94%)
$155 million in damage claims (1%)

Source: California Department of Insurance, California Department of Forestry and Fire Protection
To: Rep. Kathy Castor, Chair, House Select Committee on the Climate Crisis
    Rep. Frank Pallone, Chair, House Energy and Commerce Committee
    Rep. Raúl Grijalva, Chair, House Natural Resources Committee
    Rep. Collin Peterson, Chair, House Agriculture Committee
    Sen. Lisa Murkowski, Chair, Senate Committee on Energy and Natural Resources
    Sen. John Barrasso, Chair, Senate Committee on Environment and Public Works

From: Scientists concerned about climate and biodiversity impact of logging

Date: June 2020

Dear Members of Congress,

As forest and climate change scientists and experts, we are writing to urge you to oppose legislative proposals that would promote logging and wood consumption, ostensibly as a natural climate change solution, based on claims that these represent an effective carbon storage approach, or claims that biomass logging, and incinerating trees for energy, represents renewable, carbon-neutral energy.

We find no scientific evidence to support increased logging to store more carbon in wood products, such as dimensional lumber or cross-laminated timber (CLT) for tall buildings, as a natural climate solution. The growing consensus of scientific findings is that, to effectively mitigate the worst impacts of climate change, we must not only move beyond fossil fuel consumption but must also substantially increase protection of our native forests in order to absorb more CO₂ from the atmosphere and store more, not less, carbon in our forests (Depro et al. 2008, Harris et al. 2016, Woodwell 2016, Erb et al. 2018, IPCC 2018, Law et al. 2018, Harmon 2019, Moomaw et al. 2019).

Furthermore, the scientific evidence does not support the burning of wood in place of fossil fuels as a climate solution. Current science finds that burning trees for energy produces even more CO₂ than burning coal, for equal electricity produced (Sterman et al. 2018), and the considerable accumulated carbon debt from the delay in growing a replacement forest is not made up by planting trees or wood substitution (noted below). We need to increase growing forests to more rapidly close the gap between emissions and removal of CO₂ by forests, while we simultaneously lower emissions from our energy, industrial and agricultural sectors.

In your deliberations on this serious climate change issue, we encourage you to consider the following:

- The logging and wood products industries suggest that most of the carbon in trees that are logged and removed from forests will simply be stored in CLT and other wood products for buildings instead of being stored in forest ecosystems. However, this is clearly incorrect. Up to 40% of the harvested material does not become forest products and is burned or decomposes quickly, and a majority of manufacturing waste is burned for heat. One study found that 65% of the carbon from Oregon forests logged over the past 115 years remains in the atmosphere, and just 19% is stored in long-lived products. The remainder is in landfills (Hudiburg et al. 2019).

- Logging in U.S. forests emits 617 million tons of CO₂ annually (Harris et al. 2016). Further, logging involves transportation of trucks and machinery across long distances between the forest and the mill. For every ton of carbon emitted from logging, an additional 17.2% (106 million tons of CO₂) is emitted from fossil fuel consumption to support transportation, extraction, and processing of wood (Ingerson 2007). In fact, the annual CO₂ emissions from logging in U.S. forests are comparable to yearly U.S. emissions from the residential and commercial sectors.
The cumulative climate change impact of logging in the U.S. is even higher, since logging causes substantial reductions in carbon sequestration and storage potential in forests due to soil compaction and nutrient removal, and these combined impacts can often reduce forest carbon storage potential by 30% or more (Elliott et al. 1996, Walmsley et al. 2009).

- The wood products industry claims that substituting wood for concrete and steel reduces the overall carbon footprint of buildings. However, this claim has been refuted by more recent analyses that reveal forest industries have been using unrealistic and erroneous assumptions in their models, overestimating the long-term mitigation benefits of substitution by 2 to 100-fold (Law et al. 2018, Harmon 2019). The climate impact of wood is even worse if the reduced forest carbon sequestration and storage caused by nutrient loss and soil compaction from logging is included, as discussed above.

In countless public communications, and at numerous Congressional hearings, industry representatives have advocated for increased logging in the context of reducing wildland fire and related emissions. While small-tree thinning can reduce fire intensity when coupled with burning of slash debris (e.g., Perry et al. 2004, Strom and Fulé 2007) under very limited conditions, recent evidence shows intensive forest management characterized by young trees and homogenized fuels burn at higher severity (Zald & Dunn 2018). Further, the extremely low probability (less than 1%, Schoennagel et al. 2017) of thinned sites encountering a fire where thinning has occurred limits the effectiveness of such activities to forested areas near homes. Troublingly, to make thinning operations economically attractive to logging companies, commercial logging of larger, more fire-resistant trees often occurs across large areas.

Importantly, mechanical thinning results in a substantial net loss of forest carbon storage, and a net increase in carbon emissions that can substantially exceed those of wildfire emissions (Hudiburg et al. 2013, Campbell et al. 2012). Reduced forest protections and increased logging tend to make wildland fires burn more intensely (Bradley et al. 2016). This can also occur with commercial thinning, where mature trees are removed (Cruz et al. 2008, Cruz et al. 2014). As an example, logging in U.S. forests emits 10 times more carbon than fire and native insects combined (Harris et al. 2016). And, unlike logging, fire cycles nutrients and helps increase new forest growth.

We are hopeful that a new and more scientifically sound direction will be considered by Members that emphasizes increased forest protections, and a shift away from consumption of wood products and forest biomass energy, to help mitigate the climate crisis. We believe having a dialogue now would be productive, and we could help members of your Committees to be more effective in achieving the conservation and climate change goals that we share. We look forward to hearing from you and are available to provide additional scientific sources and serve as a resource for your Committees as you consider policy proposals on the climate crisis.

Sincerely,

Lead Signatories
* Affiliations listed for identification purposes only

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1 https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks
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Chapter 4B

Amendments to the Eastside Screens Governing Federal Forest Management

SARA GHAFOURI
American Forest Resource Council
Portland, Oregon

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June 8, 2020

Shane Jeffries, Forest Supervisor
Ochoco National Forest
3160 NE Third Street
Prineville, OR 97754

In Reply To: Eastside Screens Plan Amendment

Dear Mr. Jeffries:

American Forest Resource Council (AFRC) is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to the six eastern Oregon/ southeast Washington National Forests that this amendment will impact, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. Oregon’s forest sector employs approximately 61,000 Oregonians, with AFRC’s membership constituting a large percentage of those jobs. Rural communities, such as the ones affected by this project, are particularly sensitive to the forest products sector in that more than 50% of all manufacturing jobs are in wood manufacturing. Timber provided by these Forests supports jobs not only in Oregon but also in Idaho and Washington.

AFRC is pleased that the Forest Service is proposing to amend the 21" dbh limit (21" rule) from the Eastside Screens. We are encouraged that the Forest Service recognizes the flaws of attempting to manage complex forest ecosystems under the constraints of a firm one-size-fits-all limitation. Those flaws are evident after a quarter-century of management that has yielded results that fall short of the very forest conditions that the rule was intended to create. Rather than accelerate the trajectory of forests toward a late-seral structure, this rule has instead created forest conditions that are unnaturally dense and exacerbate risk to wildfire, insect and disease infestations, and drought. This creates ripple effects to adjacent forests all of which retard the
ability of the forests in eastern Oregon to provide for the predictable and sustainable timber supplies that our members and the communities they help support depend on.

As early as 2003, the Forest Service recognized that the Eastside Screens presented management challenges, including those resulting from the 21" rule. A letter dated June 11, 2003 from then-Regional Forester Linda Goodman noted that “screens direction, including the 21-inch diameter limitation, is limiting the ability to meet the screens objectives of providing LOS stands.” The letter went on to outline several reasons why the Eastside Screens presented a barrier to attaining desired end results and suggested that more flexibility was needed. One excerpt from the letter is particularly appropriate at this time--“Previous interpretations that site specific Forest Plan amendments were not allowed in rare cases (Regional Forester’s letters on screens, October 2 and December 23, 1993), coupled with a nine-year body of practical experience, suggests a need for more flexibility in implementation of screens direction. Some flexibility in implementing 21” diameter limitations, harvest under Scenario A, and connectivity corridors is appropriate.”

In addition to the detriments to the ecological qualities in eastern Oregon, the Eastside Screens had significant impacts to the socioeconomic well-being of local communities that depend on the proper management of the National Forests in the region. Following the adoption of the Eastside Screens and the 21” rule, the forest products industry went through immediate downsizing and the economic impacts to rural communities and counties are still being felt today. An amendment to the flawed 21” rule is necessary not only to address ecological needs but also because its rigid application has resulted in tragic consequences to the industry and local communities, who had no time to adjust to the quick implementation of the Eastside Screens, while providing marginal benefits to wildlife and other resources and impeding the practice of sound forestry. We urge the Forest Service to recognize and highlight the potential socioeconomic benefits that could result from amending this rule.

The Forest Service and other land managers are moving toward treating forests on a landscape scale, which is very appropriate from an ecological perspective. It is important to recognize that forests and vegetation at this scale are multidimensional across space and time, and characterized by horizontal, vertical, and temporal components. Although treatments are being applied at the landscape level, the amount of resources available to trees is very site specific and carrying capacity is defined at the ground level. One-size-fits-all templates such as the 21" rule and, although not specifically at issue here, leaving all trees 150 years and greater, eventually become self-defeating. Please refer to the attached statement prepared by Stephen A. Fitzgerald, Professor of Silviculture, Oregon State University, for the United States Senate in 2010. Professor Fitzgerald articulates the potential ramifications of the 21” rule which are now manifesting themselves in the nation’s forests. In this testimony, Professor Fitzgerald stated that “Permanent, fixed diameter limits are not based on ecology and forest science but rather political science. These artificial limits remain static while forests, and larger ecosystems, are invariably dynamic: that is, they grow, compete for resources, and are continually affected by disturbance.”

AFRC and its members actively participated in the public workshops facilitated by the Forest Service in early May. Those workshops were designed to allow the public to share their
perspectives on the proposed amendment. Although AFRC attended each workshop, our ability to effectively share our perspectives and provide substantive feedback to the Forest Service was limited due to the virtual nature of the workshops and the high attendance by interested stakeholders. Therefore, this letter is meant to supplement what limited feedback we were able to convey during the workshops and allow us to expand on our thoughts from a scientific, social, and technical perspective. We also would like the Forest Service to consider our ideas for realistic and implementable alternatives to the current wildlife standard that we believe will enable the Forests to more effectively attain the desired outcomes described in that standard. Alternatives that we describe in this letter are designed to create a more effective guideline that can be adapted to the multitude of unique forest ecosystems in eastern Oregon. What we will propose is meant to align with the current standard direction to “maintain and/or enhance Late Old Structure (LOS) components in stands subject to timber harvest as much as possible.”

The current guideline of a diameter limit (21” rule) was simply the vehicle that the Forest Service believed to be the best instrument to attain the “LOS components” described above.

There is a diverse array of forest cohorts, ecosystems, and seral stages across eastern Oregon. This undermines the utility and effectiveness of a firm one-size-fits-all restriction as a means to a desired end. Instead, a one-size fits-all approach is flawed and counterproductive. We applaud the Forest Service’s approach to remedy this flawed standard and we hope to both support what you develop as an alternative and to assist by providing our own alternatives.

It is important to note how the Eastside Screens define LOS. The ecosystem standard states that “LOS, a term used in the interim wildlife standard, refers to the structural stages where large trees are common, i.e. Multi-stratum with Large Trees, and Single-stratum with Large Trees.” Those two stages are described in a table that includes the “components” to each stage. Since the existing 21” rule is simply meant as a vehicle to “maintain” those components, it is important to note how they are described. That table includes the following forest conditions for both stages that the standard should be designed to maintain or develop:

- Two or more cohorts of trees
- Medium and large sized trees dominate the overstory
- Trees of all sizes may be present
- Horizontal and vertical stand structure and tree sizes are diverse
- The single dominant canopy stratum consists of medium sized or large trees

Our assumption is that the existing 21” rule was meant to “maintain and/or enhance” the “large tree” component described in the Table. We also assume, since the cohort in question is described as both “late” and “old”, that tree size is being used as a surrogate for tree age. Further, while the “minimum” standards for LOS are described, there is no provision for addressing the scenario when stands reach a “maximum” or condition where intervention is needed to prevent the loss of desired structure.

The term “large tree” is a relative term. What constitutes a “large tree” is dependent on what type of forest stand is in question. A forest ecologist would apply a different standard to determine what is “large” to an eastern deciduous forest in New Hampshire than they would to a
giant sequoia forest in California. The New Hampshire forest may contain “large” oak trees that are 18” dbh while the California forest may contain “large” sequoia trees that are 300” dbh. Developing a single metric for what constitutes large for those two forests is impractical. The same applies, although to a lesser degree of extremes, to the forests of eastern Oregon. How can a single standard be developed to determine what is a large tree in both dry ponderosa pine forests on the Deschutes National Forest and moist mixed-conifer forests on the Umatilla National Forest? How can a single standard be developed to determine what is a large and/or old tree in a single forest with multiple overstory species? We believe that such a standard to replace the current DBH limit cannot and should not be created. Instead, we believe that an effective replacement needs to be descriptive rather than prescriptive and malleable enough to allow professional foresters the ability to adapt it to a broad spectrum of forest conditions.

We also believe that the Forest Service should consider a wide range of alternatives that provides the decision-maker with an appropriate spectrum from which to choose. To be clear, the options we outline below are simply alternatives to the 21" dbh limit described in the Wildlife Standard, Scenario A, 2a. The direction to design treatments to develop LOS in 2b of this Scenario are assumed to remain in place.

ALTERNATIVES TO CONSIDER

Option 1:

Replace “maintain all remnant late and old seral and/or structural live trees > 21” dbh that currently exist within stands proposed for harvest activities” with:

“Determine, based on tree characteristics, those trees in each stand that represent a “remnant” cohort, and exclude them from harvest. Identification of remnant trees may be based on any of a variety of methods, such as evaluation of bark, limb, trunk, or crown characteristics, or increment coring, at the discretion of the Forest Service."

Since the underlying objective of the Eastside Screens is to maintain and develop late old structure, using the language above would better equip the Forest Service to focus on older/legacy trees rather than only large trees. Similar language was recently adopted by the Bureau of Land Management to protect remnant trees of all species across a wide range of ecosystems. BLM Northwest/Central Oregon ROD and RMP, at p. 59-69 (2016).

Option 2:

Replace “maintain all remnant late and old seral and/or structural live trees > 21” dbh that currently exist within stands proposed for harvest activities” with:
“Maintain all remnant late and old seral and/or structural live trees that a Forest Service silviculturist and/or wildlife biologist determines to be integral to meeting the desired LOS conditions outlined in Table 1.”

This type of descriptive language would permit Forest Service professionals the flexibility to determine which trees are integral to the condition that they are managing toward. It still makes reference to “remnant” trees but allows the professionals to determine what those are and which should be retained.

**Option 3:**

Mimic the standard language that was recently adopted into the Colville Forest Plan that maintains a diameter limit but provides flexible and adaptable exemptions:

*Large Tree Management activities should retain and generally emphasize recruitment of individual large trees (larger than 20 inches diameter at breast height) across the landscape. Exceptions where individual large trees may be removed or destroyed include the following:*

- Trees need to be removed for public health or safety (such as, but not limited to, danger/hazard trees along roads or in developed or administrative sites)
- Trees need to be removed to facilitate management of emergency situations such as wildfire response.

*The following exemptions apply only to situations where removal of smaller trees alone cannot achieve the stated desired conditions:*

- Trees need to be removed to meet, promote, or maintain desired conditions for structural stages (see FW-DC-VEG-03. Forest Structure).
- Trees need to be removed to control or limit the spread of insect infestation or disease.
- Trees need to be removed where strategically critical to reinforce, facilitate, or improve effectiveness of fuel reduction in wildland-urban interfaces.
- Trees need to be removed to promote special plant habitats (such as, but not limited to, aspen, cottonwood, whitebark pine).

**Option 4:**

Remove the Wildlife Standard, Scenario A, 2a and rely on the direction to design treatments to *develop LOS* in 2b of this Scenario to meet desired end results.

We understand that some may desire the Forest Service to *replace* the 21” rule with a new set of limitations, rather than remove the rule. However, we think the Forest Service should consider this option for several reasons:
Chapter 4B—Amendments to the Eastside Screens Governing Federal Forest Management

1. To provide the decisionmaker with a full range of alternatives (we assume that there will be a “no action” alternative; that alternative should be balanced with one that considers a straightforward removal).

2. The existing language in 2b can be viewed as a viable “replacement” despite its existing inclusion.

3. More professional discretion will lead to more efficient planning and projects would be less likely to be subject to litigation over compliance with the amended language.

STATUTORY AND REGULATORY CONSIDERATIONS

The amendment to the Eastside Screens should not be considered “significant” under NFMA, NEPA, or the 2012 planning rule. The 2012 Planning Rule applies since this amendment is initiated after 2015. 36 C.F.R. § 219.17(b)(2). Forest Plans may generally be amended “in any manner whatsoever after final adoption after public notice.” NFMA § 6(f)(4), 16 U.S.C. § 1604(f)(4). However, amendments that would “result in a significant change in such plan” are subject to additional procedural requirements. Id. Determining significance under NFMA is within the discretion of the responsible Forest Service official. Umpqua Watersheds v. U.S. Forest Serv., 725 F.Supp.2d 1232, 1244 (D. Or. 2010); Native Ecosystems Council v. Dombeck, 304 F.3d 886, 900 (9th Cir. 2002). An amendment is only significant if it justifies “requiring, in essence, the Forest Service ‘to conduct the same complex planning process applicable to promulgation of the original plan.’” Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012, 1032 (10th Cir. 2002) (quoting Sierra Club v. Cargill, 11 F.3d 1545, 1551 (10th Cir.1993) (Seymour, J., dissenting)).

Although the Forest Service Handbook has since been amended, former Handbook 1909.12, ch. 5.31 directed the responsible official to consider “timing; location and size; goals, objectives, and outputs; and ‘management prescription’ (defined as whether the change applies only to a specific situation or will affect future decisions as well).” Lands Council v. Martin, 529 F.3d 1219, 1227 (9th Cir. 2008). The Planning Rule only indicates that an amendment that is significant under NEPA is also significant under NFMA: “Except for an amendment that applies only to one project or activity, a proposed amendment that may create a significant environmental effect and thus requires preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA.” 36 C.F.R. § 219.13(b)(3). The 1982 Planning Rule “expressly commend[ed] the determination of the significance of an amendment to the Forest Supervisor's judgment.” Sierra Club v. Cargill, 11 F.3d 1545, 1548 (10th Cir. 1993). Since the 2012 Planning Rule and Handbook have been amended to delete most guidance on NFMA significance, the Supervisor’s discretion has only increased.

The Ninth Circuit has upheld a NFMA non-significance determination which “does not alter multiple-use goals or objectives for long-term land and resource management, nor significantly change the planned annual outputs for the forest.” Dombeck, 304 F.3d 886, 900 (9th Cir. 2002). Amending or eliminating the 21” rule would not alter multiple-use goals or objectives but is necessary to achieve those objectives. The 21” rule is only a portion of one
subset, the wildlife standard, of the overall Eastside Screens, so it pales in significance to the original decisions to implement the Eastside Screens. With the amendment of a plan late in the planning period, as here, the timing factor weighs heavily against significance. *Wyoming Sawmills Inc. v. U.S. Forest Serv.*, 383 F.3d 1241, 1251 (10th Cir. 2004).

When the Eastside Screens were first implemented, the U.S. District Court agreed that decision was not a significant Forest Plan amendment. *Prairie Wood Prod. v. Glickman*, 971 F.Supp. 457, 463 (D. Or. 1997). This finding was based in part on the labeling of the Eastside Screens as an “interim” measure. *See id.* at 461, 464–65. The government expected to release a draft EIS in June 1997, and a final EIS in 1998, for the Interior Columbia Basin Ecosystem Management Project. *Id.* at 461; 62 Fed. Reg. 2176 (Jan. 1997). The DEIS was released on time. 62 Fed. Reg. 32,076 (June 12, 1997). The FEIS, however, was not issued until late 2000. 65 Fed. Reg. 79,069 (Dec. 18, 2000). The planning process concluded with the 2003 Memorandum of Understanding to cooperatively implement the “The Interior Columbia Basin Strategy” which continued the Eastside Screens. 2 If imposition of the Eastside Screens as an “interim” measure was not significant, then returning to a small part of the previous status quo can’t be significant either.

The Forest Service should not be deterred by the 2014 Snow Basin decision. In that case, the court rejected a site-specific Forest Plan amendment because it found the project did not present unique aspects or characteristics. The court agreed with the plaintiffs’ argument that “the decision to use a site-specific amendment to address a forest-wide problem is not rational.” *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, No. 3:12-CV-02271-HZ, 2014 WL 6977611, at *28 (D. Or. Dec. 9, 2014). Here, by contrast, the agency is aiming to address forest-wide problems with a forest-wide amendment, so it will not fall afoul of Snow Basin.

Amendment or elimination of the Eastside Screens would not be significant under NEPA either. “An EIS is not necessary where a proposed federal action would not change the status quo,” because long-range aims are “quite different from concrete plans,” and “NEPA does not require an agency to consider the environmental effects that speculative or hypothetical projects might have on a proposed project.” *Ctr. for Biological Diversity v. Ilano*, 928 F.3d 774, 780 (9th Cir. 2019) (*Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 668 (9th Cir. 1998)). *See 36 C.F.R. § 220.4(a), 40 C.F.R. § 1508.27* (significance factors). This is particularly true of long-range plans that will be subject to future site-specific analysis and can tier to the ICBEMP FEIS. “When a programmatic EIS has already been prepared, … site-specific impacts need not be fully evaluated until a ‘critical decision’ has been made to act on site development.” *State of Cal. v. Block*, 690 F.2d 753, 761 (9th Cir. 1982); *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) (upholding BLM plan to fully evaluate site-specific impacts of future actions).

Based on some of the statements during the public workshops, we expect that some members of the public will claim that any change to the Eastside Screens is “highly uncertain” or

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1 One of AFRC’s predecessor organizations was a plaintiff in this case, as were a number of member companies, some of which have since gone out of business.

“highly controversial,” such that an EIS would be required. 40 C.F.R. §§ 1508.27(b)(4), (b)(5). Ideological opposition to forest management, or an ideological position that “[e]very large tree now matters because most are gone,” does not create high levels of uncertainty or controversy. See Science Panel, May 11, 2020, Presentation Slides, at p. 51 (https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd738444.pdf). Certain stakeholders’ mistrust of the Forest Service doesn’t create highly uncertain or controversial circumstances either. See id., p. 52 (“FOREST SERVICE HISTORY OF WANTING ‘FLEXIBILITY’ & DISCRETION HAS BEEN ABUSED”).

“A project is ‘highly controversial’ if there is a substantial dispute [about] the size, nature, or effect of the major Federal action rather than the existence of opposition to a use.” WildEarth Guardians v. Provencio, 923 F.3d 655, 673 (9th Cir. 2019) (cleaned up). And a substantial dispute requires that “evidence, raised prior to the preparation of an EIS or FONSI casts serious doubt upon the reasonableness of an agency’s conclusions.” Id. NEPA does not “anticipate the need for an EIS anytime there is some uncertainty, but only if the effects of the project are ‘highly’ uncertain.” Envtl. Prot. Info. Ctr. v. U.S. Forest Serv., 451 F.3d 1005, 1011 (9th Cir. 2006). These factors will generally not be triggered when actions do not concern “forest management techniques are new, unique to the region, or experimental such that the results are unpredictable.” Conservation Cong. v. United States Forest Serv., 235 F.Supp.3d 1189, 1204 (E.D. Cal. 2017), aff’d, 775 F. App’x 298 (9th Cir. 2019).

SCIENTIFIC REVIEW

The genesis of the 21” rule was not a function of an exhaustive scientific synthesis and review. Regardless, we understand that any modified version of the existing 21" dbh limitation must be supported by current science. Therefore, we would like to ensure the Forest Service consider the full spectrum of science that is applicable to the underlying objectives of the Eastside Screens. Please review and consider the following pieces of literature in your ensuing analysis and incorporate them into your decision-making process.


Findings

- Research indicates a 60.2% increase in density in ponderosa pine dominated stands and a 176% increase in density in grand fir stands over the past 140 years. These findings suggest that if restoration of historical conditions is a goal of managers, then treatments in moister mixed conifer stands should be a priority.
- The results of this study indicate that restoring historical conditions will require removal of a significant portion of contemporary stand basal area, especially in moister and more productive stands.
- Retaining all trees $>53$ cm (21") dbh may handicap restoration of historical forest conditions for two reasons: First, many stands, particularly moister and more productive stands, currently have more trees $>53$ cm (21") dbh than were historically present. Second, many trees $>53$ cm (21") in contemporary stands are a different species than was present historically and retaining these trees will exacerbate compositional shifts from shade-intolerant to shade-tolerant species.

- Achieving compositional targets (i.e., restoring stands to the historical proportion of different species) is likely to be more important to achieving resiliency objectives than structural targets (i.e., restoring stands to historical basal area or density).

- Reducing forest density to historical levels while maintaining a higher proportion of shade-tolerant species than was historically present will likely result in higher stand water use, greater drought stress, and increased risk of mortality from fire and insect disturbance than desired.

**Assessment**

We believe that the findings in this paper support the notion that a firm one-size-fits-all guideline to attaining desired end results across a broad spectrum of forest types is flawed. It also supports the notion that such a guideline will likely undermine the diverse mix of species present across these forest types. Further, it may be necessary to remove a substantial portion of stand basal area to achieve long-term restoration objectives in stands where shade tolerant tree species, including individual trees with diameters $>21"$, dominate the stand.

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**Findings**

- Results suggest there is approximately a one in five chance of allowing harvest of a tree older than 125 years using the 21" rule as a guide. However, the rule limits harvest of large young shade-tolerant trees that have developed following fire exclusion. For large trees, 62 percent of grand fir and 50 percent of Douglas-fir were less than 125 years old. In contrast, only seven percent of large ponderosa pine were less than 125 years old.

- Overall, the 21" rule protects large old-growth ponderosa pine, but fails to protect smaller old-growth individuals of all species, and does not allow for removal of large younger shade-tolerant grand fir and Douglas-fir that have developed following fire exclusion.

- New guidelines could incorporate how age structure varies with environment and development history and include morphological indicators of tree age that can easily be applied by managers and technicians.

**Assessment**

This document further supports the notion that tree dbh is often a poor surrogate for determining tree age, especially across the strong productivity gradients that exist in eastside
forests. In particular, it highlights the flawed nature of the 21" dbh limitation on the effectiveness of protecting old grand fir and Douglas-fir. Likelihood of success in achieving the stated goal of protecting older large trees increases if they are released from the competition brought by shade tolerant conifers that were promoted through fire suppression.


**Findings**

- Strict age or size limits on tree harvest that are not sensitive to site conditions, disturbance history, and topo-edaphic settings can hinder some restoration efforts and may reduce resiliency. Rules of thumb provide helpful guidelines but departures from these may be allowed with well-reasoned explanations.
- Tree diameter was used (in the Eastside Screens) as a rapid and conservative but crude surrogate for old growth to limit removal of larger and older trees—because analyses had not been completed to characterize old forests and old trees—across the variety of forest types and productivities.
- Restoration guided by size alone will not remove all of the individuals of species and ages of trees that are products of the altered disturbance regimes of these forests.
- The limits on removing any tree larger than about 53 cm (21") whatsoever, regardless of geographic context, or age, or species, or relative abundance, or other considerations (e.g., forest health) within a patch can inhibit regeneration in some stands, lack any real landscape objectives, and impede landscape-level management and restoration.

**Assessment**

This report addresses the utility of adopting the option we outlined above from the Colville Forest Plan in its flexibility on providing for “departures” from “rules of thumb.” It also reemphasizes the same points made in the prior two papers cited regarding the flawed nature of abiding by a one-size-fits-all limitation.


**Findings**

- A lower-end size limit of 21 inches was negotiated with the plaintiffs included in the NRDC petition.
• Recent research has shown, however, that old trees are not always large, and large trees are not always old (Van Pelt 2008, Brown et al. 2019).
• Combining age- and size-based metrics to retain adequate densities of large trees along with old trees featuring desirable traits could allow younger large trees to be managed more flexibly.
• The 21" rule does not provide protection for older, but smaller trees that may play an important ecological role. Neither does it allow for removal of young but large shade-tolerant trees that are maladapted to the existing fire regime.
• Tree diameter alone is an insufficient guide for restoration.
• Focusing on a single scale (the tree) does not address stand and landscape scale considerations.
• Simplistic rules and standards will, over time, generate unintended consequences, making it more rather than less difficult to manage for resilience to climate change and other threats, and to provide for multiple ecosystem services.

Assessment

This synthesis further supports the flawed nature of relying solely on tree diameter as a surrogate for age.


Findings

• Consumption of wood products in the United States has risen in recent decades. U.S. lumber production is projected to increase through 2040.
• The forest products sector helps sustain the social, economic, and ecological benefits of forestry in the United States.

Assessment

We understand that the Forest Service is dedicated to making this Plan Amendment “socially durable.” In order to properly gauge whether your proposal is socially durable you must consider the full spectrum of social values that the public receives from these forests.

One of the panels on the Science Workshop hosted by the Forest Service included scientists who provided a review of science relevant to “social values” of eastside forests. Following that presentation, AFRC asked the scientists why their assessment of “social values” to eastern forests did not include the public need for wood products manufactured from timber.
resources harvested from public forests. Their response was that their assessment was limited to the science they had available. Therefore, we assume that those scientists did not have access to the technical report cited above from the Department of Agriculture. This report clearly indicates a growing need for wood products by the American public.

We would like the Forest Service to include this need as a “social value” by the public in your analysis of the Eastside Screens Plan Amendment. If the social values in your assessment are limited to, as the workshop scientists outlined, “economics” you will have oversimplified the value that the American public ascertains from National Forests.

**CLOSING REMARKS**

We appreciate the efforts that the Forest Service is making to include the public in the development of this plan amendment. We understand that some level of social acceptance is critical to the viability of the amendment. During the Science Workshop, one scientist was asked how they would advise the Forest Service to gauge social acceptance. Part of their response noted that whatever is proposed will not likely be “socially acceptable for everyone.” As active participants in those workshops, we believe that the feedback provided by public participants did not reflect an accurate representation of the interested public. This was perhaps partially due to the virtual nature of the workshops. We hope that the Forest Service receives feedback from a broader range of interested stakeholders over the ensuing months and that feedback is properly weighed in your decision-making process.

We hope to stay engaged with the Forest Service throughout the amendment process in order to share our perspectives with you on the consequences, both socially and ecologically, that this outdated rule has had. We also hope to provide solutions that we believe will assist the Forest in attaining its desired ecological outcomes while at the same time ensuring that our members can continue to thrive in their respective communities.

AFRC is pleased to be involved in the planning, environmental analysis, and decision-making process for the Eastside Screens Plan Amendment, and looks forward to playing a constructive role in this process. Should you have any questions regarding the above comments, please contact me at 541-525-6113 or ageissler@amforest.org.

Sincerely,

Andy Geissler
Federal Timber Program Director
American Forest Resource Council
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE
Office of the Secretary
Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Appeals Division, Department of Agriculture.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Agriculture, National Appeals Division’s request for an extension to a currently approved information collection for Customer Service Survey.
DATES: Comments on this notice must be received by October 13, 2020 to be assured of consideration.
ADDRESSES: The National Appeals Division invites interested persons to submit comments on this notice. Comments may be submitted by the following method: Federal eRulemaking Portal. This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to http://www.regulations.gov. Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 1320 Braddock Place, Fourth Floor, Alexandria, Virginia 22314, 703.305.2588.

SUPPLEMENTARY INFORMATION:
Title: National Appeals Division Customer Service Survey.
OMB Number: 0503–0007.
Expiration Date of Approval: October 31, 2020.
Type of Request: Extension of a currently approved information collection.
Abstract: Executive Order 12862, requires Federal Agencies to identify the customers who are or should be served by the Agency and survey those customers to determine the kind and quality of services they want and level of satisfaction with existing services. Therefore, NAD proposes to extend its currently approved information collection survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Appellants, producers, and other USDA agencies.
Estimated Number of Respondents: 1,600.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 272.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.
Comments may be sent to Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 1320 Braddock Place, Fourth Floor, Alexandria, Virginia 22314. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C., Chapter 35.

Jennifer Michael Nicholson,
Deputy Director, National Appeals Division.
[FR Doc. 2020–17537 Filed 8–10–20; 8:45 am]
BILLING CODE 3410–WY–P

DEPARTMENT OF AGRICULTURE
Forest Service
Pacific Northwest Region; Oregon; Land Management Plan Amendment; Forest Management Direction for Large Diameter Trees in Eastern Oregon

AGENCY: Forest Service, USDA.
ACTION: Notice to initiate a land management plan amendment and notice of availability.

SUMMARY: The Pacific Northwest Region of the Forest Service has prepared a Preliminary Environmental Assessment (EA) for Forest Management Direction for Large Diameter Trees in Eastern Oregon. The proposal would amend the land management plans for the Deschutes, Fremont-Winema, Malheur, Ochoco, Umatilla, and Wallowa-Whitman National Forests in Oregon. This notice also provides information on how to comment on the Preliminary EA.
DATES: Comments concerning the scope of the analysis must be received by September 10, 2020. The final EA is expected September 2020.
ADDRESSES: Individuals and entities are encouraged to submit comments via webform at https://eams.ecosystem-management.org/Public/CommentInput?project=58050. Comments may also be sent via email to SM.FS.EScreens21@usda.gov. Hardcopy letters must be submitted to the following address: Shane Jeffries, Forest Supervisor, Ochoco National Forest, 3160 NE Third Street, Prineville, OR 97754. For those submitting hand-delivered comments, please call 541–416–6500 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Emily Platt, Team Leader, at SM.FS.EScreens21@usda.gov or at 541–416–6500. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:
Background
In 1995, the Forest Service adopted the Eastside Screens, which amended land management plans for national forests outside of the range of the northern spotted owl in Oregon and Washington. The Eastside Screens
include a limit on the harvest of trees equal to or greater than 21-inches diameter at breast-height (dbh) where late and old structural stage forests are below the historic range of variability. Since the issuance of the Eastside Screens, forest conditions have changed, new science has emerged, and land management priorities have shifted to emphasize forest restoration and the mitigation of wildfire impacts. By adapting the 21-inch standard to reflect learning over the past 25 years, the Agency would streamline restoration of forests in eastern Oregon in order to create landscapes that withstand and recover more quickly from drought, wildfire, and other disturbances.

**Purpose and Need for Action**

The purpose of this proposal is to analyze a science-based, alternative to the 21-inch standard in the Eastside Screens. Adapting the standard to incorporate science and 25 years of learning would enable managers to more effectively restore forestlands in eastern Oregon.

**Proposed Action**

The Forest Service is proposing to replace the 21” standard with a guideline that emphasizes recruitment of old trees and large trees. An adaptive management component is also assessed in this analysis.

**Responsible Official**

The Responsible Official for this amendment is Ochoco Forest Supervisor, Shane Jeffries.

**Nature of Decision To Be Made**

Given the purpose and need of the project, the Responsible Official will review alternatives, public comments, and consider the environmental consequences to decide whether to prepare a finding of no significant impact or prepare an environmental impact statement. If a finding of no significant impact is appropriate, the Responsible Official will decide whether to select the proposed action, another alternative, or a combination of alternatives.

**Substantive Requirements**

When proposing a Forest Plan amendment, the 2012 Planning Rule (36 CFR 219), as amended, requires the responsible official to identify the substantive requirements of the rule that are likely to be directly related to the amendment (36 CFR 219.13[b][5]). The substantive requirements that are likely to be directly related to the proposed amendments are: (1) 36 CFR 219.8(a)(1)(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildfire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change; (2) 36 CFR 219.8(a)(1)(v) Wildland fire and opportunities to restore fire adapted ecosystems; and (3) 219.9(b)(1) The responsible official shall determine whether or not the plan components provide the ecological conditions necessary to: Contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area.

**Comment and Objection Information**

The Preliminary EA and other related documents are available for comment on the project website at https://www.fs.usda.gov/project/?project=58050. Additional information regarding this proposal can be found at https://go.usa.gov/xv4X. As provided for at 36 CFR 219.16, the responsible official has combined the notifications for initiating the plan amendment and inviting comments on the proposed plan amendment and alternatives.

This EA is subject to Forest Service regulation 36 CFR 219, Subpart B, as the administrative review, or objection, process. Only individuals or entities who submit specific written comments during the designated comment period will be eligible to participate in the objection process. Specific written comments should be within the scope of the proposed action, have a direct relationship to the proposed action, and include supporting reasons for the Responsible Official to consider. Comments submitted anonymously will be accepted and considered but will not meet the requirements to be eligible for administrative review. Comments received in response to this solicitation, including names (and addresses, if included) of those who comment, will be part of the public record for this proposed action.

Allen Rowley,
Associate Deputy Chief, National Forest System.
[FR Doc. 2020–17430 Filed 8–10–20; 8:45 am]
BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

**Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee**

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene by conference call, at 11:30 a.m. (EDT) Thursday, September 3, 2020. The purpose of the planning meeting is to discuss and vote to submit the Committee’s civil report rights project report on the DC Mental Health Community Court to the Staff Director for publication.

**DATES:** Thursday, September 3, 2020 at 11:30 a.m. (ET).

**Public Call-In Information:**
Conference call number: 1–877–260–1479 and conference call ID number: 1929821

**FOR FURTHER INFORMATION CONTACT:** Ivy L. Davis, at ero@usccr.gov or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821.

Members of the public are invited to make statements during the Public Comments section of the meeting or to submit written comments. The comments must be received 30 days after the meeting date. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150,
Forest Plans Amendment
Forest Management Direction for Large Diameter Trees in Eastern Oregon

Environmental Assessment-Preliminary

Pacific Northwest Region (R6) Oregon and Washington
August 2020

Photo Credit: Mark Penninger, U.S. Fish & Wildlife, La Grande, OR Field Office
Responsible Official Delegated by the Regional Forester

Shane Jeffries, Forest Supervisor  
Ochoco National Forest  
3160 NE 3rd Street  
Prineville, Oregon  
Phone: 541-416-6500
Chapter 4B—Amendments to the Eastside Screens Governing Federal Forest Management

Adapting the Wildlife Standard of the Eastside Screens

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1.0 INTRODUCTION

1.1 FOREST SERVICE PLANNING FRAMEWORK

National forests and grasslands are required to have a Land and Resource Management Plan (LRMP). Those plans inform the overall management of each unit and all projects on each unit must be in conformance with the associated LRMP. When plan components (desired conditions, goals, standards, and/or guidelines) need to be changed for any reason the planning unit must complete a plan amendment (36 CFR 219). The amendment process is intended to help keep plans current and responsive as conditions change or updated science changes our understanding.

The Eastside Screens were adopted in 1994-95 (see below) and amended the underlying forest plans which were published in either 1989 or 1990, depending on the forest. They consisted of three components for screening proposed timber sales: riparian screen, ecosystem screen, and the wildlife screen. The Inland Native Fish Strategy (INFISH) and Pacific Anadromous Fish Strategy (PACFISH) now operate in place of the riparian screen. Under the ecosystem screen, the Forest Service compares current conditions of a proposed timber sale area with the historical range of variability (HRV). Under the wildlife screen, the Forest Service imposes certain harvesting restrictions according to whether or not the condition of a sale area is within the HRV for late and old structure (LOS) forest.\footnote{Late and Old Structure (LOS) forest is described in the ecosystem standard of the Eastside Screens. No changes are proposed to the ecosystem standard. LOS is described in detail in the vegetation section.}

Subsection 2 of the Wildlife Screen’s Scenario A stipulates that:

Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following standards:

a) Maintain all remnant late and old seral and/or structural live trees $\geq$ 21-inch dbh\footnote{Diameter at breast height is a common forestry term used to express the diameter of the trunk or bole of a standing tree. Tree trunks are measured at the height of an adult’s breast which in the U.S. is 4.5 feet above the ground on the highest side of the tree.} that currently exist within stands proposed for harvest activities.

The amendment analyzed in this document specifically addresses this portion of subsection two and a portion of subsection four (see Appendix B). These portions are commonly referred to as “the 21" standard.” The amendment would not change any other
plan components in the individual forest plans. All management areas, timber requirements, MIS, and other standards and guidelines remain unchanged.

1.2 History of the Eastside Screens

The Forest Service developed the Eastside Screens in the 1990s in response to concerns about old trees on the eastside of the Cascades. House Speaker Tom Foley (Washington) and Senator Mark Hatfield (Oregon) requested that Agricultural Secretary Edward Madigan form an interagency panel to complete a scientific evaluation of the effects of Forest Service management practices on the sustainability of eastern Oregon and Washington forests. The panel was to address seven key questions defined by Speaker Foley and Senator Hatfield (Everett et al. 1994). The panel produced the Eastside Forests Ecosystem Health Assessment (EFEHA) or the “Everett Report.”

EFEHA concluded that there was a loss of large trees and old forests, fragmented landscapes caused by small harvest units, and conditions were ripe for large and severe insect, disease, and wildfire disturbances due to large increases in forested area, density, and shade-tolerant forest cover. The panel did not address social or economic concerns, but acknowledged their importance for ecosystem sustainability and identified the need for more information about social values and expectations for management of eastside forests.

During the same timeframe, Natural Resources Defense Council (NRDC) petitioned the courts to suspend old tree harvest on eastside forests. Regional Forester (RF) John Lowe asked the EFEHA team to develop interim policies that could be applied to vegetation management and timber sale projects. This team developed the Eastside Screens in part to keep existing large and old trees and manage national forests to promote an increase in the number of large and old trees. They recommended replacing it within 12–18 months with more formal landscape evaluations that responded to their key findings. A lower-end size limit of 21 inches was negotiated with the plaintiffs included in the NRDC petition. On June 12, 1995 RF Lowe signed the Decision Notice for the “Revised Continuation of Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales” (Regional Forester’s Forest Plan Amendment #2), which slightly modified the initial screens.

During the last three decades there have been multiple interpretations and guidance documents issued on how to implement the screens. Some guidance documents encouraged forests to complete project specific plan amendments to cut trees over 21 inches while others outlined direction that trees greater than 21 inches could be cut under certain conditions. Due to changing and conflicting guidance national forests have taken different approaches to addressing this issue on the ground. Some national forests in eastern Oregon have completed multiple project specific forest plan amendments that alter the 21-inch standard in some way. Other forests have avoided the harvest of trees over 21-inches to avoid project specific forest plan amendments. Still others have started amendments and not finished; for example, in 2014 the Snow Basin lawsuit led the Wallowa-Whitman National Forest to pull a proposed amendment to the Eastside Screens because the court found that the Forest Service could not use a site-specific amendment to address a forest-wide problem. In total since 2003, there have been 21 amendments to forest plans related to the 21-inch standard. Amendments generally focused on removing
Adapting the Wildlife Standard of the Eastside Screens

young grand fir or white fir in dry ponderosa pine forests but some also addressed removal of lodgepole, Douglas fir, and ponderosa pine. Project level analyses have shown no significant adverse impacts to resources as a result of the amendments and in fact the analyses have demonstrated positive impacts in terms of restoring stand and landscape resilience.

The limitations of the 21-inch standard have become increasingly apparent in recent years as the Forest Service has intensified its focus on restoring forest resistance and resilience to disturbance and as public and agency interest in creating forests better able to withstand and recover from disturbances like drought and wildfire has grown. At the same time, scientific knowledge about frequent-disturbance environments like those in eastern Oregon has grown. The need for new approaches to forest management has become even more urgent given ongoing changes such as an increase in the length of fire season and the area burned by wildfires. Managers often do not have the flexibility to take advantage of opportunities to protect and enhance large and old trees by removing fast-growing shade tolerant species that compete with old pines and larch for resources or to thin fast-growing pine stands to develop more disturbance-resistant conditions. Restoring and adapting forests and reducing mortality of old trees from large disturbances like wildfire, drought, and insect outbreaks requires a more strategic approach than the 21-inch standard allows.

1.3 Public Input

Pre-NEPA engagement activities were conducted to help develop: 1) an ecologically, socially, and politically durable amendment, 2) coordinated and timely communications and engagement, 3) public access to and understanding of the process, and 4) relationship focused involvement.

In order to gather feedback early in the process (pre-NEPA), we reached out to likely interested individuals and organizations during the COVID-19 pandemic. To comply with social distancing policies, we were unable to convene in-person public meetings. Instead, we used a variety of alternative methods to make project information accessible including through phone calls, mailings, posting information to the website, and holding our workshops virtually. The Forest Service hosted three virtual workshops that included 171 participants. The workshops included:

- **A Science Forum** (May 11, 2020) where ten scientists from the PNW Research Station, universities, and non-profit groups shared science related to eastern Oregon forest management and set the stage for a discussion of the science and values underlying the 21-inch standard.

- **An Intergovernmental Technical Workshop** (May 13, 2020) with the [Eastern Oregon Counties Association](#) and a **Partner Technical Workshop** (May 15, 2020). Both technical workshop formats were identical and included: project background, review of 2012 Planning Rule, brief summary of a rapid science review by the Pacific Northwest Research Station, case study, and small breakout groups led by ID Team members and line officers to gather feedback.
Meeting recordings and all materials from the early engagement events are posted on our project website: https://go.usa.gov/xvV4X

1.4 PURPOSE AND NEED FOR ACTION
The purpose of this assessment is to analyze a durable, science-based alternative to the 21-inch standard in the Eastside Screens. Adapting the standard to incorporate science and 25 years of learning would enable managers to more effectively restore forestlands in eastern Oregon.

1.5 NEED FOR CHANGE
Scientific research, ongoing monitoring of restoration treatments and natural disturbances, and practical experience implementing the 21-inch standard demonstrate a need to change policy to better conserve large and old trees and to adapt stands to future climate and disturbance regimes. Adapting the 21-inch standard to respond to science findings and experience restoring eastern Oregon forests can better protect old trees and better provide for resilience of forest stands to future climate and disturbance stressors.

Old trees provide critical habitat functions and form the foundation for stands that are resilient to future change because they have persisted through past climatic and disturbance variability (Marcot et al. 2018, Hessburg et al. 2015, Vosick et al. 2007, Bull et al. 1997). Achieving more effective conservation of old trees in eastern Oregon is of critical importance to tribes, recreationists and other forests users, local communities that depend on ecosystem services from national forests, and the general public because of the critical functions they provide and because older trees are in steep decline throughout the American West (Lindenmayer et al. 2012, Lutz et al. 2009, van Mantgem et al. 2009). As discussed in the current conditions discussion below, old trees in eastern Oregon are declining at an alarming rate.

Although the 21-inch standard protects large trees from logging, it does not protect old trees that are smaller than 21 inches. And implementation of the 21-inch standard often prevents restoration treatments from achieving conditions necessary for old trees to persist. Old trees are at elevated risk of mortality when young trees compete with old trees for light and water (Bradford and Bell 2017, Millar and Stephenson 2015, Fettig et al. 2007, Kolb et al. 2007, Waring and Law 2001, Kolb et al. 1998). Competition is particularly acute when trees are large and young because larger trees have greater leaf area and use more resources (Johnston et al. 2019, Gersonde and O’Hara 2005).

Increases in stand basal area since frequent fire was excluded from eastern Oregon forests are largely attributable to growth and establishment of relatively large, fast growing, shade tolerant species like grand fir and Douglas-fir (Johnston 2017, Merschel et al. 2014, Hagmann et al. 2014). Increases in stand basal area have significant reduced drought resistance of old trees (Voelker et al. 2019). Restoring historical competition dynamics characterized by low basal area, low stand density, and a relatively higher proportion of shade intolerant species increases the resistance of stands to drought, insects, and fire disturbance effects associated with a warming climate (e.g., Tepley and Hood 2020, Zhang et al. 2019, Vernon et al. 2018, Sohn et al. 2016). A variety of empirical studies and science syntheses demonstrate that protection of all trees greater
Adapting the Wildlife Standard of the Eastside Screens

than 21 inches prevents restoration of historical conditions and conditions that are likely to maintain old trees into the future (Johnston in review, Lindsay and Johnston 2020, Merschel et al. 2019, Johnston et al. 2018, Johnston 2017, Stine et al. 2014).

Although the 21-inch standard protects large trees from logging, it does not protect large trees from mortality from fire, insects, and drought. Many large trees will be lost to mortality as these disturbance processes become more extensive in the coming decades (Kerns et al. 2018, Littell et al. 2018, Mote and Salathe 2010). Although replacing the 21-inch standard with different conservation policies may result in more large trees being cut, better providing for stand and landscape scale resilience to disturbance has the potential to optimize provision of large trees over time (Spies et al. 2018, Bradford and Bell 2017, Sohn et al. 2016, McDowell and Allen 2015, Millar and Stephenson 2015).

1.6 Goals
The goal of this proposed amendment is synonymous with the purpose and need for the original screens, which is the “…need to maintain the abundance and distribution of old forest structure.” The original 1994 EA explains, “The purpose is to preserve those components of the landscape -- old forest abundance, wildlife habitat in late and old structural stages, and riparian areas -- which new information suggests is vitally important to certain species of wildlife and fish and to the overall vegetative structure of the forest.”

Given new science and our evolving understanding of landscape ecology, a standard that prohibits logging of all trees larger than or equal to 21 inches diameter at breast height (dbh) is no longer adequate to support landscape restoration and resiliency efforts, nor conserve the remnant old and late seral and/or structural live trees it was meant to protect.

This proposed amendment is narrowly focused on Scenario A of the wildlife standard of the Eastside Screens. This means that in project level application and NEPA analysis, the ecosystem screen is still applied first, and this proposed amendment would only affect project areas where LOS forest is found to be below HRV for one or more biophysical environments.

1.7 Decision to be Made
The Region 6 (Pacific Northwest Region) Regional Forester, Glenn Cassamassa, has designated the Forest Supervisor of the Ochoco National Forest as the Decision Maker for this analysis. When the analysis is completed, he will decide which alternative to select. He will compare each alternative’s ability to meet the purpose and need and weigh the effects of each alternative as presented in the environmental analysis.

2 Proposed Action and Alternatives
Through the means described in section 1.3, and through written communications, individuals, groups, organizations and county governments have provided feedback to the interdisciplinary team. Some support the effort in concept, and some are conceptually opposed to it.
The discussions and suggestions made during our early engagement activities helped inform the development of the alternatives and the key issues addressed in this assessment. Eight important themes emerged in our early engagement work: trust and collaboration; monitoring and adaptive management; social and economic issues; diameter limits and species composition; large trees vs. old trees; scale and flexibility issues; climate change and wildfire; and, wildlife, snags and down wood.

- In response to concerns related to trust, collaboration, monitoring, and adaptive management, the alternatives integrate an adaptive management component to ensure accountability through targeted monitoring of impacts to large and old trees. The alternatives also encourage the use of multi-party monitoring to support a meaningful way for citizens to be involved in the monitoring.
- Social concerns about the amendment being driven by economic factors (i.e. to get the cut out) and by concerns about the economic impacts of the Eastside Screens were addressed by using a science-based approach to focus on the ecological need for change and by incorporating a social and economic assessment in the analysis.
- The differences between large old and large young trees are directly addressed in our analysis, and alternatives were developed to enable managers to base decisions on these differences while recognizing both large and old trees as ecologically valuable. Likewise, the concern about diameter limits as it relates to species composition is directly addressed by our range of alternatives. Expected changes in species composition is addressed in our analysis.
- Concerns about scale were addressed in the development of alternatives, and flexibility was addressed directly in the range of alternatives.
- All action alternatives directly address concerns about climate change and wildfire as these alternatives allow for management strategies that increase resilience to future climate and disturbance regimes.
- In response to concerns about wildlife, the amendment retains the original intent of the Eastside Screens to protect and promote LOS for wildlife habitat and incorporates an approach grounded in wildlife science to revise of the snag and green-tree retention portion of the standard.

2.1 CURRENT MANAGEMENT ALTERNATIVE

Currently, implementation of the Eastside Screens is inconsistent across the region. Scenario A of the wildlife standard requires no net loss of LOS from each biophysical environment. In practice, the interpretation of no net loss of LOS has varied from Forest to Forest and through time. Sub-section 1 of Scenario A stipulates that:

*Some timber sale activities can occur within LOS stages that are within or above HRV in a manner to maintain or enhance LOS within that biophysical environment. It is allowable to manipulate one type of LOS to move stands into the LOS stage that is deficit if this meets historical conditions.*
Adapting the Wildlife Standard of the Eastside Screens

No restriction on the harvest size of trees is stipulated. In practice many Forests and projects have applied a restriction to the harvest of trees larger than or equal to 21 inches dbh to the management of all LOS.

Subsection 2 of Scenario A stipulates that:

_Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following standards: a) Maintain all remnant late and old seral and/or structural live trees ≥ 21-inch dbh that currently exist within stands proposed for harvest activities ..._

This standard has been applied as written across Forests and through time.

Subsection 4 of Scenario A stipulates that:

_All sale activities (including intermediate and regeneration harvest in both even-age and uneven-age systems, and salvage) will maintain snags and green replacement trees of >21 inches dbh (or whatever is the representative dbh of the overstory layer if it is less than 21 inches), at 100% potential population levels of primary cavity excavators. This should be determined using the best available science on species requirements as applied through current snag models or other documented procedures. NOTE: for Scenario A, the live remnant trees (< 21” dbh) left can be considered for part of the green replacement tree requirement._

The Current Management Alternative represents continued implementation of the Eastside Screens 21-inch dbh harvest restriction as described above.

### 2.2 Old Tree and Large Tree Guideline with Adaptive Management (Proposed Action)

The Proposed Action is to replace the 21-inch standard with a guideline that emphasizes recruitment of old trees and large trees. Old trees are defined as ≥ 150 years of age. Large trees are defined as grand fir, white fir, or Douglas-fir ≥ 30” dbh or trees of any other species ≥ 21 inches dbh. This alternative would also include adaptive management.

The current standard says:

_Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following standards: a) Maintain all remnant late and old seral and/or structural live trees ≥ 21-inch dbh that currently exist within stands proposed for harvest activities ..._

The new guideline would say:

_Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following plan components: a) Managers_
should retain and generally emphasize recruitment of old trees and large trees. Management activities should first prioritize old trees for retention and recruitment. If there are no old trees, the largest trees should be retained. Old trees are defined as having visual characteristics that suggest an age \(\geq 150\) years. Large trees are defined as grand fir, white fir, or Douglas-fir \(\geq 30''\) dbh or trees of any other species \(\geq 21\) inch dbh. Old and large trees will be identified through best available science. Management activities should consider species composition and spatial arrangement within stands and across the landscape ...

Exclusive of the snag and green tree retention change described below, all other standards would be maintained as they currently exist.

The adaptive management approach would include both implementation and effectiveness monitoring. Effectiveness monitoring would focus on answering the following questions:

- How does the mortality level of 1) old trees and 2) all trees differ between managed stands and unmanaged stands?
- How does mortality of old trees differ based on species, biophysical setting, and/or management and disturbance history?
- Does the type of management or the combination of management actions prior to disturbance influence mortality of old trees?

Multi-party site visits would also be encouraged to consider ways to make treatments more effective at preserving and maintaining old and large trees across the landscape.

If restoration treatments prove ineffective at conserving old trees relative to passive management of unmanaged stands, a dbh limit will be re-imposed. The dbh limit that would be imposed would prohibit harvest of grand fir, white fir and Douglas-fir trees \(\geq 30\) inches and prohibit the harvest of all other tree species \(\geq 21\) inches. This standard is not suggested specifically by the scientific literature but rather is a recognition of trust issues deeply embedded in management activities involving old trees in the Northwest. The dbh limit would not necessarily be reimposed across the whole landscape but rather by Potential Natural Vegetation groups (PNV) where restoration has proven ineffective based on an analysis conducted every five years by the Pacific Northwest Regional Office. See Vegetation section for a more detailed description of PNV.

See Appendix B for a comparison of plan language for each alternative.

### 2.3 Old Tree Standard Alternative

This alternative replaces the size prohibition with an age prohibition.

The new standard would say:

Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following plan components: a) Trees estimate to be old \((\geq 150\) years\) shall not be removed. Forests may use best
Adapting the Wildlife Standard of the Eastside Screens

available scientific information to estimate the age of old trees based on physical characteristics. Management activities should retain and emphasize the recruitment of large trees of the appropriate (dependent on the site) species composition and spatial arrangement within stands and across the landscape ...

Exclusive of the snag and green tree retention change described below, all other standards would be maintained as they currently exist.

See Appendix B for a comparison of plan language for each alternative.

2.4 ADAPTIVE MANAGEMENT ALTERNATIVE

In this alternative, the 21-inch standard would be removed. Management activities would not include a size or age requirement. Exclusive of the snag and green tree retention change described below, all other standards would be maintained as they currently exist, including moving the stand toward the desired condition of LOS.

This alternative would include the same adaptive management approach described in the proposed action.

See Appendix B for a comparison of plan language for each alternative.

2.5 ALTERNATIVES CONSIDERED BUT NOT FULLY ANALYZED

Lower diameter limit

Some participants in the public engagement sessions suggested we lower the diameter limit to 16 inches dbh. This alternative would not allow us to reduce competition and associated mortality in old trees across the landscape by removing some young but large shade tolerant trees. Please see need for change section for additional detail.

Basal area alternative

This alternative would have allowed activities to occur within and outside of LOS if harvest activities would increase the basal area-weighted age of stands, and there would be no net loss of LOS. Exceptions would have been permitted by the following process:

- If a forest wants to manage an area in such a way that basal-area weighted age of the stands will not increase, it may do if it uses a collaborative process with a representative range of stakeholders to engage the public and the project is being proposed to:
  - Meet or maintain desired conditions for species composition by removing shade tolerant species in favor of shade-intolerant species,
  - Meet or maintain desired conditions for low density stand conditions in appropriate biophysical settings where removal of smaller trees alone cannot achieve desired conditions,
  - Control or limit the spread of insect or disease infestation, or
  - To favor aspen, cottonwood, whitebark pine, or special plant habitats.
- Projects brought forth through the exception process must include multi-party monitoring.
This alternative was eliminated from detailed analysis because it was difficult for many people to understand and would create the need for the Forest Service and partners to develop entirely new approaches to management. It would also require data that is often not readily accessible at the project level.

**All trees over 21 inches that are cut would remain on site**

In pre-NEPA public meetings and discussions, an option was suggested that would allow for cutting of trees as needed with all cut trees greater than 21 inches dbh left onsite. This option is currently available to managers without completing a forest plan amendment because the Eastside Screens only apply to subset of management activities, and the 21-inch standard does not apply to this kind of “drop and leave” scenario. Regardless, the drop and leave option is not always feasible or desirable because it could create fuel loads that make forests susceptible to uncharacteristic fire severity. Drop and leave scenarios may also conflict with existing Land and Resource Management Plan (Forest Plan) direction to maintain lower fuel loads post–treatment than created by drop and leave scenarios.

**Combined age and diameter limit standard**

This alternative would have given managers the ability to choose either age or size in implementing projects. That is, managers would either be required to protect all trees over 21 inches (30 inches for shade tolerant species) or managers would be required to protect all trees over 150 years of age. While similar to the preferred alternative, this option is a standard rather than a guideline. Other alternatives more directly and reliably met the purpose and need in a way that was simpler and easier for managers and interested publics to understand.

### 2.6 CHANGE COMMON TO ALL ACTION ALTERNATIVES

**Snag and Green Tree Retention Change**

Rather than existing language at 4.a.1 of the Eastside Screens, forests would have a choice: Maintain all snags > 20" (or whatever is the representative DBH of the overstory layer if it is less than 20") or complete a snag analysis using the best available science on snag-dependent species ecological requirements as applied through current snag tools, models, or other documented procedures to maintain or increase habitat for a diverse composition of wildlife species.

For green tree retention, forests will retain and recruit large trees of the appropriate species and spatial arrangements to meet LOS objectives and wildlife tree objectives using best available science. Forests are encouraged to use natural decay processes and agents to recruit snags from green trees.

See Appendix B for detailed plan language including guidelines referred to above.

### 2.7 COMPLIANCE WITH NFMA-SUBSTANTIVE REQUIREMENTS

When proposing a Forest Plan amendment, the 2012 Planning Rule (36 CFR 219), as amended, requires the responsible official to identify the substantive requirements of the rule that are likely to be directly related to the amendment (36 CFR 219.13(b)(5)). The substantive requirements that are likely to be directly related to the proposed amendment
Adapting the Wildlife Standard of the Eastside Screens

are: 1) 36 CFR 219.8(a)(1)(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change; 2) 36 CFR 219.8(a)(1)(v) Wildland fire and opportunities to restore fire adapted ecosystems; and 3) 219.9(b)(1) The responsible official shall determine whether or not the plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern (SCC) within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.

History of Eastside Screens

- Developed in the 1990s

- Eastside Forests Ecosystem Health Assessment or Everett Report

- NRDC Litigation

Where Eastside Screens Apply

- Deschutes NF
- Fremont-Winema NF
- Malheur NF
- Ochoco NF
- Umatilla NF
- Wallowa-Whitman NF

2020 Environmental Law: Year in Review

Riparian Standards

Ecosystem Standards

Wildlife Standards

- 21" Rule

“Outside of LOS, many types of timber sale activities are allowed. The intent is still to maintain and/or enhance LOS components in stands subject to timber harvest as much as possible, by adhering to the following standards: a) Maintain all remnant late and old seral and/or structural live trees ≥ 21-inch dbh that currently exist within stands proposed for harvest activities ...”
Need For Change

• The constant need for site-specific project-level amendments
  • 2014 Snow Basin Decision

• Failure to protect older trees (smaller than 21 inches) that provide critical habitat functions

• The 21" Rule prevents restoration that could create conditions for older trees to persist

Photo credit: Andy Geissler

Forest Plan Amendment Process

Public Involvement
• Science Forum (May 11, 2020)
• Intergovernmental Technical Workshop (May 13, 2020)
• Partner Technical Workshop (May 15, 2020)
• General Information Sessions (August 19 and August 20, 2020)

Draft Environmental Analysis
• Released August 11, 2020
• Comments due October 13

Final EA & Draft Decision
• Fall/Winter 2020
• 45-day Objection Period

Final Decision
• Winter/Spring 2021

Photo credit: James Johnston
**Purpose and Need**

To analyze a durable, science-based alternative to the 21-inch standard in the Eastside Screens. Adapting the standard to incorporate science and 25 years of learning would enable managers to more effectively restore forestlands in eastern Oregon.

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**Preliminary Environmental Assessment**

**Four Alternatives**

- Current Management Alternative
- Old Tree and Large Tree Guideline with Adaptive Management (Proposed Action)
- Old Tree Standard Alternative
- Adaptive Management Alternative
Old Tree and Large Tree Guideline with Adaptive Management (Proposed Action)

<table>
<thead>
<tr>
<th>Current Language (Not Action)</th>
<th>Old Tree and Large Tree Guideline with Adaptive Management (Proposed Action)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain all remnant late and old seral and/or structural live trees &gt; 21-inch dbh that currently exist within stands proposed for harvest activities</td>
<td>Guideline: Management activities should retain and generally emphasize recruitment of old and large trees. Management activities should first prioritize old trees for retention and recruitment. If there are no old trees, the largest trees should be retained.</td>
</tr>
</tbody>
</table>
### Old Tree Standard Alternative

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</tr>
</thead>
<tbody>
<tr>
<td>Maintain all remnant late and old seral and/or structural live trees &gt; 21-inch dbh that currently exist within stands proposed for harvest activities</td>
<td>Standard: Old trees estimated to be &gt; 150 years shall not be removed. Forests will use best available science information to estimate old trees based on physical characteristics. Guideline: Management activities should consider species composition and spatial arrangement within stands and across the landscape.</td>
</tr>
</tbody>
</table>
### Adaptive Management Alternative

<table>
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<tr>
<th>Current Language (Not Action)</th>
<th>Adaptive Management Alternative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain all remnant late and old seral and/or structural live trees &gt; 21-inch dbh that currently exist within stands proposed for harvest activities</td>
<td>Guideline: Management activities don’t include a size or age requirement but must still adhere to the rest of the screens including d.2.b and d.2.c.</td>
</tr>
</tbody>
</table>
Chapter 4B—Amendments to the Eastside Screens Governing Federal Forest Management

Photo Credit: Irene Jerome

NEPA Analysis

Vegetation Management
- Species composition
- Late and old growth structure

Wildlife
- 4 Federally listed species
- 85 Region 6 sensitive species and management indicator species
- 16 wildlife species habitat associations with late and old growth forests

Social and Economic
- Forest Products
- Cultural and heritage resources
- Recreation

Considerations
- 2012 Planning Rule
- Impacts of new CEQ NEPA regulations
- EA versus EIS

Photo Credit: Andy Geissler
Chapter 4B—Amendments to the Eastside Screens Governing Federal Forest Management

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