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# Oak Woodland Restoration Rulemaking Options

Report to the Forest Practice Committee  
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Several potential options were discussed during the field tour held on May 6<sup>th</sup>, 2014 that could be potentially viable solutions to address the issue of oak woodland restoration. These solutions ranged from development of new regulation, revision of existing regulation, addressing the issue of conversion or the development of a Technical Rule Addendum #6. Additionally, the Forest Practice Committee could select to allow the current regulatory structure to remain unaltered in regards to this resource management issue.

Board staff has attempted to capture and address these potential solutions in this report and therefore provide the Forest Practice Committee the ability to analyze these options and select the best method, if any, to develop a potential to the problem at hand. These provided solutions likely do not address every option that the Board currently could pursue, but at a minimum does cover the options that were addressed during the field tour.

## **Option #1: Adoption of an Exemption under 1038 for Oak Woodland Restoration**

**Discussion:** Under existing statute, the Board does not possess the authority to adopt an exemption for oak woodland restoration, or other resource management issues, without intervention from the Legislature. The oak woodland restoration issue does present an opportunity for the Board to engage with Legislative representatives and pursuing sponsoring legislation to address this issue through the exemption process should this option be selected.

## **Option #2: Revision of 14 CCR 912.7(a)**

### **912.7, 932.7, 952.7 Resource Conservation Standards for Minimum Stocking [All Districts, note (b)(1)(D)]**

The following resource conservation standards constitute minimum acceptable stocking in the Coast [Northern, Southern] Forest District after timber operations have been completed.

- (a)** Rock outcroppings, meadows, wet areas, or other areas not normally bearing commercial species shall not be considered as requiring stocking and are exempt from such provisions.

**Discussion:** Points were raised that that potential revision to 14 CCR 912.7(a) could supply the necessary revisions to the rules that would allow for oak woodland restoration to occur. The Board could review the language of “or other areas not normally bearing timber” and the intent of this language. If the Board was to determine that identified oak woodlands were not areas that historically bore timber or provided clarification on the application of this existing regulation to the setting of oak

woodlands, it may then be possible for landowners and RPF to effectively manage these forested landscapes for other forest values that are associated with oak woodlands. Any changes that the Board would consider in regards to revisions to this rule language would have to comply with PRC 4513.

**Option #3: Develop a Special Prescription similar to that of the Aspen, meadow and wet area restoration 14 CCR 913.4(e)**

**Discussion:** In 2011 the Board adopted permanent regulations for aspen, meadow and wet area restoration (14 CCR 913.4(e)). The need for this regulation was present because aspen is not a Group B commercial species in any Forest Practice District. Therefore, the regulations in place at the time did not allow for the utilization of aspen to meet stocking standards in any form or fashion. The minimum stocking standards per 14 CCR 912.7 are waived when aspen, meadow or wet area restoration is proposed pursuant to 14 CCR 913.4(e).

Black oak and Oregon white oak are Group B commercial species in the Northern and Coast Districts and therefore these species can currently be utilized to meet minimum stocking. However, only black oak is a commercial Group B species in the Southern District and therefore only black oak would be available to meet minimum stocking under the current regulatory structure, presuming that other hardwood Group B species are not present in the oak woodland types being considered for restoration.

Upon review of the 14 CCR 913.4(e), it does seem plausible that the framework of this existing regulation could be utilized to develop a special prescription for oak woodland restoration. Certainly some tenants of the regulation would undergo significant revision given that the stand types proposed for treatment vary tremendously, but nevertheless, a general framework for a draft regulatory proposal is present.

Any rulemaking that the Board would consider in regards to revisions to this rule language would have to comply with PRC 4513.

**Option #4: Development of a Technical Rule Addendum**

**Discussion:** The development of a Technical Rule Addendum (TRA) is also a possibility that may be considered. A TRA could address only the issue of oak woodland restoration, or could address forest resource restoration as a whole. Comments were offered by field tour participants that the Board may also want to consider the restoration of other habitats types in addition to oak woodlands. For instance, the restoration of limited habitat types for sensitive plant or animal species could be a goal of landowners and current regulatory standards may not support these types of restoration goals.

A TRA could provide guidance to RPFs on expectations on the categories and/or types of information that should be produced in proposal of oak woodland restoration, or in the case of a broader TRA, proposed alternative restoration projects of other forest resources.

As recently as 2012 the Board adopted a TRA that defines hydrologic disconnection of forest roads. This, as is the case with other TRAs contained within the Forest Practice Rules, are generally guidance to the regulated public, RPF and LTO communities. Should the Board decide that enforceable standards need to be included for oak woodland restoration, or other types of alternative restoration projects, then it may be best suited to pursue codifying new regulation into the FPRs, altering existing regulation or relying upon existing regulation as structured to support proposed restoration projects.

Any rulemaking that the Board would consider in regards to development of a TRA would have to comply with PRC 4513.

### **Option #5: Development of Board Policy or Guidance Document that Identifies that Existing Regulations Supports Oak Woodland Restoration**

**Discussion:** Research conducted by staff indicates that several NTMPs in the recent past have been approved by the Director that have contained oak woodland restoration and meadow restoration. In these cases stocking has been wholly met utilizing Group B species or, in the case of meadow restoration, stocking has been exempted. This would indicate that existing regulations, when appropriately applied by RPFs and the Department, do support oak woodland restoration. Although the regulations that allowed for meadow restoration were eliminated by the Board in 2011, they were supplanted by the Aspen, meadow and wet area special prescription, which still support meadow restoration activities.

For the remainder of this discussion, Board staff will attempt to provide commentary on how existing regulations may currently support oak woodland restoration, while still addressing the issue of conversion of timberland.

14 CCR 912.7(d) states the following:

#### **912.7, 932.7, 952.7 Resource Conservation Standards for Minimum Stocking [All Districts, note (b)(1)(D)]**

The following resource conservation standards constitute minimum acceptable stocking in the Coast [Northern, Southern] Forest District after timber operations have been completed.

**(d)** The resource conservation standards of the rules may be met with Group A and/or B commercial species. The percentage of the stocking requirements met with Group A species shall be no less than the percentage of the stand basal area they comprised before harvesting. The site occupancy provided by Group A species shall not be reduced relative to Group B species. When considering site occupancy, the Director shall consider the potential long term effects of relative site occupancy of Group A species versus Group B species as a result of harvest. If Group A species will likely recapture the site after harvest, Group B species do not need to be reduced. The time frames for recapturing the site shall be consistent with achieving MSP. The Director may prohibit the use of Group A and/or B commercial species which are non-indigenous or are not physiologically suited to the area involved. Exceptions may be approved by the Director if the THP provides the following information and those exceptions are agreed to by the timberland owner:

**(1)** Explain and justify with clear and convincing evidence how using Group A nonindigenous, or Group B species to meet the resource conservation standards will meet the intent of the Forest Practice Act as described in PRC § 4513. The discussion shall include at least:

**(A)** The management objectives of the post-harvest stand;

**(B)** A description of the current stand, including species composition and current stocking levels within the area of Group B species. The percentage can be measured by using point-count, basal area, stocked plot, or other method agreed to by the Director.

**(C)** The percentage of the post-harvest stocking to be met with Group B species. Post harvest percentages will be determined on the basis of stocked plots. Only the methods provided by 14 CCR §§ 1070-1075 shall be used in determining if the standards of PRC § 4561 have been met.

**(D)** A description of what will constitute a countable tree, as defined by PRC § 4528 for a Group B species and how such a tree will meet the management objectives of the post-harvest stand.

The Director, after an initial inspection pursuant to PRC § 4604, shall approve use of Group B species, as exceptions to the pre-harvest basal area percentage standard, if in his judgment the intent of the Act will be

met, and there will not be an immediate significant and long-term harm to the natural resources of the state.

As set forth in 14 CCR 912.7, Group B commercial species can be utilized for meeting minimum stocking. Although 912.7 does supply prescriptive standards in regards to proportionally of stocking of Group A and Group B commercial species in pre and post harvested stands, it also allow for exceptions to be approved by the Director. This approval is predicated upon the fact that the RPF supplies the required information as set forth in 912.7(d)(1)(A) –(D) and that the intent of the Act is met per PRC 4513.

**4513. Intent of Legislature.** It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to assure that:

- (a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.
- (b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to sequestration of carbon dioxide, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

It is important to note that the intent of the Legislature applies to “productivity of timberland” and therefore does not apply to areas where conversion of timberland has occurred. In order to meet the intent of the Legislature per the Act and apply 14 CCR 912.7 to oak woodland restoration projects, the Board would have to find that oak woodland restoration under existing regulation is not a conversion of timberland. Therefore, the Board must analyze the definition of timberland per the Act as provided for in PRC 4526.

**4526. Timberland.** "Timberland" means land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis.

Amongst other requirement, timberland, as defined in the Public Resources Code, is private land that is available for and capable of growing a crop of commercial species. Therefore, oak woodland restoration projects would have to result in the maintenance of “commercial species” upon completion of operations so that timberland is present subsequent to restoration activities and the issue of conversion is abated. Therefore, the Board must review the definition of commercial species.

It is also required that commercial species are “used to produce forest products”. The obvious forest product is lumber which is often associated with western US softwoods, but there are a multitude of forest products that could be produced from oak woodlands as well. This is likely why that both Oregon white oak and black oak were previously defined as commercial species. The Board would likely have to develop findings that acknowledge that oak woodlands do indeed produce, and could be managed for, forest products. For instance, these forest products could range from firewood, hog fuel, landscape chips, pulp, small specialty saw logs, dimension lumber, flooring, burl, etc.

**Commercial Species** (For the Coast Forest District:) means those species found in group A and those in group B that are found on lands where the species in Group A are now growing naturally or have grown naturally in the recorded past.

The Board has adopted a definition of commercial species that is contained in 14 CCR 895.1 for each Forest Practice District. Although the list of Group A and Group B commercial species varies by Forest District, as discussed in Option #3, the definition remains constant for each Forest District.

The definition of commercial species contains the caveat “Group A are now growing naturally or have grown naturally in the recorded past”. Clearly Group A species are now growing within these oak woodland where restoration is desired, or restoration of these landscapes would not be of concern to

landowners, RPFs and agency personnel. In regards to Group A species growing in the recorded past, the Board could find that the approved Plan obtained through the CEQA process by RPFs and landowners would provide the documentation necessary to provide record the historic presence of Group A species within these landscapes. Through the Plan process and application of 14 CCR 912.7(d)(1)(B) it is incumbent upon the RPF to provide “a description of the current stand, including species composition and current stocking levels within the area of Group B species” therefore documenting pre-treatment conditions. It is also important to note that many portion of the state have historical aerial photo coverage, LiDARm, vegetation type mapping and soils mapping that would additionally bolster the required recordation that was supplied by RPFs in Plans. If this level of documentation and recordation is accepted by the Board as “recorded past”, the remaining Group B species would remain as commercial species and therefore the lands treated under oak woodland restoration would remain as timberland.

Should option 5 be entertained by the Board, it would become necessary to develop either a guidance document or Policy Statement that incorporates finding of the Board in relation to the intricacies mentioned above. It is possible, and even likely, that in addition to the above mentioned points of discussion that other issue would also have to be addressed.

**Conclusion:**

Board staff has attempted to capture and articulate the various opportunities that were discussed during the field tour in relation to oak woodland restoration. As previously stated, these provided solutions likely do not address every option that the Board currently could pursue, although these options do provide viable solutions. While some of the options do represent a comprehensive solution for a greater number of landowners, others offer a modest solution that could be built upon in future rule or policy making efforts.

Consideration of these presented options is appreciated.

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