

MEMORANDUM OF UNDERSTANDING

The undersigned, being members of the Oregon timber industry and conservation communities (the “**Cooperating Parties**”), recognize and acknowledge the following:

A. The Cooperating Parties are presently embroiled in a costly and unpredictable battle over competing initiative petitions that would appear on the November 2020 ballot.

a. On July 9, 2019, Vikram Anantha, Micha Elizabeth Gross, and Kate Crump (the “**Forest Waters Petitioners**”) filed three initiative petitions with the Secretary of State (the “**Secretary**”) that the Secretary would assign initiative petitions numbers 35, 36, and 37 (the “**First Round IPs**”). The First Round IPs propose to make consequential changes to the regulatory regime surrounding Oregon forest practices, including aerial pesticide spray.

b. On September 24, 2019, the Secretary found that the First Round IPs do not comply with constitutional procedural requirements. On October 11, 2019, two of the Forest Waters Petitioners filed a legal challenge to the Secretary’s finding on the First Round IPs and the challenge is now pending in the Oregon Court of Appeals.

c. On October 2, 2019, the Forest Waters Petitioners filed three more initiative petitions that the Secretary would assign numbers 45, 46, and 47 (the “**Second Round IPs**,” and together with the First Round IPs, the “**Forest Waters IPs**”). The Second Round IPs include most of the substantive provisions of the First Round IPs, but exclude certain provisions to comply with the Secretary’s finding on the First Round IPs.

d. On November 5, Jim James, Scott Russell, and Neil Westfall (the “**Landowner Petitioners**,” and together with the Forest Waters Petitioners, the “**Petitioners**”) filed initiative petitions that the Secretary would assign numbers 53, 54, and 55 (the “**Landowner IPs**” and together with the First Round IPs and the Second Round IPs, the “**Initiative Petitions**”). IP 53 would require state compensation for certain regulations. IP 54 would alter the procedure for adopting new forest practice regulations. IP 55 would change the composition of the Oregon Board of Forestry.

e. On January 13, the Secretary found that IP 54 does not comply with constitutional procedural requirements.

f. Certified ballot titles for the Second Round IPs, IP 53, and IP 55 have all been appealed to the Oregon Supreme Court (the “**Appeals**”).

B. The Cooperating Parties acknowledge that they have an incentive to reach a compromise on historically difficult issues without risking adverse outcomes in an election.

C. The Cooperating Parties believe that any compromise must be built on mutual trust and respect, and to that end must achieve the following overall goals:

a. Greater business certainty: Provide a greater level of certainty to forest landowners and industries that depend on Oregon forests without compromising the viability of Oregon’s manufacturing infrastructure.

b. Greater environmental certainty: Provide a greater level of certainty for the survival and recovery of threatened and endangered species, and ensure that drinking water, and aquatic resources are protected.

c. Process to resolve future issues: Provide a durable framework and process leading to substantive outcomes to address current and future issues related to achieving greater business certainty and greater environmental certainty as described herein that is outside the initiative process and legal system.

d. Complete a stand-down from pursuing changes through the initiative process, related legal actions, and certain other relevant legislative and regulatory proceedings while the facilitated process is working.

D. The Cooperating Parties stand to gain by pursuing an alternative path informed by science with a mutual willingness to compromise that achieves high quality environmental outcomes and certainty for everyone involved.

NOW, THEREFORE, the Cooperating Parties share the following intentions:

1. The Cooperating Parties will pursue a science-informed policy development process, rooted in compromise, to evaluate and jointly recommend substantive and procedural changes to Oregon forest practice laws and regulations as outlined below:
 - a. A mediated series of meetings over the course of no more than eighteen months. The object of these meetings is to finalize a plan to prepare an application to the federal services through changes to Oregon's Forest Practices Act and implementing regulations that will provide a rational basis for an approvable Habitat Conservation Plan, or other mechanism for federal regulatory assurances, covering listed salmonids and other aquatic and riparian-dependent species.
 - b. The mediated meetings will include representatives of the federal services and relevant state agencies.
 - c. The mediated meetings will include discussion of forest practices that impact waters of the state and at risk species including, but not limited to, forest roads, near-stream operations, and steep/unstable slope activities affecting streams.
 - d. The Cooperating Parties will develop their final plan so that interim legislation implementing the agreements reached will be enacted on or before the February 2022 Legislative session. Such implementing legislation will include:
 - i. Elements that decrease the risk to listed species and the aquatic resources upon which they rely while increasing certainty and durability of forest practice laws and regulations going forward.
 - ii. An adaptive management component that involves a rigorous look at the efficacy of existing and future forest practice regulation, and a science-driven process for analyzing the need for any changes.
 - iii. Recognition of the potential for disproportionate impacts to small forest landowners and provision for alternative compliance paths and mitigation of financial impacts.
 - iv. A sunset for the 2022 legislation if the federal services fail to issue a final record of decision approving a statewide habitat conservation plan, or other federal

mechanism for regulatory assurance, by December 31, 2027, or the incidental take permit is otherwise revoked on appeal.

- e. The Cooperating Parties will present an update on the mediated process and their progress toward accomplishing goals during the 2021 Legislative session.
 - f. The Cooperating Parties recognize the importance of forestry and aquatic resources to Native American tribes, and understand that the state and federal governments will consult with tribal governments on these issues as this process moves forward and any resulting policy changes.
2. The Cooperating Parties will observe the ground rules attached as Exhibit A, and any other ground rules mutually agreed to in the subsequent mediation. The Cooperating Parties will publicly support:
 - a. Pesticide spray legislation that includes the components described in the attached Exhibit B.
 - b. Enabling legislation for the process described in Section 1 that includes public funding for third party or public staffing and technical resources.
 - c. Legislation that directs the Board of Forestry to extend as interim rules the 2017 salmon, steelhead and Bull trout stream rules to the Siskiyou Georegion at the soonest possible date consistent with current administrative procedures, and suspension of the Siskiyou riparian review process. These rules may be changed as part of the implementing legislation envisioned by 1.d. above.
 3. The Cooperating Parties will agree to a mediator to facilitate the process described in Section 1.
 4. Provided the legislation described in Section 2 passes the Oregon legislature no later than March 9, 2020, and the Cooperating Parties agree to the mediator in Section 3, the undersigned will:
 - a. Endeavor to cause:
 - i. The Petitioners to withdraw and terminate the Appeals and any then-pending litigation concerning the Initiative Petitions, except for litigation regarding the First Round IPs, which the Forest Waters Petitioners intend to prosecute to final resolution in the normal course.
 - ii. The Forest Waters Petitioners to withdraw the Forest Waters IPs, except that this subsection will not apply to the First Round IPs until the associated litigation is fully and finally resolved.
 - iii. The Landowner Petitioners to withdraw the Landowner IPs.
 - iv. The Petitioners to close any political action committee connected to the Petitions.
 - b. Testify before the Board of Forestry in support of suspending work on the coho rulemaking, and opposing any new petitions for resource site protection rulemakings for aquatic species, during the pendency of this process or the passage of the 2022 Legislative session, whichever concludes earlier.

- c. Encourage the Board of Forestry to analyze the safety and efficacy of aerial pesticide application by unmanned aerial vehicle if and when such technology becomes commercially viable.
 - d. Not initiate or support new proposals for regulation of aerial pesticide applications on Oregon forestlands until the earlier of (i) the Cooperating Parties ceasing work on an approvable Habitat Conservation Plan pursuant to Section 1(a) above, or (ii) December 31, 2027.
5. Except as provided in Section 1.e., the expressions of intent set forth in this Memorandum of Understanding, although containing an agreement in principle, shall not be binding on the Cooperating Parties.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

DISCUSSION DRAFT

EXHIBIT A

Ground Rules

Each of the participants to these discussions agree to these ground rules:

1. We will attempt to develop a system which provides:
 - * Minimum guarantees for everyone;
 - * Incentives which maintain and enhance timber, fisheries and wildlife resources;
 - * Future flexibility, accountability, better management, compliance with regulations and resource goals.
2. All participants in the negotiation are to bring with them the legitimate purposes and goals of their organizations. All parties recognize the legitimacy of the goals of others and assume that their own goals will also be respected. These negotiations will try to maximize all the goals of all the parties as far as possible.
3. This effort will receive priority attention, staffing and time commitments.
4. Give the same priority to solving the problems of others as will your own.
5. Commitment to search for opportunities: without creativity there will be no plan or agreement.
6. Commitment to listen carefully: ask questions to understand and make statement to explain or educate.
7. All issues identified by any party must be addressed by the whole group.
8. State needs, problems and opportunities, not positions — positive candor is a little-used but effective tool.
9. Commitment to attempt to reach consensus on a plan.
10. Commitment to be an advocate for an agreed plan.
11. Attempt to protect each other and process politically with constituencies and general public.
12. Weapons of war are to be left at home (or at least at the door).
13. Anyone may leave the process and the above groundrules, but only after telling the entire group why and seeing if the problem(s) can be addressed by the group.
14. All communications with news media concerning these discussions will be by agreement of group. Everyone will be mindful of the impacts their public and private statements will have on the climate of this effort.
15. No participant will attribute suggestions, comments or ideas of another participant to the news media or non-participants.
16. All rights, remedies, positions and current prejudices are available to everyone if the effort is unsuccessful.
17. Participants are free to, and in fact are encouraged to, seek the best advice from their friends and associates informed of the progress of the discussions.
18. All of the individuals who are participants accept the responsibility to keep their friends and associates informed of the progress of the discussions.
19. If you hear a rumor, call facilitator before acting on it.

EXHIBIT B
OREGON FOREST HELICOPTER PESTICIDE LEGISLATION COMPONENTS

Initial Notification

- 1) Concerned Oregonians (each, a “**Recipient**”) may register with the Oregon Department of Forestry (“**ODF**”) to receive notifications of nearby helicopter applications of pesticides (as defined in ORS 634.006 (8)), but not including helicopter applications of fertilizers, by providing to ODF (a) a description of the relevant parcel (b) proof of residency on that parcel, and (c) contact information, including the Recipient’s mailing address, email address, and phone number. These parcels (“**Flagged Parcels**”) will be reconciled by ODF with tax lots that will be flagged in a geospatial layer maintained within ODF’s Forest Activity Electronic Reporting and Notification System (“**FERNS**”). Similarly, a person in control of the surface water intake for a permitted water right, or who owns and operates a spring box that the person certifies is an exempt use of Oregon water (each, a “**Water User Recipient**”), may register with ODF to receive notifications of helicopter pesticide applications by providing to ODF (a) the Global Positioning System (“**GPS**”) coordinates of the intake or spring box, (b) proof of the Water User Recipient’s ownership or control of the intake or spring box, and (c) contact information, including the Water User Recipient’s mailing address, email address, and phone number. ODF will log the location of the registered intakes or spring boxes (the “**Flagged Water Sources**”) in FERNS.
- 2) For all notifications of helicopter pesticide applications on forestlands, the operator must identify a ninety-day window within which the operation will occur (the “**Application Window**”). Operations outside the Application Window would require a new notification. All notifications of helicopter pesticide applications on units with at least one Nearby Recipient (as defined below) must be made at least thirty days prior to conducting an operation, unless the operation was previously notified within the same calendar year and not completed, in which event the operation must be notified at least one week prior to conducting an operation (notwithstanding ORS 527.670(9)).
- 3) Today, when a landowner or operator files a notification with FERNS, it produces a list of intersects with other resources and regulatory layers (e.g., streams, resource sites). Under the proposed legislation, for all helicopter pesticide applications, FERNS would create for the notifier a list of (a) all Recipients with a Flagged Parcel within one mile of the boundary(ies) of the proposed operation(s), and (b) all Water User Recipients with a Flagged Water Source within one mile of the boundary(ies) of the proposed operation(s) and within the same drainage basin (each described by (a) and (b), a “**Nearby Recipient**”). The landowner and/or operator would have the first opportunity to reach out to any Nearby Recipients in person, but two weeks following the notification, FERNS would automatically generate an email to each Nearby Recipient notifying them of the proposed operation, the Application Window, and the contact information for the landowner and operator.
- 4) All notifications of helicopter pesticide application should only list pesticides reasonably likely to be used.

Real-Time Notification

- 5) To perform a helicopter pesticide application on any given day, a landowner and/or operator must, prior to 7:00 pm on the preceding day, make an election within FERNs to perform a helicopter pesticide application the following day (a “Go Election”). The Go Election may be made for single or multiple units within each notification (a single notification frequently contains many units). A Go Election will immediately prompt an email to each Nearby Recipient within one mile of the boundary of the relevant unit(s), notifying them of the possibility of an application the following day. A Go Election would not require the operator complete an application the following day. Provided that the application would still occur within the Application Window, an operator may make a Go Election on multiple or succeeding days.

Post Application Completion Reporting

- 6) Within 24 hours of completion of a helicopter pesticide application, an operator must identify within FERNs the units completed. FERNs will offer the operator the list of the operator’s units for which a Go Election was made from which the operator may select the completed units.
- 7) All units identified by the operator for helicopter pesticide application in FERNs will be designated “available,” “pending,” or “completed.” During an Application Window, but prior to a Go Election, a unit will be designated as “available.” Between a Go Election and the reporting required by the preceding section, a unit will be designated as “pending.” A unit for which the operator has reported a completion will be marked as “completed.” If an operator does not make any report following a Go Election, then at 11:59 pm on the second day following the Go Election the unit will automatically be re-designated as “available.”
- 8) An operator who makes a Go Election and then makes a helicopter pesticide application but who does not timely report the unit’s completion shall be subject to graduated penalties for each day they fail to report, that begin with a warning, and increase to \$1,000 for the second day in a single season, and \$5,000 for each additional day in a single fall or spring spray season.
- 9) The legislation would (a) explicitly provide a mechanism for the request of daily spray records by state agencies, law enforcement, and licensed health care providers by request to the Pesticide Analytical Response Center (b) require production of daily spray records within twenty-four (24) hours of request to the operator, (c) require production of any unit spray pattern data, including but not limited to any GPS information within five (5) business days of request, (d) increase financial penalties for failure to timely produce a daily spray record or flight path data upon request, and (e) provide that such information is not otherwise public record subject to request.

Penalties for Interfering with Helicopter Pesticide Applications

- 10) Any person who intentionally interferes with a helicopter pesticide application may be ticketed for a violation with a presumptive fine of \$1,000 for the first offense, and \$5,000 for any additional offense within a five-year period, and may be liable to the operator for any actual damages resulting from the interference or other remedies available at law. Any interference by a Nearby Recipient shall be deemed to be intentional. There shall be a rebuttable presumption that any interference is intentional if caused by a Recipient or a Water User Recipient who registers a Flagged Parcel or Flagged Water Source pursuant to Section 1 above.

Miscellaneous

- 11) The “go-live” date for the foregoing software enhancements for FERNS would be no less than one year following the enabling legislation. The “go-live” date may be extended twice in six-month increments should the state Chief Information Officer, in consultation with the Cooperating Parties, determine that the software enhancements are not ready for use in the field. Until the “go-live” date, current rules will continue to apply.
- 12) Particularly with respect to the Real-Time Notification and Post Application Reporting described above, ODF would be specifically instructed to create an application for iPhone and Android that is convenient to use on a cell phone in the field anywhere a data connection is available.
- 13) Software development would require adequate funding.
- 14) The legislation would establish helicopter pesticide application buffers (no direct application zones) of 300 feet around inhabited dwellings and schools that are not owned by the landowner receiving the application and around any Flagged Water Source within the same 6th level hydrologic unit. Inhabited dwellings and schools have the definitions currently appearing in Oregon Department of Forestry Guidance for ORS 527.672 Aerial Herbicide Applications dated May 25, 2018, but would exclude trespassers.
- 15) The legislation would, subject to any product label or federal law requiring more stringent standards, establish the following helicopter pesticide application buffers (no direct application zones) adjacent to streams on forestland governed by the Oregon forest practices act:
 - a) On fish bearing streams and on Type-D streams, the larger of (i) the riparian management area as of the implementation date of the buffers required by Section 2(c) of the Memorandum of Understanding to which this Exhibit B is appended., (ii) the required vegetated buffer, or (iii) 75 feet; and,
 - b) On flowing Type-N streams that are not Type-D streams, 50 feet.
- 16) The provisions of sections 14 and 15 above will go into effect on January 1, 2021.