

RECORDED

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**Clatsop County
Board of Commissioners
Minutes
Wednesday, August 12, 2020**

REGULAR MEETING: 6:00 PM

ROLL CALL

PRESENT

Commissioner Sarah Nebeker
Commissioner Pam Wev
Chair Kathleen Sullivan

ABSENT

Commissioner Lianne Thompson
Commissioner Mark Kujala

AGENDA APPROVAL

*Motion made by Commissioner Wev, Seconded by Commissioner Nebeker.
Voting Yea: Commissioner Nebeker, Commissioner Wev, Chair Sullivan*

BUSINESS FROM THE PUBLIC

Tom Clark is concerned with the fitness of the Citizen's Advisory Committee to draft policy that is legal, appropriate, and supports the variety of viewpoints present within the county. He said draft Goal 4 would generate a lawsuit from both private land owners and from the state and that the committee is attempting to trample on private land owner rights.

David Wells, Chief Forester with Oregon Natural Forestry, submitted written comments. *See hereto attached Exhibit A.*

Mike Eliason, General Counsel & Director of Government Affairs, Oregon Forest & Industries Council, submitted written comments. *See hereto attached Exhibit B.*

Doug Cooper, Vice President of Resources, Hampton Lumber, submitted written comments. *See hereto attached Exhibit C.*

CONSENT CALENDAR

*Motion made by Commissioner Nebeker, Seconded by Commissioner Wev.
Voting Yea: Commissioner Nebeker, Commissioner Wev, Chair Sullivan*

5. Board of Commissioners Regular Meeting Minutes 6-24-20 {Page 106}
6. Board of Commissioners Regular Meeting Minutes 7-8-20 {Page 117}
7. Board of Commissioners Regular Meeting Minutes 7-22-20 {Page 123}

- 1 8. Transfer of property to the Girl Scouts of Oregon and SW Wash. Inc. {Page 126}
- 2 9. Transfer of property to the Sunset Empire Park and Recreation District {Page
- 3 132}
- 4 10. FY 2020-21 budget and appropriations adjustments for the Public Health Dept.
- 5 for unanticipated grant revenue from Columbia Pacific CCO {Page 138}
- 6 11. Request from Warrenton School District to use Camp Kiwanilong for school
- 7 purposes {Page 148}
- 8 12. Homeland Security Grant – Communications Plan {Page 161}

9 **COMMISSIONER'S LIAISON REPORTS**

10 Wev reported that the Chelsea Gardens housing project is moving forward and there
11 may be an opportunity to apply for a grant to create a childcare facility onsite. The
12 property will be managed by the Northwest Oregon Housing Authority.

13 Nebeker attended the Human Services Advisory Council. There was a presentation on
14 CHART – Community Health Advocacy and Resource Team. She reported that Amy
15 Baker, Executive Director of Clatsop Behavioral Healthcare (CBH), is working on an
16 initiative to reach out to the Latino community. They have hired a bilingual therapist.
17 Nebeker attended the Public Safety Coordinating Council. The new jail had to do some
18 rebidding to keep within the budget. The Medical Examiner has retired. The Harbor has
19 been very busy. CBH has been conducting visits on telehealth and in person visits.
20 There have been 800,000 needles exchanged since the start of the Harm Reduction
21 Program and there is a syphilis outbreak.

22 Sullivan recognized Dr. McNickle for his work that he and his staff have done with the
23 Harm Reduction Program. She is happy about the transfer of property to the Girls
24 Scouts of Oregon and also that the Warrenton School District is leasing Camp
25 Kiwanilong for activities. Sullivan encouraged the Board to consider creating a Youth
26 Advisory Board to encourage young people to get involved in county government. There
27 will be a presentation from the Council of Forest Lands Committee to talk about
28 important issues. She encourages all the Board members to listen. Sullivan recognized
29 Gail Henrikson and her staff for all the hard work they are doing.

30 **COUNTY MANAGER'S REPORT**

31 Bohn reminded everyone that there will be a public meeting for the Public Works
32 Resiliency Project. All the information is on the county website. Oregon Department of
33 Forestry will be giving a presentation to the Board on August 26th relating to the state's
34 forest management.

35 **BUSINESS AGENDA**

- 36 13. Adopt Proposed Fee Schedule for Public Health Services and Assessment & Tax
- 37 Services to be implemented August 13, 2020 {Page 184}

38 Steele notified the Board that the change to the Assessment & Taxation fee is a title
39 change only. The Public Health fee changes pertain to onsite septic systems and
40 temporary restaurant licenses.

1 Sullivan stressed that the fees the county raises are done to cover the costs and are
2 thoughtfully done. Steele reiterated that the costs are so the county can continue to
3 cover the costs for essential services. For example, the title search fee includes the
4 cost of the program along with staff time so all of that is taken into consideration
5 when setting the fee. There are several departments doing behind the scenes work
6 to make sure the information is up to date.

7 *Motion made by Commissioner Nebeker, Seconded by Commissioner Wev.*
8 *Voting Yea: Commissioner Nebeker, Commissioner Wev, Chair Sullivan*
9

10 **GOOD OF THE ORDER**

11 None

12 **ADJOURNMENT**

13 6:45 P.M.

14 Approved by,

15 
16 _____
17 Kathleen Sullivan, Chairperson
18



Oregon Natural Forestry, LLC
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Public Comment for Clatsop County Board of Commissioners Meeting

August 12, 2020

Re: Comprehensive Plan Update, Goal 4 – Forestlands

Hello my name is David Wells and I am the Chief Forester with Oregon Natural Forestry, a forestry consulting business based in Tillamook that includes Clatsop County within my service providing area.

Reviewing the Draft version of Goal 4 – Forestlands for the Clatsop County Comprehensive Plan I find there are many troubling statements.

For instance:

“Selective harvest should be encouraged over clear-cutting.....” page 6

“Forest access should be gated only where a clear and present danger to the forests can be shown.” “The forests should be a recreational resource for all.”
page 6

“When spraying herbicides the maximum quality (sp) of chemical spray should be limited not by the manufacturer, but by forestry department regulations.” page 7

“Off-road vehicles (ORVs) shall be strictly confined to established rock roads.....” page 9

These statements, some vague and others beyond purview of the Agency, would put additional burdens on the private forest landowner. The statement that “Forest access should be gated only where a clear and present danger to the forests can be shown” and “The forests should be a recreational resource for all” is especially troubling seeing how some treat the forest using it as a garbage dump, etc. These statements are describing a community’s access to private land after all.

In my work as a consulting forester I find that my clients have a diverse set of values and ways they choose to manage their forestland. The Oregon Forest Practices Act does set a standard for forest practices in Oregon regulating harvest, requiring reforestation, and protecting water. Adding additional constraints to the forest owner works to be a disincentive to practice good forest management and care for the land.

I am asking that the Goal 4 portion of the Comprehensive Plan receive additional review with a diverse group of stakeholders to revise the draft statements to align with the Oregon Forest Practices Act and Oregon Planning laws.



OREGON FOREST & INDUSTRIES COUNCIL

SUSTAINABILITY. SCIENCE. INNOVATION. GROWTH.

Exhibit B

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August 12, 2020

Clatsop County Board of Commissioners
Hon. Chair Kathleen Sullivan
800 Exchange Street, Suite 410
Astoria, Oregon 97103

Re: Goal 4 Comprehensive Plan Update

Chair Sullivan and Members of the Commission,

Thank you for the opportunity to express the Oregon Forest & Industries Council's ("OFIC") comments on the ongoing process to update the Clatsop County Comprehensive Plan, specifically Goal 4, which addresses forest lands. OFIC represents over 50 large forestland owners and wood products manufacturers in Oregon, who provide over 60,000 family-wage jobs. Of the nearly 30 million acres of forestland in Oregon, OFIC members are responsible for managing over 6 million of those acres. Our members have a considerable presence in Clatsop County and take pride in providing economic and social support to the local communities. With that in mind, we have reviewed the draft Goal 4 language and have significant concerns that the updated text is, in many instances, far outside the scope of land use planning and also explicitly preempted by the Oregon Forest Practices Act ("OFPA").

At the outset, we wish to emphasize that updating the county's comprehensive plan is a valuable and necessary undertaking. It is a very lengthy process, takes a considerable amount of resources and provides a vision for future development in the unincorporated areas of the county. Having not undertaken a full update of the plan since its adoption in 1980, we agree this a good time for the county to take a fresh look. In addition, the formation of numerous regional Citizen Advisory Committees (along with a countywide CAC) adheres well to Goal 1 of Oregon's Land Use Planning Goals, which calls for "the opportunity for citizens to be involved in all phases of the planning process." We applaud the county's commitment to the process.

With respect to Goal 4, it is important to fully understand the relationship between local land use planning and the statutory underpinnings of the OFPA. Goal 4 states that "forest operations, practices, and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in ORS 527.722."¹ ORS 527.722 is contained within the OFPA and, among other provisions, notes that "...no unit of local government shall adopt any rules, regulations, or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside an acknowledged urban growth boundary."² In addition, Chapter 197 makes explicit that the land use planning goals and rules found in ORS Chapters 195-197 do not apply to the programs, rules, etc. carried out under the OFPA and further, "no goal or rule shall be adopted...in a manner to require or allow local governments to take any action prohibited by ORS 527.722."³ In summary, as the very well-done comprehensive plan storymap on the county website explains, Clatsop County has a very limited role in regulating industrial timber lands. Whether privately or publicly owned, industrial timber lands are managed under the OFPA, and the OFPA sets the standards for all commercial activities involving the establishment, management or harvesting of trees on Oregon forestlands.⁴

Taking those considerable sideboards into account, the draft Goal 4 update ventures into areas explicitly preempted by the OFPA. While we provide several examples here in an effort to be helpful, this is far from an

¹ OAR 660-015-0000(4) <https://www.oregon.gov/lcd/OP/Documents/goal4.pdf>

² ORS 527.722(1) <https://www.oregonlaws.org/ors/527.722>

³ ORS 197.277(1) and ORS 197.277(2) <https://www.oregonlaws.org/ors/197.277>

⁴ Clatsop County Comp Plan Storymap: <https://storymaps.arcgis.com/stories/044d31e5923d44afa888f97c7b379da8>

exhaustive list and we recommend planning staff and legal counsel thoroughly re-draft language before eventually bringing it forward to the planning commission and ultimately the Board of Commissioners for adoption. In addition to language preempted by the OFPA, there is also a pervasive anti-forestry tone to the updates, which is disheartening considering how deeply connected the forest products industry is to the past, present and future of Clatsop County.

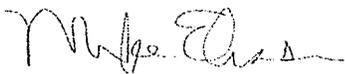
With respect to the draft language, policy #2 (regarding changes in forest zoning) should incorporate language from the relevant Oregon Administrative Rule, OAR 660-006-0010, in order to accurately state how lands suitable for commercial forest use should be identified. A much bigger problem is policy #3, as virtually the entirety of this draft policy is outside of the scope of land use and instead addresses forest practices solely regulated by the OFPA. Subjects such as stream buffers, replanting requirements, clear-cuts, forest access and gates, herbicides, controlled burns, etc, are all expressly the jurisdiction of the OFPA and do not belong in the county comprehensive plan.⁵ In fact, the one area that can be addressed by the local land use authority, limiting forest fire propagation, currently is not. We recommend addressing that issue via the county's authority to implement defensible space standards, limiting residential development in the wildland-urban interface and similar measures.

Other significant problems with the current draft include policy #7(b), which, similar to policy #3, requires all gates to be left open on private forest lands. This is expressly preempted under current law. Policy #9, which creates watershed protections "in addition to what is currently specified in the OFPA" must be deleted in its entirety as it is also preempted by the OFPA. We would add that including subjective statements such as "the existing Forest Practices Act does not do a good job of adequately protecting watersheds for community or municipal drinking water" is both inaccurate (forestlands, including actively managed forestlands, have been repeatedly documented to provide the highest water quality of any land use in Oregon) and inappropriate for a document expected to be in effect for the next 20-40 years. Even if this statement were true, and it is not, the OFPA is an ever-evolving Act and has been significantly amended dozens of times over the past four decades.

Other issues we would be remiss in not mentioning include policy #12 (addressing utility right-of-ways), which appears to request the state adopt rules currently effect in California. This does not fit a county comprehensive plan and should be deleted. Policy #21 addresses carbon sequestration, which is both outside the scope of the comp plan and, as drafted, completely preempted by the OFPA. Finally, policies #22-29 are a series of broad statements and recommendations on forest practices that do not meet the requirements of either Goal 4 or the comprehensive plan generally. While these are likely well-intentioned statements, they should be deleted from the plan before adoption.

In closing, we thank you for the opportunity to comment and encourage the Board of Commissioners, planning staff and legal counsel to take a closer look at the draft language and ensure that the final product meets the high standard necessary of a county comprehensive plan and, with respect to Goal 4, conforms to current law. This will help ensure the county does not engage in wasting vital resources and staff time defending language that could have easily been addressed at an earlier stage. Clatsop County has a bright future ahead of it and the forest products industry intends to remain a fixture in the county, providing family-wage jobs and community support for decades to come.

Please do not hesitate to contact me at 971-218-0945 if you have any questions.



Mike Eliason
General Counsel & Director of Government Affairs
Oregon Forest & Industries Council

⁵ https://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/page/16971/draft_01_goal_4_-_dlcd_comments.pdf p. 6-7



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August 12, 2020
 Clatsop County Board of Commissioners
 Hon. Chair Kathleen Sullivan
 800 Exchange Street, Suite 410
 Astoria, Oregon 97103

Re: Goal 4 Comprehensive Plan Update

Chair Sullivan and Members of the Commission,

Please accept this feedback from Hampton Lumber on Clatsop County's Comprehensive Plan Update for Goal 4: Forestlands. As you know, Hampton owns and operates roughly 30,000 acres of timberland in Clatsop County, most of which is located near the community of Knappa. As a sawmill operator, we also depend on timber sales from Clatsop State Forest and surrounding privately owned forestlands to supply raw materials for local lumber manufacturing.

We appreciate the need to update the comprehensive plan for the county and understand the challenging nature of the task. That said, we were disappointed in the Goal 4 language that was submitted in draft form to the Oregon Department of State Lands (DSL) for review earlier this year. In addition to containing several policy prescriptions that are illegal, the document as submitted includes several factually incorrect statements and suggestions based off unsupported ideas or assumptions. The document does not reflect actual forestland management in the county, nor does it represent a viable future vision for the county's diverse forest stakeholders. Some examples of the problematic draft policies are summarized below.

Oregon Law

Oregon law specifically precludes county regulation of forest practices.

“[N]o unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands outside of an acknowledged urban growth boundary.”

ORS 527.722. Though the statute contains limited exceptions, none would apply to the proposed additions to the Clatsop County comprehensive plan. This fact was specifically, and explicitly, confirmed by the DSL staffer who reviewed the draft plan. ¹ Similar prohibitions apply to the regulation of pesticide applications.

“No city, town, county or other political subdivision of this state shall adopt or enforce any ordinance, rule or regulation regarding pesticide sale or use, including but not limited to:

- (1) Labeling;
- (2) Registration;

¹ “Much of the below is not regulated through land use. Refer to OAR 660-06-0060, “The Forest Practices Act (ORS 527.620 to 527.992) as implemented through Oregon Board of Forestry rules regulates forest operations on forest lands. The relationship between the Forest Practices Act and land use planning is described in ORS 527.722 to 527.726. OAR 660-006-0025 does not authorize county governing bodies to regulate forest operations or other uses allowed by ORS 527.620 to 527.990 and Oregon Board of Forestry rules.”

- (3) Notification of use;
- (4) Advertising and marketing;
- (5) Distribution;
- (6) Applicator training and certification;
- (7) Licensing;
- (8) Transportation;
- (9) Packaging;
- (10) Storage;
- (11) Disclosure of confidential information; or
- (12) Product Composition.”

ORS 634.057. Again, there is no exception for the Clatsop County comprehensive plan.

Instead, regulation of forest practices is exclusively the domain of the Oregon Board of Forestry pursuant to the Forest Practices Act. ORS 527.610 et seq. In this manner, the state avoids inconsistent and conflicting regulations that would result from a county-by-county approach.

A centralized regulatory regime also produces a better outcome for Oregonians in the long run. The Board receives all of the latest scientific and expert opinions when it reviews and establishes rules. It also weighs the long-term benefits versus the costs and attempt to uncover unintended consequences of pursuing one policy over another. In the end, the Board’s work is guided by a robust monitoring and adaptive management regime requiring large resources unavailable to most local jurisdictions, and pursuant to that process, the regulations implementing the Forest Practices Act have been updated in major ways dozens of times since the Act’s passage in 1971. Oregonians should be proud of the Oregon Forest Practices Act and the high quality environmental outcomes it produces.

Given the foregoing statutory prohibitions, the following sections directly conflict with state law:

- *Sections 3a(1), 3a(2), 3a(3), 3a(4), 3a(6), 3a(7), 3a(8), and 3a(9)*: Stream buffers, replanting, harvest methods, and herbicide use in forests are regulated under the Oregon Forest Practices Act. The county has no authority over these activities and any policy prescriptions related to such should be removed from this document.
- *Sections 3a(5)*: The county has no legal authority over public access policy on private property or ODF managed public lands. In addition, most private timberland in the county is already open to the public (except during closures for high fire danger) and used for hunting, fishing, hiking, mountain biking, and foraging. This existing public benefit of privately owned forestlands should be added to the section on ‘Recreation’. While not included in this draft, there are also opportunities for county and city officials to coordinate with forestland owners regarding gate access for emergency planning and response situations. We encourage the county to pursue such partnerships.
- *Section 7b*: “*Elk and Deer damage due to browsing is a natural risk of timber production. It may be reduced through liberal availability of hunting licenses and through open access to forest lands. This means that gates at all forest access roads are to remain open.*” Please see comments on Section 3a(5) (above) regarding private property rights.
- *Section 9*: This section purports to require advance notification and mandate use of non-“synthetic” chemicals in watersheds. As highlighted above, and as recently confirmed in Lincoln County litigation, counties do not have the authority to regulate forestland pesticide applications. To the degree that the county views current regulations as insufficient, then comments should be directed to the Board of Forestry. Following historic legislation this summer, these regulations have been significantly modified to increase buffers and provide advance notification through a state-of-the-art online system. Our hope is that these first-in-the-nation practices will give

communities further comfort that forest pesticide applications are transparent, heavily regulated, and safe.

Incorrect Information/Assumptions

In addition to the legal issues associated with many of the policy prescriptions included in this draft document, a number of statements also reflect a poor understanding of modern forest practices and forestry science and require amendment, clarification, and/or citation. For example:

- *Section 3a: "The Forest Practices Act sets minimum standards consistent with past priorities and needs updating to take into account in new science and findings."*
Oregon has some of the strongest forest protection laws in the world. The county comprehensive plan is not the place for editorializing on state forest practices, particularly not without scientific or historical support.
- *Section 3a(6): "Forest diversity should be maintained. A variety of native tree species should be used when replanting clear-cuts."*
This is already common practice. Public and private timberland managers plant a mixture of Douglas fir, Western hemlock, noble fir, Sitka spruce, and cedar depending on a variety of variables, including elevation and soil condition.
- *Section 3a(4): "Selective harvest should be encouraged over clear cutting. Explain the benefits of continuous forest cover [sic]."*
First, selective harvest is not a management strategy for sustainable commercial timber production in western Oregon. Selective harvest, also known as thinning, removes some trees (often diseased or dying) so that the remaining trees can grow well until harvest. In western Oregon forests, clear cuts provide the space and sun Douglas fir seedlings need and reduce windthrow danger. For many small woodland owners, costs of logging necessitate larger harvest projects. What's more, a strategy that relies entirely on thinning ultimately results in logs that are too large for local mills. If the intent is to maintain a sustainable harvest in Clatsop County, selective harvest as a model is counterproductive as it would eventually make forestland incompatible for timber production and result in the loss of local wood manufacturing infrastructure. We do not believe this prescription is in the county's interest nor within its authority or expertise to recommend.
- *Section 3a(9): "Use of controlled burns should be encouraged to clear forest under story of fuel."*
By encouraging controlled burns, this section conflicts with other policies regarding burning found elsewhere in the document (*3d: Reduced forest fires/limit fire propagation*). Fire in forest management is a complex subject. In Oregon, there is considerable difference between controlled use of fire in eastern and western forests. Any policies regarding its use should be established in consultation with experts.
- *Section 3b. "The commercial timber industry, while important to Clatsop County for the jobs it creates, the raw materials it provides, and the tax revenues it generates, should be highly regulated to maintain forestland at a sustainable level."*
The timber industry is already highly regulated and that fact should be reflected in this document.
- *Section 3c: "Restoration following all timber cuts should be encourage [sic], along with effort to assure compliance. If the terrain is not suitable for restoration, alternative sites should be identified for tree planting in order to keep the overall number of forested acres roughly the same."*
It is unclear what is being suggested here. Reforestation is already required by law and enforced by the Oregon Department of Forestry. If further "restoration" is being suggested more detail is needed.

- *Section 3e. "Existing restrictions on timber cutting should be enforced. Regulations should encourage selective harvest in areas of scenic beauty, such as the coastal hills visible from Clatsop County beaches."*
Regulations related to timber harvest are already strictly enforced by the Oregon Department of Forestry..
- *Section 9: "Unfortunately, the existing Forest Practices Act does not do a good job of adequately protecting watersheds for community or municipal drinking water."*
This line item is conjecture and not supported by water quality monitoring data. The county comprehensive plan is not the place for editorializing on state forest practices, particularly not without scientific or historical support.

Public Process

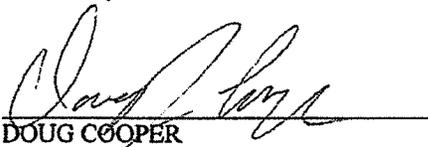
In conclusion, we have deep concerns with the process by which this draft was prepared. While a major forestland owner and timber purchaser in the county, we did not receive an invitation to participate in the Goal 4 discussions. No one at our Warrenton mill or Big Creek forestry office in Knappa received word of public meetings being held on the topic. We found out about the process second-hand and were able to attend a number of community meetings beginning last fall.

The Clatsop County Board of Commissioners selected and tasked the regional citizen advisory committees with soliciting feedback from residents and key stakeholders in their respective regions and they should be held accountable to do so. In our experience, these meetings were not used to solicit meaningful feedback nor were the concerns, comments, or expertise offered by the forestland owners and forest sector workers who were present at these meetings incorporated anywhere in the draft document. As a result, this document clearly only reflects the expressions and beliefs held by the handful of volunteers entrusted to shepherd this process.

As the members of the citizen advisory committees are not elected officials, it is the Board of Commissioners that is ultimately accountable for ensuring the plan update is accurate and inclusive. As the document currently reflects a poor understanding of land use laws, the Oregon Forest Practices Act, and existing forestland uses and management, we highly recommend county staff review the accuracy, appropriateness and legality of the content of Goal 4. As currently written, the comprehensive plan would assuredly solicit legal challenges at considerable expense to the county. I would also suggest the Board of Commissioners carefully review the process that has informed development of this document to ensure that going forward, public engagement is transparent, inclusive, and responsive to the county's diverse stakeholder groups.

Thank you for the opportunity to comment. Please feel free to contact me at 503-365-8400 if you have any questions.

Sincerely,



DOUG COOPER

Vice President of Resources
Hampton Lumber