



## Chapter

# Regulations and Laws

Paul Oester

**A**n array of laws and regulations, unique to forestland owners and operators, relate to wildfire risk and protection, forest management practices, water resource protection, boundaries, liability issues, and taxes. Furthermore, regulations and laws that apply to woodland ownership involve all three levels of government—local, state, and federal.

Some activities on your property may be subject to laws administered by several agencies. This is particularly the case with water resources. If your property has a stream or a significant wetland or if it borders a lake, regulations may apply that are overseen by two or more agencies (see Table 12.1, page 68). This chapter highlights regulations important to woodland owners.

## Local regulations

Regulation at the local level varies; counties and municipalities have considerable latitude in implementing the state's land-use laws. Check with your local planning department, assessor's office, and rural fire control district to find out specific regulations that might apply to your property. For example:

- County planning departments administer state and local land-use regulation and consider applications for building permits and for certain water-resource practices.
- The county assessor provides local administration of the western and eastern Oregon forestland property tax systems, as well as fire patrol and emergency fire protection assessments. The assessor also has information about special assessment programs and may have records of property surveys.
- Rural fire control districts consider applications for burning permits and provide prevention and control for some woodland properties.

## State regulation

Myriad regulations administered by state agencies can affect the woodland owner. These agencies include, but are not limited to: Department of Environmental Quality, Division of State Lands, Water Resources Department, Department of Forestry, Department of Fish and Wildlife, Department of Revenue, and Department of Land Conservation and Development (see Table 12.1).

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The Oregon Water Resources Department and the Division of State Lands administer water laws, water rights, and removal or fill of materials when streams or wetlands are involved. Oregon's Department of Forestry is probably the agency with which you'll be most involved because it administers the Oregon Forest Practices Act.

### **Oregon Forest Practices Act**

If you're planning to log, build a road, spray chemicals, or undertake some other kind of forest operation, the Oregon Forest Practices Act (FPA) probably will affect how you do it. The Oregon Forest Practices Rules became law in 1971 and since then have seen several major revisions. The laws' intent is to protect our public forest resources, including soil, water, and fish and wildlife habitat.

Certain FPA rules apply broadly, while others are more site specific. Examples of broadly applied rules are:

- Notifying the Oregon Department of Forestry 15 days before beginning activities such as timber harvesting (including thinning) and road construction
- Requiring special practices to minimize hazards when using forest chemicals, including pesticides, fertilizers, and pheromones
- Disposing of slash
- Limiting the size of clear-cuts
- Requiring that enough trees and logs be left after harvest for wildlife habitat

Site-specific rules focus on:

- Reforestation requirements
- Location, design, construction, and maintenance of roads
- Timber harvesting and its related activities
- Streamside and water protection measures

## **Federal regulation**

Federal laws—for example, the Endangered Species Act (ESA) and the Clean Water Act (CWA)—may affect what you can do in some situations. States also can be involved in implementing federal laws.

The ESA makes it illegal to "take" an *endangered* or *threatened* animal or plant species. An endangered species is one threatened with extinction; a threatened species is on the verge of being endangered. "Take" is defined as "to harass, harm, pursue, hunt, shoot, kill, trap, capture or collect" the species.

Within that definition, it's the element of "harm" that most woodland owners need to be aware of. Harm is defined as "significant habitat modification or degradation [that] actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering." The Oregon Forest Practices Act's regulations and guidelines comply with the intent of the ESA for management activities on forestland.

Among the federally listed endangered or threatened species in Oregon are the northern spotted owl, gray wolf (currently extinct), bald eagle, Canada lynx, several species of salmon and steelhead, and bull trout. The state ESA allows listing species that are rare within the borders of Oregon but that might be common in other states; for example, the American and Arctic peregrine falcons, kit fox, wolverine, and Washington ground squirrel.

Congress passed the Federal Water Pollution Control Act in 1948. In 1972, that act was amended to include pollution from "nonpoint sources" such as erosion from logging and roads as well as leaks of chemicals, equipment

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lubricants, and other pollutants from logging equipment. ("Point sources of pollution," by contrast, include smokestacks and pipelines.) The law was renamed the Clean Water Act in 1977. Administered by the Environmental Protection Agency (EPA), the Clean Water Act requires states to develop "best management practices" to protect water quality during timber harvesting.

The Oregon Department of Environmental Quality (DEQ) is responsible for protecting and enhancing water and air quality in Oregon. DEQ monitors water quality in the state and has developed a list of streams—known as the "303(d)" list—that have fallen below established water quality standards and are thus "water quality limited."

Laws passed in 1993 and 1995 gave the Oregon Department of Agriculture regulatory authority to address non-point-source pollution on agricultural lands and to implement the intent of the federal Clean Water Act for Oregon. Oregon Forest Practices Act regulations meet the requirements of these laws as they apply to forestland.

## Taxes

State and/or federal tax programs affect woodland property owners in several ways. Oregon has a variety of forest tax and assessment programs. Chapter 15 gives basic information on each one.

If you harvest timber, it's likely you will need to pay federal and state income taxes on the profit from your sales. Tax laws are complex, so it's a good idea to get advice before you harvest. Talk with a good tax consultant, one who's familiar with timber taxation; see "Other resources—publications" at the end of Chapter 15 for references.

Be aware, also, that there are federal and state tax incentives for planting trees. Ask your local ODF stewardship forester or OSU Extension forester about how you might benefit.

## Easements

An *easement* is a legal arrangement common for many woodland property owners. The one to whom an easement is given is called the *grantee*, and the one who gives the easement and to whose land the easement applies is the *grantor*. An easement gives the grantee the right to use certain portions of the grantor's property, usually for specific purposes such as access for hauling logs or for a driveway. The grant is usually long term or permanent. An easement generally stays with the land and is passed on to future owners.

Sometimes a land trust (for example, a conservation organization) will buy an easement to protect a particularly significant tract; however, they usually accept these properties as gifts.

## Boundaries

It is always good to know where your property lines are, especially if you are planning operations such as logging. A professional land surveyor can establish permanent corners along your property line so you and your neighbors know where your property boundaries are. This can help protect you from boundary disputes, including timber trespass.

Oregon and 29 other states west of the Allegheny Mountains use the *rectangular survey system* or government survey. This system creates a grid that's divided into townships measuring 6 miles on a

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side. A township comprises 36 sections, each measuring 1 mile square. Your property could be further delineated into quarter-sections or less depending on the size of the property. For more information, see *Land Measurement and Survey: An Introduction for Woodland Owners*, PNW 581 (see “Other resources—publications” at the end of this chapter.)

During a boundary survey of your property, a licensed land surveyor places *monuments* (markers) at your property corners. Then, Oregon law requires the licensed land surveyor to complete a *record of survey*, which is a map documenting the monuments and the rationale used to establish their locations. This map becomes part of the public record. Other surveyors, title companies, real estate professionals, and neighbors have access to the map.

Corner monuments and a filed map help manage woodland risks, such as timber trespass. In Oregon, landowners are responsible for “triple stumpage” (three times the value of the uncut timber) if they harvest timber from a neighbor’s property. Penalties are reduced to double stumpage if the trespass was casual or involuntary. There is also the cost of litigation and reforestation borne by the offending landowner. Knowing your property boundaries reduces woodland ownership risks and helps prevent boundary dispute issues.

## Liability

Owning property carries with it some personal liability risks. For example, you may be liable if a trespasser falls into an abandoned well or falls out of a tree on your property, unless you have made a reasonable attempt to mark the hazard or to remove it. If your property contains places or structures known as “attractive nuisances”—a pond, tree

house, or cave, for example—you may need extra protection.

Liability insurance can help, but there are other protections, too. For example:

- Disclose known risks clearly and in writing, and have people who use your property acknowledge in writing that they know about and accept these risks
- Be sure contractors who work on your land have insurance, including personal injury insurance for themselves and their employees (worker compensation). Request written proof from their insurance company.

## Summary of regulatory agencies

Table 12.1 (page 68) summarizes agencies and the activities they regulate on forest properties. Although agencies are listed separately, jurisdictions overlap somewhat.

## Other resources

### *In the sleeve*

*Oregon’s Forest Practice Rules*, EC 1194. Paul Adams. 1996. Corvallis: Oregon State University Extension Service, 12 pp.

### *Publications*

*Legal Aspects of Owning and Managing Woodlands*. Carl Reidel and Thomas J. McEvoy. 1998. Washington, DC: Island Press, 220 pp. ISBN 1-55963-638-6 (hardcover) or ISBN 1-55963-639-4 (paperback). \$45.00 hardcover, \$22.00 paperback.

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*Land Measurement and Survey: An Introduction for Woodland Owners*, PNW 581. Joe Holmberg. 2006. Corvallis, OR: Extension Services of Oregon State University, Washington State University, and University of Idaho. 12 pp. \$3.50

"Incentives and Regulations for Watershed Management and Enhancement." Mike Cloughesy. In: *Watershed Stewardship: A Learning Guide*, EM 8714. Derek Godwin, Flaxen Conway, and Mike Cloughesy, project leaders. 2000. Corvallis: Oregon State University Extension Service, 485 pp. \$42.00. Also available on CD (request EM 8714-CD) for \$15.00.

### **Internet**

Oregon Department of Forestry  
<http://oregon.gov/ODF/index.shtml>

Oregon Water Resources Department  
<http://www.wrd.state.or.us>

Oregon Department of Environmental Quality  
<http://www.deq.state.or.us>

U.S. Army Corps of Engineers  
<http://www.nwp.usace.army.mil/>

Table 12.1—Federal, state, and local agencies and the forestland activities they regulate.

Agency	Activities
Rural fire control district	Issues burning permits, provides fire prevention and control for some woodland properties.
County assessor	Administers property tax system, provides information about special assessment programs; usually a source of property survey information.
County land use department	Administers state and local land-use regulations, issues building permits, must approve some water resource practices.
Oregon Department of Environmental Quality	Responsible for protecting and enhancing Oregon's water and air quality and for managing the proper disposal of solid and hazardous wastes. Includes approving or denying sewage disposal systems and administering storm water permits, underground storage, and solid and hazardous waste management. Monitors and assesses water quality, establishing pollution limits for rivers and streams.
Oregon Division of State Lands	Administers removal/fill law where streams and wetlands are involved, leasing of waterways, registration of docks, sand and gravel mining.
Oregon Water Resources Department	Involved with water quantity issues and programs. Administers water law, water rights, water use permits including approving in-stream water rights. Jurisdiction over well construction standards, dam inspection for dams over 10 feet high.
Oregon Department of Forestry	Administers Forest Practices Act for activities including prescribed fire, harvesting, reforestation, chemical applications, road construction, and slash disposal. Issues burning permits, provides fire protection and control. Also, administers the WOSTOT program and state tax incentives.
Oregon Department of Fish and Wildlife	Technical input if a local, state, or federal permit is required for blasting in streams. Administers state Endangered Species Act.
Oregon Department of Land Conservation and Development	Works with counties to enforce Oregon's land use regulations (ORS 197). Oregon Land Use Planning Act requires statewide planning goals and requires local counties and municipalities to develop state-approved comprehensive plans.
Oregon Department of Revenue	Oversees timber taxation programs, including Western Oregon Small Tract Optional Tax (WOSTOT), the Western and Eastern Oregon Forest Land and Privilege Tax, and the Forest Harvest Tax.
Internal Revenue Service	Timber income taxation and estate taxes. See Federal Income Taxation for Woodland Owners: An Overview, listed in "Other resources—publications" on page 67.
U.S. Army Corps of Engineers	Regulates navigable waters and disposal of dredged or fill material in waters of the United States, makes wetland determination decisions.
U.S. National Marine Fisheries Service	Administers federal Endangered Species Act as it applies to marine and anadromous species, including salmon. Lists, reclassifies, and delists species, oversees recovery activities for species, provides for protection of important habitat.
U.S. Fish and Wildlife Service	Administers federal Endangered Species Act as it applies to terrestrial and freshwater aquatic species. Lists, reclassifies, and delists species, oversees recovery activities for species, provides for protection of important habitat.
U.S. Environmental Protection Agency	Administers federal environmental laws, including the Clean Water Act and the Clean Air Act.