

November 3, 2011

## **Outstanding issues with new Elliott State Forest Plan and a New Way Forward**

Board of Forestry Members,

Today you will consider Elliott State Forest Rulemaking. We encourage you to not adopt the new Forest Management Plan as an administrative rule at this meeting.

We have submitted comments on both the Forest Management Plan and the Implementation Plan, but have received little or no specific answers to the issues we have raised. The forest management practices on the Elliott are some of the worst currently taking place on public forestlands in the Pacific Northwest today and are about to get significantly worse with the adoption of the FMP.

Below is a detailed list of significant issues with the recently adopted FMP as well as scenarios that present an opportunity for a new way forward on the Elliott. As we've articulated in the past, we would like to be part of a solution that helps the state meet its fiduciary mandate for the Common School Fund, while simultaneously protecting the older rainforests on the Elliott. However, we remain committed to halting the ongoing clearcutting of complex older rainforest on the Elliott until we find a workable solution.

**Broken Promises:** Our comments to the Oregon Department of Forestry have detailed what we consider to be the 60-year commitments (or promises) made in the 1995 Elliott State Forest Habitat Conservation Plan (HCP) that would be broken by implementing the new FMP.

The 1995 HCP allowed the state of Oregon to "take" 43 northern spotted owls in exchange for protecting habitat to support 26 owls, including:

- 1) No clearcutting in the northwest part of the Elliott, called long-rotation basins. These 51,158 acres are called "Threatened and Endangered Species Reserves"<sup>1</sup> in the HCP.
- 2) Protecting 6,961 acres<sup>2</sup> of Habitat Conservancy Areas (HCAs), also as "permanent refuges for Threatened and Endangered species"<sup>3</sup>. These include the forests protecting 13 owl sites.
- 3) Growing older forests, resulting in 64%<sup>4</sup> of the Elliott to be over 80 years old, including 29%<sup>5</sup> over 156 years old.

Astonishingly, the 43 owls have been taken in the first 16 years of the HCP, underscoring that the 60-year commitments must be honored. Instead, the new FMP breaks or severely weakens these promises. For instance:

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<sup>1</sup> Elliott's 1995 HCP. page III-14.

<sup>2</sup> Elliott's 1995 HCP. page III-14.

<sup>3</sup> Elliott's 1995 HCP. page IV-30.

<sup>4</sup> Elliott's 1995 HCP. page IV-30.

<sup>5</sup> Elliott's 1995 HCP. page S-8.

- 1) The 2011 Implementation Plan that coincides with the new FMP targets one of the long-rotation basins as the highest priority<sup>6</sup> for clearcutting.
- 2) The new FMP maintains no permanent reserves and no HCAs. Owl sites will only be protected by a 70-acre buffer, instead of an average 400-acre HCA they have now. And the 70-acre protection only applies if there is continual occupancy.
- 3) Under the new FMP, older forest conditions are not required to be maintained, nor are trees over 24". Moreover, clearcuts over 60 years old can be counted as Advanced Structure, while higher quality older habitat can be clearcut. Other state forests, like the Tillamook, even have a stronger definition of Advanced Structure than the Elliott.

**Constitutional Mandate:** Another troubling aspect of Elliott State Forest management is the State Land Board's interpretation of the Common School Fund mandate to maximize revenue. If 25 mmbf/year met the Elliott's mandate to maximize revenue in 1995 under the HCP, why is 40 mmbf now necessary to meet that same mandate? The mandate is not to log as much as possible to the detriment of environmental values. Below we outline a new way forward for the Elliott and interpretations of the 1992 Attorney General's Opinion of the "maximizing revenue" clause.

**Science-Based Plan:** The state claims that the new Elliott FMP is science-based<sup>7</sup>. Yet the very reason the state is implementing an FMP instead of a new HCP is because no federal scientists would agree that this level of logging could adequately protect wildlife. For instance, the National Marine Fisheries Service, the federal agency charged with recovering endangered salmon, would not agree that the state's riparian management strategy was sufficient.

Oregon's own science team, the Independent Multidisciplinary Science Team (IMST), found the Oregon Department of Forestry's (ODF) riparian strategies inadequate in their 2010 review<sup>8</sup>. On August 29, 2011, the IMST reiterated, "it is difficult for us to ascertain the basis for ODF and DSL's confidence that salmonids and other aquatic species will be sufficiently protected." They restated their concern about the absence of a monitoring plan inhibiting the commitment to adaptive management.

**Monitoring:** The new Elliott FMP does not have a monitoring plan. Therefore, adaptive management is impossible. The ODF explains in the FMP that the state forest monitoring budget "was greatly reduced" in July 2010, and "will be constrained for some time." Only after an indeterminate time in the future, after the budget has recovered, "ODF will reestablish the monitoring program..."<sup>9</sup>

It does not sound hopeful the Elliott FMP will have a timely monitoring program. In fact, a basic outline was not included in the FMP or the draft Implementation Plan. Instead, the ODF will leave that to "interested parties,"<sup>10</sup> at a later time, if there is funding. This is backwards. At least a basic monitoring plan should be presented before the plan is implemented, not afterwards. In

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<sup>6</sup> See 2011 draft IP pages 42-43 describing harvest opportunities in Basin-5 (virtually identical to 1995 HCP long rotation Basin-5) as "high". "The majority of harvest opportunities will be regeneration harvests."

<sup>7</sup> Draft Final FMP November 2011. Page 3-3. See also: ODF Staff Analysis and Response to Public Comments on Draft 2011 FMP. 9-22-11. Page 3.

<sup>8</sup> Independent Multidisciplinary Science Team (IMST) Review. October 2010.

<sup>9</sup> November 2011 Elliott FMLP page 7-8.

<sup>10</sup> Coos Implementation Plan. Draft 2011. Page 56.

response to this issue, the DSL has responded that the Elliott plan IS currently being monitored. However, the existing monitoring for the Habitat Conservation Plan is simply not relevant to the new issues that need monitoring in the Forest Management Plan.

**A Better Way Forward:** Cascadia Wildlands believes there is a better way forward that can satisfy the mandate to generate revenue for the Common School Fund, but still safeguard the irreplaceable older rainforests on the Elliott. In fact, according to a 1992 Oregon Attorney General Opinion (#8223), the State Land Board is given the authority to issue itself a “time out” while it recalibrates new fundraising mechanisms on Common School Fund Lands, like the Elliott.

“... However, the board is not required to maximize present income from the Admission Act [Common School Fund] lands without regard to other considerations. Rather, the board’s duty is to manage the lands for the long-term benefit of the schools. Thus, the board may sacrifice present income to preserve the property, if it determines this will enhance income for the future. ...”<sup>11</sup>

“... In other words, the board may incur present expenses or take management actions which reduce present income if these actions are intended to maximize income over the long term.”<sup>12</sup>

In addition to authorizing the State Land Board to take management actions that would reduce present income, the Attorney General Opinion also encourages exploring revenue potential on the Elliott State Forest besides timber.

“The ‘resources’ of Admission Act lands are not limited to those, such as timber, that currently are recognized as revenue generators for the Common School Fund, but include all of the features of the land that may be of use to schools. Just as a trustee diversifies a trust portfolio, the board should consider uses of other resources, such as minerals, water, yew bark, etc., that may offer revenues for the fund. The board may set lands aside temporarily for the purpose of “banking” an asset while its economic value appreciates, if the board has a rational, non speculative basis for concluding that such action will maximize economic return to the Common School Fund over the long term.”<sup>13</sup>

In this vein, Cascadia Wildlands believes the most promising way forward on the Elliott is raising revenue for the Common School Fund through a hybrid approach, including, but not limited to the following ways:

- 1) **Receipts from thinning young stands:** According to the Oregon Department of Forestry<sup>14</sup>, there are approximately 24,000 acres on the Elliott in the 30-60 year age class that could be commercially and restoratively thinned. Rough ODF estimates suggest that thinning 2,400 acres of plantations each year for the next 10 years could net \$1 million/year to the Common School Fund. Currently, only controversial clearcutting of older rainforest on the Elliott is taking place.

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<sup>11</sup> Opinion Attorney General 8223 (1992)

<sup>12</sup> Opinion Attorney General 8223 (1992)

<sup>13</sup> Opinion Attorney General 8223 (1992)

<sup>14</sup> Communication with Mike Cafferata, Deputy Chief, ODF, June 3, 2011

- 2) **Carbon sequestration transactions:** Oregon should be at the forefront of leveraging the Elliott's ability to store carbon for dollars in a climate change mitigation scheme. The state should immediately appoint a carbon task force for the Elliott to further explore these options and best position itself to capitalize on California's Cap and Trade carbon regulatory market that is set to begin in the coming year. Groups like Ecotrust have the expertise and could be hired to help the state register the Elliott State Forest on a climate register as an offset and broker transactions with carbon purchasers.
- 3) **Conservation acquisitions of critical lands:** Oregon should rigorously explore conservation acquisitions of critical Elliott lands with land trust organizations like Western Rivers Conservancy, Trust for Public Land, Nature Conservancy and others. The Elliott State Forest has the habitat attributes and federally listed species that makes acquisitions of key areas intriguing to trust organizations.
- 4) **Land exchanges of critical Elliott lands for nearby federal plantations in the Matrix allocation:** This approach could offer protection for areas on the Elliott that are identified as critical in exchange for nearby plantations on federal lands (Coos Bay BLM). The identified lands on the Elliott would end up in reserves, while the acquired federal lands would be managed in short rotations for the benefit of the Common School Fund.
- 5) **Additional revenue sources** for the state should also be considered by legislating a more equitable tax system on timber land so that large corporate forest owners pay their fair share, especially if they impair local mill jobs by exporting whole logs.

*Consistent with the 1992 Oregon Attorney General Opinion, we call on the state of Oregon to issue a moratorium on any further older forest clearcutting on the Elliott State Forest while a new way forward is charted.*

Thank you again for considering our suggestions and don't hesitate to contact us with any thoughts or questions. We hope to have further dialogue about a new management regime on the Elliott State Forest.

Sincerely,

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