

Ordinance No. 7.100. Amended by
Resolution No. 2005-361, dated September 16, 2005.

Original Date: December 16, 2000
Subject: Tribal Forest Management

TRIBAL FOREST MANAGEMENT ORDINANCE

Siletz Tribal Code § 7.100

PART I GENERAL INFORMATION

§ 7.100 SHORT TITLE

This Ordinance shall be called the Confederated Tribes of Siletz Indians= Tribal Forest Management Ordinance (ATFMO@).

§ 7.101 JURISDICTION

The Tribal Council and its delegates have authority to enact and enforce this ordinance with regard to all operations and persons, whether residing, conducting business, or engaging in any other activities with the Tribe or upon the Tribe=s lands and shall exercise this authority to the full extent permissible under tribal and federal law.

§ 7.102 DEFINITIONS

The following definitions apply:

AAllotee@ means an individual, group of individuals, or entity who holds an ownership interest in Private Trust land.

AAuthorized Representative@ means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

ATribal Officer@ means an individual or entity duly empowered by the Confederated Tribes of Siletz Indians Tribal Council through this ordinance, resolution, or by other authorized means.

ACommercial Forest Land@ means land that is considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest

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cover and that is producing or capable of producing crops of marketable forest products, and is administratively available for intensive management and sustained production.

AForest@ or AForest Land@ means at least one acre of land which is: characterized by a more or less dense and extensive tree cover, or which contains, or once contained, at least ten percent tree crown cover; and is neither planned, nor developed, for exclusive non-forest resource use.

AForest Management Plan@ refers to that principal document, approved by the Tribal Council and by the Secretary of Interior, which regulates operations on tribal forest land.

AForest Products@ is an inclusive term which means all marketable items extracted from Tribal forests, including timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; ferns, flowers, rushes, Christmas trees, greenery, boughs, stays, branches, firewood, berries, mosses, nuts, roots, acorns, mushrooms, and herbs; other marketable material; and gravel which is extracted from, or utilized on, Tribal forest land.

AForest Resources@ means all the benefits derived from Tribal forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic, religious, cultural, or other traditional Indian values.

AForest Trespass@ means the removal or damage of forest products from tribal forest land except when authorized by law and in compliance with applicable federal and tribal regulations. Trespass can include any damage to forest resources on Tribal forest land resulting from activities under contracts or permits or from fire.

AManager@ means the Manager of the Natural Resources Department.

AMinor Forest Products@ means those forest products that have a relatively low economic value and when harvested and removed will not conflict with the sale of harvestable timber or the future growing stock of timber; the term includes, but is not limited to: bark; ferns, flowers, rushes, Christmas trees, greenery, boughs, stays, branches, firewood, berries, mosses, nuts, roots, acorns, mushrooms, and herbs.

ANatural Resources Committee@ means the advisory group established in Ordinance No. 2.500, Section 2.501, Confederated Tribes of Siletz Indians Standing Committee Ordinance.

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Private Trust Land@ means land held in trust by the United States for an individual tribal member, or group of individual tribal members, which is subject to any restriction against alienation.

Secretary@ means the Secretary of the Interior or the Secretary=s authorized representative.

Stumpage Rate@ means the stumpage value per unit of measure for a forest product.

Stumpage Value@ means the value of an uncut tree as it stands in the woods prior to extraction from Tribal forest land.

Sustained Yield@ means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the tribal forest lands without impairment of the productivity of the land.

Tribal Enterprise@ means any commercial undertaking so designated by the Tribal Council, or an economic development enterprise so designated by Tribal Council.

Tribal Forest Land@ is an inclusive term which includes all tribal land which is, or may be, enhanced by a forest cover, and which may produce forest products, maintain watershed, or other land values.

Tribal Land@ includes land, title which is held by the United States in trust for the Confederated Tribes of Siletz Indians; lands of any tribal member or group of tribal members which is subject to a restriction by the United States against alienation; and to any land owned by the Confederated Tribes of Siletz Indians.

Urban Interface Lands@ means tribal land which Tribal Council requires the Tribal Forester to manage, whether for general forest purposes or for fire protection, whether or not the lands qualify as Aforest lands.@

PART II FOREST RESOURCE MANAGEMENT

§ 7.103 SCOPE AND OBJECTIVES

- (a) The Tribal Forester shall manage the tribal forest lands in a manner
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calculated to achieve the following objectives:

- (1) Development, maintenance and enhancement of tribal forest lands in a perpetually productive state in accordance with the principles of sustained yield, providing effective management and protection through the application of sound silvicultural, economic and ecological principles to the harvesting of forest products, reforestation, timber stand improvement and other forestry practices.
- (2) Regulate tribal forest lands through development and implementation of forest management plans supported by written tribal objectives, developed with full, active consultation and participation of the tribal membership and the approval of Tribal Council.
- (3) Ensure the use of best management practices by development and enforcement of the Tribal Forest Practices Regulations authorized by §7.109 herein.
- (4) Development of forest lands and associated industries to promote tribal and community self-sufficiency.
- (5) Planning for, and modulating the intensity of management of tribal forest lands in a manner consistent with their designation by Tribal Council under §7.104.
- (6) Regulate water run-off and minimize soil erosion; and
- (7) Maintain and improve cultural and other traditional values, timber productivity, wildlife habitat, fisheries, recreation, and aesthetic values.

§ 7.104 FOREST LAND CLASSIFICATIONS

(a) The Tribal Council shall, by resolution, classify distinct types of tribal lands as necessary to achieve the purposes described in §7.103, and the Tribe=s purposes in enacting the Tribal Land Use Ordinance:

- (1) The Tribal Forester shall periodically inventory the Tribe=s forest lands and recommend classifications to Tribal Council.

(b) The classifications of tribal forest lands include:

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- (1) Commercial Forest Lands:
 - (A) Commercial Forest Lands shall be actively managed as healthy, productive, and sustainable forest lands which provide sustainable timber harvest and revenues to the Tribe.
 - (B) Management of Commercial Forest Lands shall provide for limited multiple use, which, as used herein includes only:
 - (i) timber production;
 - (ii) watershed values; and
 - (iii) noncommercial uses important to tribal members, including hunting, fishing, gathering, and providing tribal member personal use forest products, with the proper permits, as further described in §7.113 and the Tribal Forest Practices Regulations.
- (2) Private Trust Lands: These lands shall be managed by the Tribal Forester in accordance with this ordinance, accompanying regulations, and the National Indian Forest Resources Management Act, 25 U.S.C. 3101 *et seq.*, and federal regulations, 25 U.S.C. 163 *et seq.*
- (3) Urban Interface Lands: These lands shall be managed by the Tribal Forester for fire protection or as directed by the Tribal Council.

(c) At the time of acquisition, Tribal Council shall classify newly acquired or administered lands or interests in lands for their highest potential or for the purposes for which they are acquired, and in accordance with any tribal or federal requirements.

§ 7.105 TRIBAL FOREST PLANNING PROCESS

(a) The Tribal Forest Management Plan shall be based on the planning process outlined herein.

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- (1) Tribal Council shall prepare written objectives, in consultation with tribal Natural Resources staff, outlining the Tribe=s priorities regarding forest product yield on tribal forest lands.
- (2) Upon recommendation of the Tribal Forester, Tribal Council shall review and classify any lands that have not yet been classified pursuant to §7.104 herein; *provided*, that all or any portion of the tribal forest lands may be retained in their natural state if the cultural, traditional, religious, recreational, ecological, and/or aesthetic values thereon are found by the Tribal Council to outweigh the benefits of harvesting, whether or not the Tribal Council formally classifies or amends the classification of the particular forest lands.
- (3) Upon Tribal Council action under this section, the Tribal Forester shall prepare the plan governing the management of all forest lands belonging to the Tribe, as described in §7.106.
- (4) The processes required under the National Environmental Policy Act (NEPA); any Tribal Environmental Policy Ordinance (TEPO); the Endangered Species Act (ESA); and any Tribal Endangered Species Ordinance (TESO) shall commence and continue as required by federal and/or tribal law throughout the forest planning process.
- (5) As required by federal law, the Manager shall provide the completed Forest Management Plan to the Bureau of Indian Affairs for approval.

§ 7.106 TRIBAL FOREST MANAGEMENT PLAN

(a) The Tribal Forester shall prepare a plan governing the management of all forest lands belonging to the Tribe. The Plan shall include and incorporate Tribal Council=s list outlining the Tribe=s priorities regarding forest product yield on tribal forest lands and the classifications of forest lands adopted by Tribal Council pursuant to this ordinance.

(b) The Plan shall be designed to achieve the objectives outlined in this Ordinance under §7.103.

(c) The Plan may include, but is not limited to, planning for the following forest land management activities:

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- (1) Development and maintenance of necessary databases and program reports.
- (2) Gathering data for future forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.
- (3) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.
- (4) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements and/or contracts for forest fire protection and control.
- (5) Protection against insects and disease, including all aspects of detection and evaluation;
- (6) Improvement and maintenance of extended season primary and secondary forest land road systems.
- (7) Identification of research activities needed to improve the basis for determining appropriate management measures to apply to forest land.

§ 7.107 FOREST MANAGEMENT AND COMMERCIAL OPERATIONS

(a) The Tribal Forester shall develop plans for the harvest of forest products according to principles of sustained yield management, subject to Tribal Council and Secretarial approvals. The Tribal Forester shall include a long term schedule for the harvest of forest products from tribal forest land within the Forest Management Plan, which shall be updated annually and shall support the Tribe=s objectives under §7.103.

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(b) For all sales of forest products which require a Timber Sale Contract under Tribal or federal law, the Tribal Forester shall prepare a Timber Sale Report that prescribes practical methods of harvest based on sound economic and silvicultural principles.

(c) The Tribal Forester shall submit the timber sale report to Tribal Council and the Secretary or the Secretary=s designate.

(d) A timber sale report may include, but is not limited to:

- (1) Location and description of the area to be harvested;
- (2) Logging method to be employed;
- (3) Silvicultural method and goals;
- (4) An explanation of the relationship between the harvest and the approved Tribal Forest Management Plan;
- (5) Other land use values considered;
- (6) Information on archeological, environmental, other reviews and consultations and clearances;
- (7) A discussion of access issues;
- (8) Cruise method and results;
- (9) Proposed form of contract;
- (10) Proposed advertisement and prospectus;
- (11) Stumpage appraisal; and
- (12) Comparable sales analysis.

(e) Where Tribal or federal law do not require the use of a Timber Sale Contract, the Tribal Forester shall prepare an abbreviated report describing the location, quantity, quality, and value of the forest products to be sold, along with the proposed form of Paid Permit.

(f) Based on the timber sale report and on applicable tribal and federal laws, the Tribal Forester shall prepare operator contracts which will implement tribal objectives for the specific timber sale.

(g) Commercial operations and all operators on tribal forest lands must comply with the Forest Management Plan, this Ordinance, the Tribal Forest Practices Regulations authorized herein, and all other applicable tribal and federal laws and contracts.

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(h) By entering into contracts with the Tribe, such commercial operations and operators voluntarily subject themselves to the jurisdiction of the Siletz Tribal Court for all purposes related to implementation of this ordinance.

§ 7.108 NON-COMMERCIAL USE AND/OR HARVEST OF MINOR FOREST PRODUCTS

(a) Tribal forest lands are valuable to tribal members for their minor forest products, and, to the extent feasible, the Tribal Forester shall manage tribal forest lands to protect and enhance those values.

(b) Any person using or harvesting minor forest products on tribal forest lands shall comply with this Ordinance and the regulations it authorizes, the terms of any Permit, and all other applicable tribal and federal laws, including the Tribe=s Hunting, Fishing and Gathering Ordinance, STC §7.001, and Timber Use Permits Ordinance, STC §7.300.

§ 7.109 FOREST PRACTICES REGULATIONS

(a) The Tribal Forester shall develop regulations establishing standards for forest practices on tribal forest lands, subject to Tribal Council approval. The regulations shall assure the continuous growing and sustained harvesting of forest tree species where feasible and cost effective. The regulations shall not set standards below those necessary to meet the minimum objectives established in this Ordinance and the Tribal Forester may impose standards affording a higher degree of protection to the tribal forest lands than those found in this Ordinance.

(b) If, at any time, the Tribal Forester finds that the standards set in this Ordinance and accompanying regulations do not accomplish the goals and policy of this Ordinance, the Tribal Forester may, subject to Tribal Council approval, adopt rules related to specific forestry practices which establish standards in excess of those found in this Ordinance.

(c) The regulations shall provide for the overall maintenance of the following forest resources:

- (1) Timber production;
- (2) Minor Forest Products uses;
- (3) Air quality;

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- (4) Water resources, including but not limited to water quality and sources of domestic drinking water;
- (5) Riparian areas, which means the ground along a tribal water resource where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics;
- (6) Soil productivity;
- (7) Fish and wildlife population and habitat, including any threatened or endangered species; and
- (8) Cultural, religious, and traditional values.

§ 7.110 MONITORING OF FOREST RESOURCES

(a) The Tribal Forester shall monitor forest resources to determine whether the forest management practices prescribed under this Ordinance and authorized regulations conflict with the quality and ongoing productivity of the forest resources.

(b) This section shall not be interpreted to require any type of study or record-keeping except at the discretion of the Natural Resources Manager and/or Tribal Council or as specifically required by Siletz tribal or federal law.

(c) The Tribal Forester shall monitor:

- (1) Fish, wildlife, and plant species listed as threatened or endangered by Federal or Siletz tribal law;
- (2) Fish, wildlife, and plant species not currently listed as threatened or endangered by Federal or Siletz tribal law, but which the Tribal Forester determines require monitoring;
- (3) Biological sites that are determined by the Tribal Forester to be ecologically and scientifically significant;
- (4) Significant wetlands;

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- (5) Cultural, religious, historic or traditional sites; and
- (6) Any additional forest resources added by the Tribal Forester after an appropriate finding.

(d) The Tribal Forester shall determine whether any forest practices would conflict or are conflicting with the ongoing maintenance of forest resources, and if a conflict could or does exist, the Tribal Forester shall report to the Tribal Council on the potential damage to the forest resources and recommend to the Council an appropriate response for protective action.

(e) If the Tribal Forester determines that the cumulative effects of forest practices may create an adverse impact on the ongoing maintenance of any forest resource, the Tribal Forester shall recommend to Tribal Council such rules as are reasonably necessary to reduce the adverse impacts below the level at which ongoing maintenance is impaired.

(f) The Tribal Forester may control method, timing, and extent of harvest when the Tribal Forester determines such limitations are necessary to achieve the ongoing maintenance of forest resources.

(g) Nothing in this section shall be construed to limit the Tribal Forester's responsibility to carry out any other requirements of the Tribal Forest Management Ordinance or the regulations authorized therein.

§ 7.111 ADMINISTRATIVE APPEALS OF TRIBAL FORESTER DECISIONS

Any challenge under this Ordinance or its accompanying regulations shall be through the Tribal Administrative Procedures Ordinance, except where the challenge is to an action requiring approval by an approving officer or subordinate official exercising delegated authority from the Secretary, which challenge shall be exclusively through 25 C.F.R. 163.33.

PART III FOREST TRESPASS, ENFORCEMENT & PROSECUTION

§ 7.112 APPLICABLE LAW

Except as set forth below, 25 C.F.R. § 163.29, as amended, shall apply as Tribal regulations for the enforcement and prosecution of forest trespass.

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§ 7.113 TRIBAL COURT JURISDICTION

(a) The Siletz Tribal Court shall have jurisdiction, concurrent with the federal district courts, over forest trespass cases. The measure of damages, civil penalties, remedies and procedures shall be as set forth in 25 CFR §163.29.

(b) All other aspects of a tribal forest trespass prosecution shall be as prescribed by tribal law, including but not limited to the Siletz Tribal Court Rules of Procedure, unless otherwise prescribed under federal law.

§ 7.114 CONCURRENT JURISDICTION OVER FOREST TRESPASS

The Tribal Council directs the Tribal Forester or the Tribal Forester=s agent to seek concurrent civil jurisdiction over forest trespass. When the Tribe has acquired formal concurrent civil jurisdiction over trespass cases, the Tribe=s authorized representatives shall coordinate prosecution of trespass actions with the Secretary=s authorized representatives, unless the Secretary has deferred prosecution of forest trespasses to the tribe.

§ 7.115 TRIBAL PROSECUTION

(a) The Tribal Council may request that the federal government defer to Tribal prosecutions of tribal forest trespass.

(b) In deciding whether to make a timely request, Tribal Council shall consider:

- (1) Whether Tribal or Federal officials were most responsible for investigating the matter.
- (2) Whether tribal resources for prosecution are available.
- (3) Whether Federal officials appear to be moving expeditiously and diligently to investigate and prosecute the matter.

(c) Where the Tribe has not yet received formal concurrent jurisdiction, the Tribal Forester shall coordinate with the Federal officials as to each trespass, and shall review each case to determine in which forum to recommend bringing an action, and promptly provide a recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases.

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(d) In the event that the Tribe has acquired formal concurrent civil jurisdiction, but does not request that the Federal government defer to tribal prosecution, the federal officials responsible for initiating and prosecuting such cases may nonetheless file and prosecute the action in the Siletz Tribal Court, provided that the federal officials meet the qualifications for admittance to the Siletz Tribal Bar.

§ 7.116 NO DIMINISHMENT OF TRIBAL AUTHORITY

Nothing in this ordinance may be construed to prohibit or in any way diminish the Tribe=s authority to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.