

Elliott State Research Forest Update

BACKGROUND

The Board of Trustees was last briefed in detail about the establishment of the Elliott State Research Forest by the state of Oregon at its January 2022 Board meeting. Subsequent to that meeting, Governor Kate Brown signed [Senate Bill 1546](#) into law (the “Act”) establishing the Elliott State Research Forest. The legislation includes six actions that must be completed on or before July 1, 2023, for the act to become operational. These actions include OSU’s Board of Trustees authorizing the university to participate in the management of the Elliott State Research Forest.

With the goal of establishing a successful, long-term relationship with the Elliott State Research Forest Authority, to be created in the future, and to provide a framework to enable world-class research within the Elliott, university staff is providing this update for discussion, and to support the Board of Trustees’ information requirements for a decision anticipated at its April 2023 meeting.

THE ACT

The Act takes land formerly constituting the Elliott State Forest and establishes the Elliott State Research Forest (“ESRF”) to be a publicly owned research forest that advances and supports forest health, climate resilience, carbon sequestration, biodiversity, recovery of imperiled species, water quality and quantity, recreational opportunities and local economies. The Act further establishes the Elliott State Research Forest Authority (“ESRFA”) as a new state agency that is tasked with operating and overseeing the forest as a financially self-supporting entity. Management policies of the forest are anticipated to include supporting scientific inquiry by OSU and advancing long-term, operational-scale research, in partnership with the university, on issues including forest management practices, ecosystem function, biodiversity, habitat conservation, water quality and quantity, carbon sequestration, rural livelihoods and the resilience of forests to the impacts of climate change.

Key provisions of the Act include:

- 1) The ESRFA is established as a state agency that is independent of the Department of State Lands (DSL) and will be governed by a Board of Directors appointed by the State Land Board. This board will include the OSU College of Forestry dean as a non-voting member.
- 2) The Board of Directors shall contract with OSU for management of forest operations.
- 3) The Board of Directors selects an executive director of the authority. The Board of Directors and the university are to work collaboratively to recruit and nominate candidates in a selection process led by the university.
- 4) The Board of Directors oversees the operational and fiscal integrity of the ESRFA so that it is a financially self-sufficient forest management entity capable of operating and overseeing the forest and necessary infrastructure.

5) Creates the Elliott State Research Forest Account, which is established in the State Treasury separate and distinct from the state's general fund, with the intent that any revenue from the forest will stay within the forest.

5) Decouples the forest from the Common School Fund.

7) Sunset provisions. Before the Act is fully operative, the following tasks must be completed on or before July 1, 2023:

- a) The State Land Board ensures that financial obligations to the Common School Fund (CSF) related to the Elliott State Forest are satisfied.

Status: Completed. The Act included \$121M to fulfill the CSF obligation based on a \$221M valuation of the forest.

- b) The State Land Board votes to decouple the Elliott State Forest from the Common School Fund.

Status: State Land Board action is anticipated to take place in December 2022.

- c) The National Marine Fisheries Service and the United States Fish and Wildlife Service jointly publish a notice of the availability of a final habitat conservation plan for the Elliott State Research Forest pursuant to the Endangered Species Act of 1973 and a final environmental impact statement for the forest pursuant to the National Environmental Policy Act.

Status: Projected for National Environmental Policy Act (NEPA) Record of Decision in spring 2023.

- d) The Department of State Lands (DSL) contracts for third-party expertise to provide input informing the department's review of a plan submitted by OSU addressing the financial viability of forest operations and management and concludes that the plan demonstrates financial viability.

Status: DSL final review decision anticipated in October 2022.

- e) The State Land Board approves a forest management plan for the ESRF.

Status: State Land Board action is anticipated in December 2022 based on the completion of "key sections".

- f) OSU's Board of Trustees authorizes the university to participate in management of the ESRF.

Status: The Act introduces a timing issue for this authorization. OSU's decision to participate must be made by July 1, 2023. However, the ESRFA and the ESRFA Board of Directors will not be in operation until six months later, on January 1, 2024. Consequently, the OSU Board of Trustees must decide whether or not to authorize the university to participate in the management of the ESRF before the contract with the ESRFA Board of Directors can be negotiated. To navigate this timing issue, staff propose that the OSU Board of Trustees considers authorizing participation in the management of the ESRF contingent on a set of baseline contract terms.

DRAFT CONTRACT TERM SHEET

A draft contract term sheet outlining essential terms for the future negotiations with the ESRFA Board of Directors is provided in Attachment I for the Board's review at this time.

START-UP FUNDING

As identified in the OSU Research Proposal, start-up funding from the state is necessary for financial viability of the forest. This funding, currently estimated at \$40M, includes support for necessary infrastructure and equipment as well as bridging for the annual costs until timber revenue begins in year four of operations. The state is pursuing these funds along several avenues. Some assurance of this funding will be necessary to support the OSU Board of Trustee's decision.

NEXT STEPS

Staff is requesting guidance from the Board of Trustees about the kind of information it needs to inform its future decision on OSU's participation in the Elliott State Research Forest.

DRAFT Term Sheet
for
Elliott State Research Forest Management Agreement

This term sheet contains an indicative and non-exclusive set of terms intended to serve as the basis for negotiations regarding the material terms to include in the Elliott State Research Forest Management Agreement (“Agreement”) that is contemplated in Senate Bill (SB) 1546. These terms are for discussion purposes only and will not give rise to any enforceable obligations until all of the parties execute a final, written agreement.

Parties	The parties to the Agreement will be the Elliott State Research Forest Authority (“Authority”) and Oregon State University (“OSU”).
Appointment	The Authority will appoint OSU to perform the Services (defined below).
Delineation of Elliott State Research Forest (“ESRF”); Expansions or Exchanges	<p>Goal: Shared decision-making on changes to the Elliott State Research Forest boundaries.</p> <p>The lands subject to the Agreement will be the lands initially designated as the ESRF by the State Land Board pursuant to Section 2 of SB 1546. Any expansion or exchange of lands in the ESRF must be consistent with Section 14 of SB 1546.</p> <p>If any expansion or exchange of lands in the ESRF by the State Land Board (i) materially impacts the financial self-sustainability of the ESRF, (ii) materially increases the financial or management burden on OSU, or (iii) negatively impacts OSU’s research objectives and activities on the ESRF, then the addition of such lands to the scope of the Agreement shall require the concurrence of OSU, and in such event the Management Fee (defined below) shall be reasonably increased to account for the additional management burden and economic impact on OSU of including the additional or exchanged lands in the Agreement.</p> <p>Any lands added to or exchanged in the ESRF pursuant the State Land Board’s authority without the concurrence of OSU shall remain the sole responsibility of the Authority and will be managed by the Authority, except as may otherwise be agreed by OSU.</p> <p>Any lands removed from the ESRF by exchange will remain subject to any research being conducted by OSU on those lands, unless OSU determines that the removal of such lands will not materially affect research being conducted on those lands.</p>

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<p>Description of Services & Retained Responsibilities</p>	<p>Goal: Clearly defined management roles and responsibilities</p> <p>The parties agree that OSU will perform all research activities related to the Elliott State Research Forest proposal (“ESRF Proposal”) and forest management plan, to be further delineated in the Agreement, including the Harvest Activities (defined below), the Public and Recreation Use Program (defined below), and the construction and maintenance of roads, bridges, gates, and trails within the ESRF (collectively, the “Services”).</p> <p>The Agreement will provide that any and all activities and functions relating to the ownership, operation, and use of the ESRF that are not expressly included within the Services (such other activities and functions retained by the Authority, the “Retained Activities & Functions”) shall remain the exclusive responsibility of the Authority. Without limitation, the Retained Activities & Functions are anticipated to include the Access and Security Program (defined below) and the construction and maintenance of infrastructure not specifically included within the Services, including parking areas, restrooms, buildings, structures, facilities, and utilities. The Authority shall utilize its own personnel or contract with the Department of State Lands or other third parties to carry out any Retained Activities & Functions.</p>
<p>Funding of OSU Management Costs</p>	<p>Goal: Stable funding mechanism to sustain forest research and operations.</p> <p>OSU will be paid an annual management fee in exchange for performance of the Services (the “Management Fee”). The Management Fee shall be a fixed amount to be established on such reasonable basis as is determined by OSU in good faith, taking into account, among other factors, the administrative burden and resources dedicated by OSU toward providing the Services.</p> <p>The Management Fee will be established by OSU and proposed to the Authority for approval pursuant the budget process described below. The Management Fee approved and in effect from time to time will be paid to OSU in advance on or before July 1 of each year of the term and will be considered paid and non-refundable upon receipt.</p>
<p>Other Costs & Fees</p>	<p>All costs and fees associated with performing the Services that are not included within the Management Fee will be passed through and fully borne by the Authority (“Other Costs and Fees”). Such Other Costs and Fees shall be passed through at actual cost, calculated on a “time and materials” or other appropriate basis.</p>

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Reserve Fund	<p>Goal: Stable multiyear funding across variable revenue cycles</p> <p>Because annual revenue generated from the ESRF may fluctuate significantly based on myriad external factors (e.g., economic conditions, litigation, regulatory changes, weather/climate, natural disasters, etc.), short- and long-term reserves will be funded and maintained by the Authority in a separate sub-account (the “Reserve Fund”) to ensure sufficient funds are available to pay the Management Fee, Other Costs and Fees, and Authority Expenses (defined below). The amount to be contributed to the Reserve Fund each year will be proposed by OSU to the Authority for approval pursuant to the budget process described below.</p>
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<p>Budget Planning</p>	<p>Goal: Establish a collaborative planning process</p> <p>The initial budget covering the six-year period beginning on the effective date of the Agreement shall be agreed upon by the Authority and OSU prior to execution of the Agreement. At least ninety (90) days before July 1 of every other fiscal year of the term (commencing with the second full fiscal year of the term), OSU will submit to the Authority a proposed superseding six-year budget to perform the Services for such period, which will include, among other matters, anticipated work to be performed, anticipated income to be received, and anticipated expenses to be incurred during the budget period. The proposed budget will account for all revenue projected to be generated by the ESRF during the budget period and will include the following for each year of the budget period: (i) the amount of the annual Management Fee payable to OSU, which may provide for annual escalation of the Management Fee, (ii) a reasonable projection of the Other Costs & Fees, (iii) expenses necessary to fund the Authority and its activities (the “Authority Expenses”), (iv) the amount to be contributed to the Reserve Account, and (v) the amount to be contributed to the Special Fund (defined below).</p> <p>If the Authority approves the proposed budget, the approved budget supersedes the previous budget then in effect. If the Authority does not approve the proposed budget as submitted by OSU, the Authority shall submit its requested modifications (with written justification) on a line-item basis to OSU for review and incorporation into a revised budget until approved by Authority. Any line items to which no modification is proposed shall be deemed approved by the Authority. For any line item that is not approved by Authority before the first day of the period to be covered by such budget, then the amount allocated to such item in the immediately preceding budget then in effect shall continue in effect as the budget amount for such item until a revised budget amount for such item is approved; provided, however, that in the event that the Authority has not approved any line item reflected in any proposed budget for a period of more than three (3) years since the Authority last approved that line item in a previous budget, OSU may terminate the Agreement.</p> <p>OSU will report to the Authority all events which, in OSU's judgment, make it impracticable to implement any then-effective management plan or follow the budget. OSU will, at any time that OSU deems advisable, recommend to the Authority modifications to any then-effective management plan or budget.</p>
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<p>Banking/Account Procedures</p>	<p>Goal: Forest revenue to be applied to benefit the forest.</p> <p>All revenue generated from the ESRF will be deposited into the Elliott State Research Forest Account (the “Authority Account”). Funds in the Authority Account must be used first to pay the following expenses, which are listed in order of priority:</p> <ul style="list-style-type: none"> • Management Fee; • Other Costs and Fees; • Authority Expenses; • Reserve Fund; and • Special Fund. <p>Funds allocated to (i) Management Fee and Other Costs and Fees, (ii) Reserve Fund, and (iii) the Special Fund will be maintained in separate sub-accounts of the Authority Account and will not be used for any other purpose, except as provided under a budget proposed by OSU and approved by the Authority.</p>
<p>Term</p>	<p>The initial term of the Agreement will be fifty (50) years from the effective date of the Agreement. At the end of the initial term (and each subsequent term thereafter), the term will automatically extend for an additional period of ten (10) years, unless OSU provides written notice of termination at least six (6) months before the end of the current term. The extensions will continue until the date that is 100 years after the effective date.</p>

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<p>Academic Freedom and Research</p>	<p>Goal: Preserve academic freedom and research integrity.</p> <p>The Authority will not infringe on academic freedom (as described in the Joint Statement by Provost Randhawa and Faculty Senate President Boggess dated February 8, 2006) related to research activities bring performed under the Agreement.</p> <p>The Authority will not charge fees for research being conducted by OSU (or third parties coordinated through OSU) on the ESRF.</p> <p>OSU, in its sole discretion but acting in good faith, shall be the sole decisional authority as to whether any actions taken by or on behalf of the Authority infringe, impair, or materially impact the research activities and objectives on the ESRF.</p> <p>Appropriate provisions will be included in the Agreement to ensure confidential treatment of information, including information relating to research, trade secrets, and intellectual property.</p> <p>All research grants relating to the ESRF must be consistent with the ESRF Proposal and approved by or submitted with the concurrence of OSU.</p>
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<p>Termination</p>	<p>Among other possible grounds for termination, the Agreement would provide that OSU has the right to terminate the Agreement in any of the following circumstances:</p> <ul style="list-style-type: none"> • For convenience, on not less than 365 days' written notice from OSU; • The Authority infringes on academic freedom related to research activities being performed under the Agreement, unless the Authority cures that infringement within thirty (30) days of receiving written notice from OSU; • The Authority takes any action that OSU reasonably believes would interfere with research, including though changes to the forest management plan or adoption of a biennial operating plan; • The Authority fails to pay any amount required to be paid under the Agreement, including the Management Fee or Other Costs and Fees, unless such failure is cured within sixty (60) days of receiving written notice from OSU; • The Authority fails to maintain the required funds in the sub-accounts, unless such failure is cured within sixty (60) days of receiving written notice from OSU; • Any Force Majeure Event occurs which at the time of occurrence, or after the passage of time is reasonably expected to, (i) cause the ESRF to not be economically self-sustaining (e.g. catastrophic losses of revenue generating mechanisms), (ii) make the management of the ESRF consistent with the forest management plan, the Act, the HCP, or any other foundational document impossible or impracticable, or (iii) require OSU to expend its own funds to perform any management function; • Any event or circumstance arises that would require OSU to expend any E&G funds (i.e. tuition dollars) for any purpose whatsoever in connection with its performance of the Services or otherwise complying with its obligations under the Agreement; and • Any circumstance arises that would cause OSU to become obligated for compensatory obligations regarding the decoupling of the ESRF from the Common School Fund. <p>Upon termination, if requested by the Authority, OSU would take commercially reasonable steps for a period of up to six (6) months to transition management of the ESRF to a new management entity, provided that the Authority pays all costs and expenses incurred by OSU in connection with such transition.</p> <p>Notwithstanding such termination, OSU would have the right, but not the obligation, to continue any ongoing research activities (or portions thereof) for the remaining length of time contemplated by such research.</p>
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Force Majeure	<p>OSU will use commercially reasonable efforts to fulfill its obligations under this Agreement in the event of unforeseen circumstances that qualify as a force majeure event (a “Force Majeure Event”).</p> <p>A Force Majeure Event will not excuse or toll the financial obligations of the Authority to OSU.</p>
Relationship of Parties	<p>OSU is an independent contractor under the Agreement, and nothing in the Agreement will be deemed or construed as creating a relationship of partnership, joint venture, or any similar relationship between OSU and the Authority.</p>
Authority to Enter Agreements	<p>OSU may contract with one or more third-parties to perform the Services or any portion thereof, in OSU’s discretion, and the Agreement will include an express authorization for OSU to do so. OSU will not enter into contracts in the name of the Authority; provided that with respect to any individual contract for Services involving services to be provided or goods to be received in respect of the ESRF in excess of \$100,000, OSU shall have the right (but not the obligation) to require that such contracts to be entered into directly between the Authority and the applicable contractor.</p> <p>The authority of OSU to engage third parties includes, but is not limited to, the engagement of accountants, legal counsel, appraisers, forestry consultants, environmental/engineering firms, insurers, mapping services, cruising services and other professionals.</p> <p>The Agreement shall provide, and the parties shall seek clarifying legislative action to the extent necessary prior to entering into the Agreement to ensure, that OSU and the Authority shall have the benefit of an exemption from any applicable public contracting requirements in connection with any subcontracting by OSU in connection with the Services, to the extent not already exempted by ORS 279A.025(2)(a)(C).</p>
Authority Actions	<p>Goal: Consistent governance to allow long term viability</p> <p>The Authority agrees to not take any action that would:</p> <ul style="list-style-type: none"> • Be inconsistent with the ESRF Proposal, forest management plan, the biennial operations plan, or the terms of the HCP; • Unreasonably interfere with the ESRF Proposal or OSU’s research activities; • Adversely affect the Authority’s ability to meet its financial obligations under the Agreement; • Cause OSU to expend its own funds in carrying out any of the Services or its other duties under the Agreement; or • Encumber the ESRF, such as through conservation easements or sale of carbon credits, without the advice and consent of OSU.

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Insurance	<p>OSU will maintain the minimum insurance coverage set forth below:</p> <ul style="list-style-type: none">• Workers' Compensation and Employer's Liability;• General Liability - \$1 million per occurrence, \$5 million aggregate;• Commercial Auto/Fleet - \$1 million per accident, \$5 million aggregate;• Management Liability or Educators Legal Liability - \$5 million per claim;• Cyber Insurance - \$2 million;• Loggers Broad Form with fire suppression expenses liability - \$5 million per occurrence, \$5 million aggregate• Pollution Liability/Contractor's Pollution Liability - \$5 million per claim;• Professional Liability - \$5 million per claim; and• Umbrella/Excess - following form on the Employer's Liability, General Liability, Loggers Broad Form, Commercial Auto, and Pollution Liability - \$30 million. <p>Such insurance policies shall waive rights of subrogation against the Authority except for Workers' Compensation and Professional Liability.</p> <p>These minimum coverages will be updated each time the term of the Agreement is extended for another two-year period.</p> <p>The Authority will reimburse OSU for any premiums (or portions thereof) attributable to this Agreement.</p> <p>The Authority, at its own expense, will be responsible for maintaining adequate insurance covering the risks associated with the Retained Activities & Functions including but not limited to:</p> <ul style="list-style-type: none">• Workers' Compensation and Employer's Liability for its employees;• Commercial General Liability on an ISO occurrence form with minimum limits \$1 million per occurrence, \$5 million aggregate;• Commercial Auto with minimum limits of \$5 million per occurrence for all owned, hired, and non-owned automobiles; and• Property insurance on all structures and other property of the Authority. <p>Such insurance policies shall waive all rights of subrogation against OSU except for Workers' Compensation). OSU, its trustees, officers, employees, and agents shall be named as additional insured on the Authority's Commercial General Liability and Commercial Auto Liability policies.</p>
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<p>Indemnity</p>	<p>To the fullest extent permitted by law and subject to any limitations under applicable law (including the Oregon constitution), OSU will indemnify and hold harmless the Authority only for any losses not paid by insurance arising from OSU’s fraud, gross negligence, or willful misconduct in performing the Services (“OSU Indemnifiable Conduct”).</p> <p>To the fullest extent permitted by law and subject to any limitations under applicable law (including the Oregon constitution), the Authority will indemnify, defend, and hold harmless OSU for any and all other injuries, losses, liabilities, and damages whatsoever arising out of or relating to the ownership, operation, management of, or activities on the ESRF or this Agreement, including, without limitation, injuries, losses, liabilities, and damages arising from or relating to: (i) the Retained Activities & Functions, (ii) OSU’s performing the Services, including any alleged non-compliance with laws in connection with same (but only to the extent not resulting from OSU Indemnifiable Conduct); and (iii) recreational and public users of the ESRF.</p> <p>[The Agreement will provide that, to the extent reasonably requested by OSU, the Authority will establish and maintain a special fund to cover its indemnification obligations under the Agreement in no event exceeding an aggregate of \$[] (the “Special Fund”). If requested, the Special Fund will be phased in equal installments over a period of [three (3)] years after the date of request, and will thereafter maintained for the entire term of the Agreement, subject to an upward adjustment upon extension of the term every five years.]¹</p>
<p>Limitations on Liability</p>	<p>OSU shall have no liability for fire damage to the ESRF or costs of fire suppression incurred by ODF. OSU will have no liability for property damage to the ERSF or property of other Oregon governmental entities other than what is paid by OSU’s insurance.</p>

¹ Special Fund concept to be further evaluated in negotiations, and may not be required if other risk allocation and financial assurance provisions are ultimately deemed satisfactory to OSU.

<p>Intellectual Property; Confidentiality</p>	<p>Goal: Preserve academic freedom and research integrity.</p> <p>The Authority will not have any right, title, or interest in any existing intellectual property, or any new intellectual property generated by OSU (or by third party researchers conducting research activities on the ESRF coordinated through OSU) in connection with the Services.</p> <p>The Agreement will contain provisions to limit the disclosure of non-public information by OSU to the Authority, including information relating to research, trade secrets, and intellectual property, and to ensure that any such information as may be required to be disclosed to the Authority will be kept strictly confidential to the maximum extent permitted by law.</p> <p>Without limiting the generality of the foregoing, the parties will acknowledge in the Agreement that research activities, research proposals, and other communications and information about research to be conducted on the ESRF will, by their nature, contain sensitive, proprietary, and confidential information and/or trade secrets and that the risk of public disclosure of any such information would discourage interest from researchers and potentially impair the research objectives of OSU and infringe on the intellectual property rights and academic freedom of OSU and researchers. The Authority recognizes that the public interest would suffer as a result of any disclosure of such information, and would accordingly obligate itself in the Agreement to take all actions reasonably necessary to keep any such information obtained by it strictly confidential and exempt from disclosure to the maximum extent permitted by law.</p>
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<p>Harvest Activity</p>	<p>OSU will be responsible for planning, administering, and carrying out, all harvest activities on the ESRF (collectively, the “Harvest Activities”), including:</p> <ul style="list-style-type: none"> • Responsibility for harvest planning and layout; • Responsibility for labor procurement and contracting with logging, hauling, and other contractors; • Responsibility for N.O.A.P preparation and submission; and • Responsibility for harvest and post-harvest monitoring, contract administration, and enforcement. <p>The Agreement shall provide, and the parties shall seek clarifying legislative action to the extent necessary prior to entering into the Agreement to ensure, that OSU and the Authority shall have the benefit of an exemption from any applicable public contracting requirements in connection with sale of timber or other forest products from the ESRF. Such exemption shall be comparable to that provided to the State Forester under ORS 530.59(1)(a) in respect of sales of forest products from state forests for sales in connection with experimental or research projects in the field of forestland management or forest product utilization.</p>
<p>Public and Recreational Use</p>	<p>OSU will be responsible to develop and manage a public use and recreation program related to the ESRF (the “Public and Recreation Use Program”). The parties will seek legislative action to clarify that OSU will be entitled immunity in respect of public recreational access and use on the ESRF.</p>
<p>Access and Security Program</p>	<p>The Authority will be responsible to develop and manage an access and security program related to the ESRF (the “Access and Security Program”), including:</p> <ul style="list-style-type: none"> • Responsibility for surveillance and gating/access controls; • Responsibility for developing and implementing public and private access protocols consistent with enabling legislation and other foundational documents; and • Responsibility for developing access permitting regime (if applicable). <p>The Authority will consult with OSU in connection with the Access and Security Program to ensure that the program will not interfere with the current and future research activities being conducted on the ESRF.</p>

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<p>Partnerships with Tribal Governments</p>	<p>In planning and administering the Services, OSU will seek collaboration with tribal governments, to the extent required by SB 1546, to (i) research and demonstrate traditional and contemporary tribal cultural practices and ecological knowledge related to forest management; (ii) provide opportunities for tribal governments and tribal members to harvest traditional forest products and engage in traditional tribal cultural practices related to the ESRF; and (iii) consult on potential impacts on natural, cultural, and traditional resources in the ESRF.</p>
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<p>Executive Director Selection</p>	<p>Goal: Maintaining the research focus of the forest.</p> <p>In furtherance of OSU’s rights under Section 7(1)(d) of SB 1546 to lead the nomination process by which the Executive Director of the ESRF (“ED”) is selected by the ESRF board of directors (“ESRF Board”), the Agreement will provide that during the term of the Agreement: (i) the Dean of the OSU College of Forestry (“Dean”) shall be the chair of the ED selection committee and shall be responsible for structuring and implementing all aspects of the ED selection and nomination process, (ii) the Dean will set the minimum qualifications and requirements for eligible ED candidates, including a preference for forest research and operation management experience, with appropriate input from the ESRF Board, and a requirement that candidates meet OSU employment eligibility requirements, (iii) at the culmination of the process, the Dean shall make a single ED candidate recommendation to the ESRF Board for approval, and (iv) if the ESRF Board does not approve of the ED candidate proposed by the Dean for approval, then the Dean shall have the sole authority to propose alternative ED candidates until a candidate is selected by the ESRF Board.</p> <p>OSU will be permitted, but not obligated, to nominate OSU employees as candidates for the ED position and the Agreement will acknowledge that any nomination of OSU employees as potential ED candidates is not a conflict of interest (it being understood that the ESRF Board retains the power of ED selection under SB 1546).</p> <p>The Agreement will provide that the ED, once hired, may at the election of OSU become an OSU employee (if not already) who is seconded (or partially seconded) to the Authority for so long as the ED holds that position and must continue to satisfy all eligibility requirements to remain an OSU employee in good standing. The Agreement will include an acknowledgement by the parties of the mutual benefits of this employment structure, including the ability to attract the best pool of candidates available, the ability to apply for and obtain research grants to support the ESRF Proposal, and the need for the ED to participate as a researcher on the ESRF. The Agreement will further provide that if any ED who is (or becomes) an employee of OSU fails to maintain eligibility to be an OSU employee in good standing or is terminated as an OSU employee at any point during the ED’s four-year term, the Authority, acting through the ESRF Board, will remove such person as ED using the ESRF Board’s discretionary removal authority under Section 10(1) of SB 1546.</p>
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<p>Foundational Documents</p>	<p>In connection with any plan or guidance document for which SB 1546 provides that the input or approval of OSU is required, or that the applicable body responsible for approving such plan or guidance document must do so in collaboration with, or with the advice or approval of OSU, the Agreement will provide that such plan or guidance document be generated by OSU in the first instance. The documents currently anticipated to be subject to such requirement include, the ESRF Proposal (or any amendments thereto), the forest management plan, the biennial operations plan, the recreation plan, and the research plan for the ESRF.</p>
<p>Dispute Resolution</p>	<p>Disputes between the Authority and OSU regarding the interpretation or administration of the Agreement with an amount of controversy of no more than \$100,000 will be submitted to a panel of experts related to the matter under dispute, with the Authority and OSU each selecting one professional, who will then mutually agree on the third professional. The decision reached by the panel will be binding on the parties.</p>
<p>Recording</p>	<p>The parties may record a memorandum of this Agreement in the official records of each county where the lands subject to this Agreement are located.</p>
<p>Miscellaneous</p>	<p>The Agreement will also include provisions related to:</p> <ul style="list-style-type: none"> • All obligations under this Agreement will be interpreted to include an implied limitation that such obligations are enforceable only to the extent allowed by law, including the Oregon constitution; • Risk of loss; • Attorneys' fees (subject to any limitations under applicable laws, including the Oregon constitution); • Notices; • Assignment; • Amendments; • Successors and assigns; and • Governing law.