Demystifying Forest Practices Regulation: Developing a Minnesota Perspective

Proceedings of the Winter Meeting of the Minnesota Society of American Foresters December 3-5, 1991 Brainerd, Minnesota

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College of Natural Resources, Minnesota Agricultural Experiment Station and Minnesota Extension Service Department of Forest Resources Staff Paper Series Report no. 96

University of Minnesota St. Paul, Minnesota

July 1994

Published as Minnesota Experiment Station publication no. 21,321
Additional copies of this report are available from the Department of Forest Resources, University of Minnesota, 1530 North Cleveland Avenue, St. Paul, MN 55108 Ph: 612-624-3400.
Preface

Forests have played a key role in Minnesota's history. Our forests have been enormously important to the development of midwestern society during the last 150 years. We have seen public interest and state policy evolve from facilitating exploitation to encouraging protection, restoration and management for a broad array of resource values including timber, water, biodiversity, recreation, and aesthetics. The ecological, economic, and spiritual importance of forests are being increasingly recognized by society. To maximize these values, many states and units of government are contemplating the regulation of forest practices.

This proceedings provides a background to forest practices regulation as it has developed around the country and offers insights on the future of regulation in Minnesota. It documents a two-day meeting that was designed to increase the awareness and knowledge of Minnesota Society of American Foresters (SAF) members about approaches to and ramifications of forest practices regulation. We hope this proceedings will provide readers with enough understanding to be informed citizens in the Minnesota debate. We urge your careful attention to the experience and wisdom contained herein, specifically as it might pertain to Minnesota forest lands.

The papers in the proceedings were recorded, transcribed, and refined by the editors, then revised and edited further by the speakers. In several cases, printed copy was available and substituted for transcriptions. Question and answer sessions following presentations were also included where they contributed to overall communication and expressed particular concerns of the audience.

We feel the conference was a success and that these proceedings will be of value to policymakers, practitioners, and the general public. For that we thank the program planning committee, moderators, presenters, and participants, as well as members of the Headwaters Chapter of the SAF who helped with arrangements, and transcriptions, etc. Special thanks go to Larry R. Hegstad, Chair, Minnesota Society of American Foresters for providing the vehicle for this important meeting and to Ms. Clara Schreiber for editorial assistance with the various drafts of the manuscript.

We are pleased to have been a part of this conference and to be able to document this proceedings.

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Program Planning and Arrangements

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Welcome and Conference Objectives

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Ah, serendipity. Those of you who have received your December copy of the Journal of Forestry may have noticed a peer reviewed article by Frederick W. Cubbage, formerly of the University of Georgia and now with the USDA Forest Service. The article entitled, "Public regulation of private forestry," is a timely paper that reviews the current situation on the regulation of forest practices throughout the country. I would like to touch on a couple of points that Cubbage makes that set the stage for this conference.

Cubbage describes the public attitudes that have led to the proliferation of forest practices regulation in the country and the demographic trends that have led to substantial changes in public attitude. The U.S. has changed from a rural, small town manufacturing base to a predominately urban nation. Fewer people now own or are dependent upon income from farm or forest land, and fewer legislators represent rural, production-oriented economies. Increasing numbers of individuals own land more for its amenity values than for its productive capacity. He says that perceived environmental degradation, broadening economic bases, and greater personal affluence have led a majority of Americans to believe that protecting and preserving the environment is worthwhile and merits considerable expense. He is describing the evident relationship between affluence and the convenience of purchasing, protecting, and preserving land.

Research shows us that people living in cities and more affluent and educated people generally favor increased regulation. Forestry is still viewed favorably by rural residents and by the poorer and less educated. Clearly, the number and influence of rural people is declining.

As demographics and public attitudes have changed, forestry interests have sometimes been dubbed as the black caps and bad guys. I am sure you have all found yourself in that position occasionally, allegedly opposing conservation and preservation. Foresters have frequently responded by reaffirming their positions as good responsible land managers, many observing that we were the first environmentalists. We recall the canons of ethics of early writers from the forestry profession. We invoke our ethical responsibility to good land. In the U.S., however, Cubbage says "public opinion determines public policy," a salient point. Foresters may practice good management, but if the general public believes otherwise, laws to severely regulate forest management and logging will be passed. Cubbage goes on in his article to talk about how pervasive this activity is, gives many examples in the eastern and western U.S., and tries to draw parallels and distinctions between the activities in the various parts of the country.

I encourage all of you to take the time to read and learn from this article as soon as possible. It will be especially meaningful after you listen to the presentations in this conference.

Now, let's focus on our conference program and the intent of the program committee. The Society of American Foresters has three generally stated goals. The first is to advance the art and science of forestry as a profession; the second is to advance the professional development of you, the
individual members; and the third is to extend service in our profession to the various communities in which we operate. This conference concentrates primarily on the accomplishment of the second of those objectives, the education and development of individual members of the society. Indirectly, it also accomplishes the first and third goals. And so as the title, "Demystifying forest practices regulation: Developing a Minnesota Perspective" indicates, our intention is to provide an education for our members on approaches to and ramifications of the regulation of forest practices. We have five specific objectives, each of these beginning with "to educate" or "to introduce." The program committee's intent is to provide you with a basis for development of an individual philosophy on the question of forest practices regulation in this state. We believe that if you are informed citizens your actions and words will lead to the advancement of our profession, constructive service within your communities, and informed public policy for forestry.

I want to extend a very special thanks to the program committee that developed our agenda: Dave Zumeta from the DNR Division of Forestry; Alan Ek and Paul Ellefson from the Department of Forest Resources, St. Paul Campus, University of Minnesota; and Wayne Brandt from Minnesota Forest Industries in Duluth. These people assembled what we feel is a distinguished slate of speakers and an agenda that will help you develop your own educated perspective.

This morning we are going to hear an overview of forest practices regulation in the U.S. and learn about current forest practices regulations in Minnesota. You may not think that we have a forest practices act, but if you look at all the pieces of legislation that exist in this state collectively, they do comprise an important body of regulation. Finally, we will explore the role of boards and commissions, and consider the variety of tools for administering acts, and the many alternatives to binding regulations.

In the afternoon we will look at some experiences with local regulations, the fastest growing form of forest practices regulation. We will hear about eastern and western state experiences with forest practices acts and consider how the evolution of wetland regulations in this state might parallel the development of forest practices regulation. We will finish today with a presentation on the forest practices legislation that has been introduced in Minnesota.

Tomorrow we will close the conference with a panel presentation including a variety of perspectives on Minnesota forest practices regulation. We will have speakers from the DNR Division of Forestry, The Nature Conservancy, Minnesota Forest Industries, the SAF, county land commissioners and private forest land owners.

Now, sit back, get in a learning mode and prepare to develop your own individual perspective on forest practices regulation for Minnesota. Enjoy the show.
Overview and Progress Report on the Minnesota Generic Environmental Impact Statement (GEIS)

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While driving up here, I was trying to recall how long I have been involved in the Generic Environmental Impact Statement on Timber Harvesting and Forest Management, i.e., the GEIS. It has been over two years. As a matter of fact, it has been two years this month since the study officially began, that is, when the Environmental Quality Board (EQB) passed a resolution ordering the study. But there is a significant bit of history behind that event that I will get into in a minute. As I look around the room, I see people that have heard me describe the history of the GEIS probably two or three times. In fact, I see some people that probably know as much or more about this study than I do. However, I also see some people that probably do not know a lot about the GEIS. Consequently, I will give you a little bit of background about what the Timber Harvesting GEIS is, how it is organized, what it is meant to accomplish, who is doing the work, when it might be done, and what some of the implications of the study might be. I am going to keep my presentation short because I think the value of this type of interaction is to stimulate questions. I would also like to keep my presentation as informal as possible, so feel free to interrupt me if there is a particular point that needs clarification.

What is the GEIS? It is a generic environmental impact statement. A generic EIS is a specific form of environmental review. I suspect most of you are familiar with environmental impact statements and environmental assessment worksheets both at the federal and state level. Because a GEIS is a form of environmental review, there is a specific body of rules that guide its preparation. The notion of a GEIS is not just something that has been dreamed up that is being created as we go along, although the latter is certainly occurring to some extent. There is a framework, a broad framework identified in Minnesota's administrative rules for its Environmental Review Program, that guides how a GEIS will be prepared.

A GEIS is also a discretionary study. I want to make that point clear. The decision to prepare a GEIS on timber harvesting was not compulsory, but was done so at the discretion of the EQB, which we will talk about in a minute. In a normal environmental review process, environmental review is conducted to provide information to a decision-making body in determining whether or not they are going to permit say a pulp mill, shopping center, or some other development project. However, there are no specific permits involved in this particular process, and none directly hinge on the outcome of this study. Also, preparing a GEIS does not preclude similar-type developments being considered in a GEIS from occurring. Just because we are using a GEIS to look at the environmental impact associated with timber harvesting doesn't mean that new pulp mills or other wood-based facilities cannot be constructed while the study is being conducted. Minnesota's Environmental Review rules state that simply preparing a GEIS cannot stop those types of activities from being undertaken.

The real focus of a generic EIS, as opposed to a site-specific EIS, is that the generic approach looks at the cumulative effects of a lot of different but related activities, as opposed to examining
the impact of a particular development activity. In this case, the cumulative effects are those resulting from the hundreds of individual timber harvesting operations occurring around the state each year. A second distinction between an EIS and a GEIS is that the latter is intended to develop recommendations. That is very different and very important distinction. A site-specific EIS may look at alternative ways of building a plant, or different ways of mitigating some impact. But the process stops at that point. The GEIS goes one step further. It develops policy recommendations to deal with problem areas that were identified in the study.

Why is the GEIS being done? In my estimation, it is really being done for two reasons. Obviously, there is the concern over expanded timber harvesting activity. Look at what has happened in Minnesota over the past ten years in terms of the volume of timber that has been harvested. We all know that timber harvesting has increased quite significantly. We also know that given some of the announced plans for wood-based industrial expansions, the potential harvest could increased dramatically between now and maybe 1995 or 1997. We are talking of maybe a million more cords a year harvested sometime in the next four or five years. That is significant. Right now, approximately four million cords are harvested each year statewide. We could be up to five million cords cut each year before the end of the decade, which would be a significant increase considering not too long ago we were harvesting just three million cords annually. So we are seeing a tremendous increase in the volume of wood harvested in Minnesota. That is one factor. But coupled with increased harvesting is the fact that, to date, there really hasn't been any good information as to what the impacts are of a sudden increase in the amount of timber harvested in the state. We just don't have that information.

Who is doing the study? The Timber Harvesting GEIS is being conducted by the Minnesota EQB—the organization that ordered the study. I suspect that prior to this GEIS not too many people, especially those in natural resources and particularly forestry, knew much about the EQB. The EQB is an executive branch policy board within state government. It is a 15-member board consisting of the agency heads of the state's major natural resources and environmental agencies and citizens. Agency heads serving on the EQB include the commissioners of DNR, Pollution Control, Health, Agriculture, Transportation, and Public Service; the directors of the Office of Waste Management and Minnesota Planning; and the Chair of the Board of Water and Soil Resources. In addition to these nine, the governor also appoints five citizen members to the board as well as its chair. As project manager for the GEIS, I am one of several people who provide staff support for the EQB.

It was in July 1989 that a group of citizens from northern Minnesota and the Twin Cities requested the EQB to prepare a GEIS on timber harvesting. After six to seven months of deliberation and working with many of the interested parties within the state, it was agreed that the EQB should conduct a GEIS on timber harvesting. The,oard unanimously ordered the study in December of 1989. In doing so, the EQB determined it would be responsible for conducting the study. Because the EQB is the organization responsible for conducting the GEIS, it is considered the responsible government unit. In terms of who actually is doing the study, obviously the board itself is not doing the work. The board has hired a consulting firm, Jaakko Pöyry Consulting, Inc., which I will talk about in just a moment, to actually conduct the analysis. Thus, we have an executive branch board that ordered the study two years ago.

The first step after the EQB ordered the study was to try to identify just what it was going to study. That is referred to as scoping the study which, in other words, establishes the study's
overall framework. Over the past year (1990), the board spent an enormous amount of time trying to figure out what are the critical issues that need to be studied in the GEIS. What we ended up with, as a matter of fact exactly one year ago this month, was the issuance of what is called a Final Scoping Decision (FSD). That document became the blueprint for the study because it identified the major parameters of the study. In the FSD, we identified three major objectives for the study. The first one was to understand the status of timber harvesting in Minnesota. There was a lot of confusion about how much wood is being harvested and, equally important, how expanded harvesting relates to long-term sustainability of our forest resources. The second one, which really becomes the basis for the study, is identifying what are the environmental and related consequences associated with expanding timber harvesting in the state. What are the consequences today and what might the consequences be if, in fact, timber harvesting was increased to some higher level? The third major objective was to look at that harvest and, based on analyses, identify problem areas (i.e., impacts, and the type of strategies the state can employ to try and mitigate those impacts). In other words, try to minimize the potential negative impacts that might arise out of expanded timber harvesting.

Based on a lot of work with the board through public meetings and working with its citizen's advisory committee, we identified ten major issue areas in the FSD that are going to be subject to analysis. As you have probably heard, the study is not narrowly focused—it is very broad and somewhat all-encompassing. The GEIS is going to look at issues not only related to timber productivity, but also changes in the forest land base, the impact of timber harvesting on forest soils, water quality and fisheries, wildlife and biodiversity, forest-based recreation, aesthetics, cultural resources, and economics and management. Further, within each one of those major issue areas, (for example) water quality, there is a series of specific questions in the FSD that ask what particular aspects of water quality need to be analyzed in this study.

The FSD also says that we are going to look at the impact from three different levels of statewide timber harvesting activity. Obviously, we want to know what the impacts are as they exist today. In other words, what are the impacts based on present levels of timber harvesting statewide. The second level is to access the environmental impacts assuming all announced and currently planned pulp and paper plant expansions actually occur, which would raise the level of timber harvesting about a million cords a year to five million cords annually. A third level of timber harvesting to be examined is an even higher level, 7 million cords of wood a year. Now a number of people have wondered how we arrived at that 7 million cord figure. It was not a number pulled out of the air—it was a number that was developed by the DNR as potentially being a long-term maximum sustainable yield level for all timberland in the state. So we are going to be looking at environmental impacts at three different levels of timber harvest—what's going on today; what might occur within the next 5-7 years if all these announced planned expansions actually go through; and then on a very high level of timber harvesting activity that approximates a maximum sustained yield for the state.

In the process that we are going to use to prepare the Timber Harvesting GEIS, in other words the logical sequence of activities, the first step will be to try to assess the impact at these three levels of harvest I just described. Based on this assessment, we are then going to identify and categorize all the impacts, and identify a subset of those impacts we consider to be significant. For those impacts that are considered significant, we will then develop a range of possible mitigation strategies that could be used to minimize adverse impacts. Based on that information, we will then seek to identify a specific subset of those mitigation measures to recommend to the
state in order to develop appropriate policies and programs. So the process is a matter of identifying the impacts, analyzing the impacts, identifying which of those impacts is considered significant, developing some mitigation options, and finally developing a set of mitigation policy recommendations.

In terms of the actual work that is going to be done, we are looking at putting together a series of technical papers, one on each major issue area. For example, one technical paper will address the impacts of timber harvesting on water quality. These technical papers will be developed prior to developing the GEIS document itself. The technical papers will answer the following questions: What are the impacts based on these three levels of timber harvesting? Which of these impacts are considered significant? What type of mitigation strategies are possible? Finally, which mitigation strategies do we want to recommend? We are going to put this together in a series of six to ten technical papers. Based on the information contained in these papers, we will then develop a draft and ultimately a final GEIS.

A lot of people are probably wondering what this study costs and who is funding it. The study costs about $900,000 depending on what you consider are appropriate expenses to include. It is a very expensive study in my estimation. It is also a very broad study. Funding for the study came from a number of different sources, and many of you are probably familiar with some of the circumstances that resulted in the EQB obtaining part of the funding for the GEIS. We have money coming from state General Fund appropriations, the Environmental and Natural Resources Trust Fund, and funding provided by the Cuyuna Range Economic Development Corporation (located not too far from here) as a result of a lawsuit settlement. There is also some funding from the Iron Range Resources Rehabilitation Board, as well as a grant from a private foundation—Northwest Area Foundation. I will talk about just how we are using the Foundation money in a moment. The contract price for this study is just under $850,000. Considering some auxiliary costs, the total pricetag for the project is in the neighborhood of about $900,000.

As I said earlier, we spent basically all of 1990 working with the advisory committee scoping out the study, identifying what issues are going to be considered, what levels of timber harvesting to consider, what the objectives are, and other important study elements. Once that aspect was completed, we had to get down to the business of hiring a consultant to do the work. The board started that process as Paul Ellefson indicated by doing an extensive search to try and find qualified consulting firms—as you know this is a very large, broad study. We spent the better part of three months writing an RFP, reviewing proposals that were submitted, and interviewing finalists based on a short list of candidates. In March of this past year (1991), the EQB unanimously selected Jaakko Pöyry Consulting, Inc. as the contractor to prepare the GEIS. With its world headquarters in Helsinki, Finland, Jaakko Pöyry Consulting, Inc. is one of many subsidiaries within the Jaakko Pöyry network located around the world. They are the world's largest forestry consulting firm specializing in two general types of work: (1) engineering; and (2) consulting and forest management work.

Jaakko Pöyry Consulting, Inc. of Terrytown, NY, the firm we hired, is the North American subsidiary corporation of Jaakko Pöyry. However, Jaakko Pöyry Consulting, Inc. is bringing in resource people from within their worldwide network to work on the GEIS. I can think of individuals working on this project coming from Australia, England, Finland, Canada, and probably a couple other places that I missed. I think that when we totaled it up the other day, the
number of professionals working on this study exceeded 60. Obviously there are a lot of resources going into this study.

What has the contractor done? We hired them in March of 1991. Jaakko Pöyry Consulting, Inc. subsequently prepared a workplan that laid out exactly how they are going to do this study. The contractor has reviewed that workplan with the EQB and Advisory Committee, and that workplan has been approved by the board. The contractor has also submitted what we call our Initial Timber Harvesting Scenarios document. You recall a few minutes ago, I said that all the impacts are going to be assessed from three different levels of statewide timber harvesting activity. Well, these scenarios have been developed to help understand, for example, if you are going to achieve an annual wood harvest of 4 million cords: where is the timber harvesting going to occur; what type of timber would be cut; what ownerships would be affected, etc.? That effort was just completed last month. At the present time, the contractor is in the process of working with the board and developing criteria to identify the significant impacts resulting from timber harvesting. These criteria will be used to determine which impacts will be considered significantly adverse. Identifying a significant impact is a triggering mechanism. Once we determine impacts to be significant, then we start the process of identifying mitigation possibilities and ultimately developing recommendations to address those impacts.

As I alluded to earlier, we have a citizens advisory committee. When the EQB ordered the study two years ago, it established this committee to help them prepare the study. This committee consists of ten members. It is very diverse in terms of the values that are brought to the table. We have representatives of the forest products industry, the environmental community, the DNR, county forest managers, resort owners, sporting interests, small loggers, labor, and the original petitioners for the Generic Environmental Impact Statement. If any of you have ever sat through one of these citizen advisory committee meetings, you know that it is very difficult to get a diverse group like this to come together and get some type of consensus on the direction and the outcome of the study. Because of that, the board hired a facilitator to help work with this committee. The grant that I referred to earlier from the Northwest Area Foundation is going towards retaining a facilitator to work with this advisory committee. The facilitator is helping the Advisory Committee develop consensus on their advice to the board regarding many aspects of the study.

It is important that you understand this study is not just being done by the contractor and the Environmental Quality Board. We are having some of what we consider the major stakeholders in this process involved directly in reviewing what is being done. This Advisory Committee had a broad charge from the board—they were basically asked to help scope the work, identify what issues should be studied, and help select a consultant to do the work. The committee is directly involved in reviewing all the consultant's work products, and they will be playing a particularly important role in helping to develop recommendations. Again, the focus of this study is to develop policy recommendations to help mitigate any significantly adverse impacts that are identified.

When is the study going to be complete? When we developed a contract with Jaakko Pöyry Consulting, Inc., we envisioned and put into the contract a completion date of July of 1992. There were a number of reasons why we have moved back from that date, probably 60, possibly 90 days. The first reason is the fact that when the EQB selected Jaakko Pöyry Consulting, Inc. to prepare the GEIS, we did not have all the funding secured for this study. As a matter of fact,
we had just over a third of the funding secured. The board hired Jaakko Pöyry Consulting, Inc. in March, but did not sign the contract until final funding was secured in June. So a lot of time was lost waiting to see what amount of funding was available to prepare the GEIS. Second, some time was also lost due to the fact that the consultant had technical problems doing some of this work—technical difficulties beyond their control such as problems with computers, available data, etc. Third, anyone who sat through any of the Advisory Committee meetings knows there is a lot of give and take. It is not a matter of the consultant standing up there and saying, "well, this is what we have done, what do you think—rubber stamp it. It is not that at all. It is a matter of the Advisory Committee playing a very active role in seeing what the consultant has done and providing advice and careful review. Because of the charge they were given, the Advisory Committee feels very uncomfortable providing its advice without fully knowing the type of information that was developed and how it was developed. So that process, just the give and take among the Advisory Committee and the consultants, has also slowed down the process. Fourth, and I think most important, no one ever really envisioned this as being such a complex project. It really is a complex study.

Thus, instead of having a final product done in July, we are probably looking at having a final GEIS done probably in the fall of 1992. I would guess probably September would be realistic. Prior to that, the contractor will prepare a series of technical papers that will form the basis for developing the draft and, ultimately, the final GEIS. I expect to see those technical papers done in March, and a draft GEIS probably by June of 1992. Once the draft GEIS is out for public review, the board will be conducting public meetings. We had public meetings on the FSD in Rochester, the Twin Cities, and in Grand Rapids, and plan to use these areas again to obtain public input on the draft GEIS. Again, we are bound by a certain set of rules for preparing the Generic Environmental Impact Statement. And one of those rules is that we shall conduct public meetings on the draft document. The draft document up for consideration this next summer will be the draft GEIS. Based on what we hear in terms of the public comments and the reaction at public meetings, we will revise the draft document accordingly. We will ultimately have a final document hopefully going before the board for a final adequacy decision probably in September of 1992.

Questions:

Q: What is the representation on the Advisory Committee from small private woodland owners?

A: We don't have anyone directly who is a representative from the Minnesota Forestry Association, if that is what you are referring to. However, I think we have three and possibly four individuals on the Advisory Committee who are themselves small woodlot owners. That was an issue that was raised early on in the selection of these ten members—the fact that you really need to have representation of the small woodlot owner in the state. While we don't, per se, through the Minnesota Forestry Association, we do by virtue of having individuals who themselves own land not only in northern Minnesota, but also forest land in southeastern Minnesota.

Q: Will this report be available for public scrutiny?

A: Absolutely. Any of you who have been following this study knows that one of the members of the Advisory Committee is very concerned that some of the GEIS information
is not going to be public. That is not the case. This is a public process as with any
environmental impact assessment process. Any documents that are prepared are the
property of the Environmental Quality Board, and they are public documents which are
subject to public review. Anyone who wants to get a copy of any GEIS documents can
call or write me or the Environmental Quality Board office. Again, one of the virtues of
doing the GEIS is the fact that it is a very public process. People can come before the
Environmental Quality Board themselves and speak to the issue. The board meets the
third Thursday of every month, and we do have people that come before the board and
speak to this issue. We also have Advisory Committee meetings that are subject to public
meeting laws. People can come to those meetings and provide comments to the
committee. Everything that is produced with respect this study that is a required report
for the GEIS contract is a public document.

Q: What kind of timetable do we get for reviewing this work, i.e., the technical papers and
draft GEIS?
A: With regard to the draft GEIS, we are required to have a 25-day public open comment
period. We used a 40-day comment period in the FSD and I think we will probably use
a 40 day comment period in the draft GEIS. The official record will be open for 40 days.
Regarding the technical documents, once those are prepared and submitted to the board,
they become a public document. The Advisory Committee will be reviewing them prior
to that, probably at least a month or maybe 45 days prior to their actual submission so
they can be reviewed at that time. Any information or correspondence that is provided
to the Advisory Committee is also a public document. People can review that information
as well. For those working in the DNR, I know the department has established a very
thorough process of getting that information out and having it reviewed not only by their
people in the Division of Forestry but also by their wildlife managers and recreation staff,
etc. Thus, for anyone working for the DNR, there is a network established to help
provide that information to the different divisions within the agency.

Q: As a group of forestry professionals, what might we expect after the GEIS is completed?
Can we anticipate new programs, new funding, new directions? Can you give us a little
scenario of your best thoughts at this time as to what in fact might happen a year and a
half, two years from now?
A: I'll give you just that, my best thoughts. Again, the entity that ordered the study is the
Environmental Quality Board, not the Minnesota Legislature. The context of
recommendations that are going to be coming out of this study are going to range
immensely. Some of the recommendations are probably going to require legislative
action. Some of the recommendations may require administrative rules, maybe. Some
of the recommendations may require an internal commissioner or department order. We
are going to have a broad range of issues and recommendations, some of which are going
to require legislative action. Some are going to require additional funding and some are
not. In terms of the specific types of programs that might come out of this study (i.e.,
specific types of activities), I can't tell you now. Although I do know that we probably
are going to be seeing some major effort by the EQB after this study is done to help
organize, guide and move these recommendations to the correct decision makers. It is
important that recommendations that need legislative attention are identified as such in the
study, and that the legislature and the appropriate legislative committees do see those
recommendations. As we are here these next two days to talk about forest practices, it
is probably likely that forest practices will be an issue that is raised in the GEIS. Whether or not the state will move to a regulatory approach based on what they have found through this study remains to be seen.

Q: The predecessor of this, the Banzhaf study of a decade or so ago, came out with a very long list of policy recommendations. There were dozens if not hundreds of ideas in there about how new changes should be made. Do you expect the GEIS to produce a dozen major recommendations or a hundred? Also, what is the scale of suggestions that might come out of this report.

A: Probably somewhere in between. We have ten major issue areas from water quality, recreation, wildlife, etc. You may see one or two major recommendations with respect to some; you may see a dozen recommendations with respect to others. I would not be surprised to see at least 50 recommendations coming out of this effort. Again, they are going to vary in terms of scale and importance. I think you are going to see categorization as well in terms of which are the most important recommendations. That is going to be a major outcome the board wants from the study. I should also point out that this study is breaking new ground—there isn't any really good blueprint for doing something like this in terms of looking at cumulative effects. Nowhere in the U.S., or Canada for the matter, has something of this extent been done. There are two states that have done something similar to this, Massachusetts and Vermont. However, their studies are really different in terms of scope. Considering the extent to which we are looking at such a diverse range of issues, there is really no guidance in terms of previous studies.

Q: What is the role of the EQB and how has that role evolved?

A: If you look at the history of the Environmental Quality Board going back about ten or fifteen years, you will see that they were much more involved in reviewing major environmental impact statements that were prepared. The board itself was conducting major studies. They have phased out of that and basically now serve in a policy coordination capacity to help coordinate environmental policy throughout the state. I see them moving more into the various areas of natural resource management. They really haven't touched upon that much in the past—they really focused primarily on environmental protection issues per se.

Q: What is the legislative mandate for all this?

A: With respect to legislation, there is a specific chapter, Chapter 116C, I believe. The Environmental Quality Board was set up by the legislature, its been in place for about 20 years and as a response to the Minnesota Environmental Policy Act. As a matter of fact, the current chair of the board, Robert Dunn, was Senator Dunn back then, and author of the Minnesota Environmental Policy Act and the Minnesota Environmental Rights Act. Thus, he is very familiar with the ideas for and functions of an Environmental Quality Board. It is a legislatively created board, but it is administered through the executive branch of state government.

Q: Do recommendations come directly from the consultant's report, or do they come from the board in response to the consultant's report?

A: Both. The EQB and its Advisory Committee will be working very closely with Jaakko Pöyry Consulting, Inc. in developing recommendations. The recommendations will be identified in the final GEIS but they won't be developed in isolation. In other words, the
Board will not open up the final Timber Harvesting GEIS and say, "I like this or I don't." We will be working hand in hand with the contractor in developing those policy recommendations.

Q: You said there would be very general ones and there would be major ones, e.g., several ways to describe various mitigations. Could you give some example of what the format of a recommendation might be?

A: One that probably comes to the mind of many people is buffer strips. Obviously, buffer strips have been used in the past to mitigate negative impacts on water quality where timber harvesting occurs in riparian areas. That could be a possible recommendation—a very specific recommendation. Another specific recommendation might be the inclusion of snags or cavity trees in a timber sale. You might have some very broad recommendations with regard to overall coordination among state forestry agencies in Minnesota. You also might have broad policy recommendations with regards to best management practices. You will see a lot of variation from site specific to very generic, from policies that are very broad in terms of requiring legislative action to policies that are specific to a particular need. Additionally, there will be some that can be dealt with directly by land managing organizations such as the DNR or the county governments.

Q: Specific to the development of forest practices regulation or policy, do you see any of the recommendations suggesting research that is needed, suggesting technical assistance, or other programs?

A: Yes, absolutely, that is a very important issue. One major component of the GEIS is to identify future research needs. Obviously, one of the things we are finding in the course of the study is that the information that we really need to get a good handle on many of these subject areas is very fragmented or just not available. At least not available in a form that we would like to see. One of the requirements of a GEIS stated in the rules that guide environmental review is to identify future research needs. I think the GEIS will be a cornerstone for future forestry research in the state because it will identify, based on analysis, what types of additional research we need in terms of understanding, for example, biological diversity or old growth forests, or understanding the relationship between timber harvesting and water quality.

Q: Concerning policy recommendations, how do you see policy being implemented on private land? For example, could we wind up as a result of this whole effort seeing some regulatory programs for private landowners to implement these policies?

A: Yes, but regulatory approaches are just one approach. As you know, there are many others—tax incentives may be one, education, technical assistance might be others. I can't tell you the specifics of recommendations; you may see all of those or you may only see one. My assumption is that you are probably going to see the most implementable and the most practical recommendations with regard to private forest land, i.e., what is realistically possible and administratively feasible.

Q: What do you see as the Advisory Committee's role and forestry community's role in actively implementing these recommendations?

A: The Advisory Committee has been given four specific charges by the board. It is ad hoc in the sense that it will disappear after the study is done unless the EQB makes a major change in their resolution that set up the committee. The Advisory Committee's last
charge is to help develop policy recommendations. Once the study is formally completed, the Advisory Committee will be disbanded. I am sure that many of those individuals will continue on, and there may be some effort by the Board to keep that group going. With regards to the role of the EQB, obviously they are the recipients of this study. And as I indicated earlier, they are going to be the ones responsible for sifting through this report and trying to make some sense of the recommendations, including who they should go to for action. Since the commissioner of natural resources is a member of the EQB, actions that can be implemented through his department or commissioner orders certainly can be done. We also will have to work closely with the legislative committees to deal with some of the recommendations, probably some of the broader ones, that will require legislative action. We might need to package some of the recommendations coming out of the study to work through the legislature and help create some comprehensive legislation as opposed to just piecemeal, specific recommendations. The third part of your question was—you were talking about the Advisory Committee, the EQB, etc.—there has not been discussion, per se, but I see the board taking a leadership role in helping identifying where specific landowner categories can best be dealt with, particularly DNR, counties, and the Forest Service (to the extent we can influence Forest Service management planning). Beyond that, I would say that the real focus will be through the EQB and working with appropriate legislative bodies.

Q: How does this all relate to the situation in Cass County?
A: Correct me if I am wrong, but I assume the advisory committee in Cass County you are referring to is a result of the MacMillan-Bloedel lawsuit settlement. There is a requirement that—I see people shaking their heads "yes" from the DNR—three counties (Cass, Aitkin and Crow Wing Counties) had to establish advisory committees. These committees are not related to the GEIS. To be perfectly honest I do not know who is on that committee or what they have even done. Maybe someone else can address that issue.

Q: What kinds of recommendations can we expect to come out of the GEIS regarding research?
A: I think that you are probably going to see a pretty ambitious research agenda. As you know, we have found that a lot of the information just isn't there. Even for some of the basic information that we have, timber inventory data, there is certainly room for improvement in terms of the information that is collected, how it is collected, its usefulness, etc. Thus, I see that a major component being a research agenda—a very ambitious research agenda that covers a broad range of research issues related to forestry and natural resources.
Private Forestry Practices Regulated By Public Programs:
Experiences With State Forest Practices Laws

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Public regulation of forestry practices prescribed by private landowners has been a sensitive issue for forest landowners and forestry professionals for decades. The issue is not new—Gifford Pinchot, the founder of the Society of American Foresters, was a strong advocate of such regulations. In his book *Breaking New Ground*, Pinchot leaves little doubt about where he stood on the issue when he said "... we saw that only Federal control of cutting on private [forest] land could assure the Nation the supply of forest products it must have to prosper .... that [we] will eventually exercise such control is inevitable, because without it the safety of our forests and consequently the prosperity of our people cannot be assured." Such are strong words from a most renowned conservationist and a widely-respected forestry professional.

The regulatory environment advocated by Pinchot never materialized in his time—politically more sensitive state laws facilitated by the federal government were proposed and accepted as alternatives. But what if Pinchot were alive today to view the regulatory landscape that currently exists in many of our far western and New England states? Would he be pleased that his interests had been modestly achieved? And what about states where such approaches to private forestry are being actively suggested—states like Montana, Arkansas, Michigan, New York, West Virginia, and the like? Would he relish the opportunity to enter the political arena where his strongly held views on the subject could be set forth? I expect he would do so with great gusto, observing that only the times have changed—not the issues.

Opinions about public regulation of private forestry practices are probably as sensitive and as strongly held today as they were 50 and 60 years ago. The notion of a landowner having to comply with a government prescribed forestry standard out of concern for the law and fear of legal penalties somehow tends to irritate the American spirit. Before we fasten ourselves in to unbending positions on the issue, might not it be in our best interest to explore the landscape of forest practices regulation? Consider:

- What do we mean when we speak of public regulation of private forestry practices?
- Why have public regulatory approaches to directing the application of private forest practices become so popular?
- Are there equally effective alternatives to public regulation of private forestry practices?
- If a forest practices law is judged to be necessary, what subject matter might comprise its contents?
- What has been accomplished via state forest practices laws—and at what cost?
- How might a state proceed on the matter of forest practices regulation?
WHAT DO WE MEAN WHEN WE SPEAK OF PUBLIC REGULATION OF PRIVATE FOREST PRACTICES?

Regulation is a harsh word—likewise, it is a harsh tool of public policy. In a forestry context, forest practices regulation implies government prescribed rules and standards that the forestry practices of private owners must comply with in order to conform with broader societal interests in their forests. In such a context, the modern forest practices laws which have been developed across the nation speak well to the nature of regulation. Most such laws concern themselves with a broad range of forestry benefits, including timber, water, recreation, aesthetics, and fish and wildlife habitat—to name just a few. Similarly broad is the range of forest practices that are of concern to such laws. From a timber management perspective, for example, forest practices are often considered to be any activity or operation required to establish, care for, or remove trees. Timber harvesting, site preparation, tree planting, stand thinning, application of chemicals, fire control activities, and construction of transportation networks are but a few examples. In some instances, forest practices are defined as literally any activity or operation which takes place within a forested area. Examples include removal of certain forest vegetation to enhance a forest’s aesthetic characteristics; construction of hiking trails for forest recreational uses; planting selected forest vegetation to improve wildlife habitat; and the application of herbicides to foster improved forage production in forested areas.

WHY HAVE PUBLIC REGULATORY APPROACHES TO DIRECTING THE APPLICATION OF PRIVATE FOREST PRACTICES BECOME SO POPULAR?

Public regulation of private forestry practices has been around for a long time. As of the mid-1950s, nearly all states had enacted seed-tree laws, namely laws that, at a minimum, required the reforestation of cutover private lands. They were never seriously acknowledged nor enforced; most have long since been repealed. Beginning in the early 1970s, however, regulation took a more somber turn, especially in far western states such as California, Oregon, and Washington. In such states, comprehensive laws focusing on a variety of forest outputs and forestry practices and calling for complex administrative structures and rigorous enforcement of forest practices standards became the order of the day. Today, nearly half of all states have some form of legal regulations (such as a seed tree law) that direct the forestry practices of private forestland owners; 12 of these states have chosen to enact and implement a modern comprehensive forest practices law.

The extent of forest practices regulation by state governments is best illustrated by considering the area of private timberland that is or could be subject to the provisions of modern state forest practices laws. At the present time, the nation's 12 comprehensive forest practices laws directly influence the nature of forestry practices applied to nearly 20 percent of all U.S. privately owned timberland. If the timberland situated within the 12 additional states that are known to be actively considering such laws is included, nearly 50 percent of the nation's privately owned timberland would then be subject to the provisions of a comprehensive state forest practices law. Such is an area twice the size of all the timberland that is situated within the National Forest System. The exact number of private forestland owners impacted by such a regulatory landscape is subject for speculation; surely it would be a significant proportion of the nation’s 7 million nonindustrial private landowners.
The renewed interest in public regulation of private forest practices stems from an amazing array of causes and concerns. Some of the arguments favoring regulation are grounded in reality, others are based on vivid imaginations and foggy misconceptions about the real world in which forestry is practiced. Consider a sampling of the major circumstances which have given rise to renewed interest in public regulation as a policy mechanism to be focused on the forestry practices of private landowners.

Without question, some advocates of forest practices laws are persons and organizations that have experienced careless and often shoddy application of forestry practices—including, excessively large and aesthetically displeasing clearcuts; poorly maintained forest roads that promote sediment in streams and rivers; indiscriminately applied pesticides that impose havoc on certain species of wildlife; and the timber harvesting residues that remain to fuel the ferocity of unexpected wildfires. These circumstances are at times a reality. These conditions require immediate and straightforward corrective attention. They may—or may not—warrant a comprehensive regulatory program.

Interest in forest practices regulation has also resulted from broad-scale public concern over the environment in general. That the public has an interest in environmental matters is without question. One need only read about toxic wastes, recycling, spotted owls, global warming, and tropical deforestation to get a clear message of wide-spread interest in local, national, and world wide environmental conditions. Citizen activism pointed toward forest practices has undoubtedly been fostered in part by this wider public concern over the condition of natural environments in general.

In the same vein, forest practices regulation has come of age because of federal laws requiring state programs which collectively are designed to address important nationally defined environment problems. The dredge and fill permitting process implemented by the U.S. Army Corp of Engineers, and various amendments to the Federal Water Pollution Control Act have often set the tone for regulation. The 1972 Amendments to the Federal Water Pollution Control Act, for example, required state action to control silvicultural sources of water pollutants. Not surprisingly, some states took the Environmental Protection Agency serious when in 1975 it issued a model state forest practices law as a means for addressing such sources.

Forest practices laws are also of burgeoning interest today because of a continuing societywide fascination with the placement of legal standards in legislatively established laws. To some, specification of minimal reforestation standards or maximum clearcut sizes in law is viewed as the most effective means of sending a clear message to the forestry community that a change in management direction is needed. Such a forceful approach is the stick approach to management, used even though a carrot approach might do just as well. Likewise, forest practices standards are often inserted in law to facilitate litigation—evidence can be presented to demonstrate whether a landowner did or didn’t violate a legally specified threshold beyond which conduct is unacceptable. We Americans have a proclivity for legislative law. Moreover, we have a fascination with the placement of detailed standards of conduct into laws. In part, such is a reflection of our uneasiness with public agencies being granted significant administrative discretion.

Statewide forest practices regulations are also being suggested as a response to a plethora of municipal and county ordinances which often restrict the practice of forestry. In New Jersey, for
example, over 100 of the state's municipalities at one time had adopted restrictive ordinances
concerning timber harvesting. Similarly in Connecticut, 25 of the state's 169 townships had at one
time enacted some form of forest practices regulation. The Massachusetts Forest Cutting Act was
established in part out of desperation over the proliferation of timber harvesting restrictions among
local units of government. As professionals, we often argue that forestry practices must be
prescribed by and be appropriate for each forested acre. Sometimes, however, society-adopted
rules to do so become a jungle of complexity and inefficiency that is in need of statewide
uniformity, possibly a statewide forest practices law.

And last, suggestions for enacting a forest practices law has also been motivated by a "get there
first" attitude, a perspective that is founded on the notion that the world is run by those who show
up. As interest in forest practices laws becomes more common, the mind-set in any one state
often seems to be that of opposing parties hurrying to present their version of a forest practices
law before their opponents suggest a law that is less to their liking. In the mean time, no one
carefully ponders the substance of a forest practices law nor the alternative nonregulatory
approaches that can be used to influence private landowner decisions regarding forestry practices.

In sum, state forest practices laws are common on the American scene. The burgeoning interest
in such laws has many sources. Included are concerns over poorly prescribed forestry practices,
tailcoat effect of broader interests in the environment in general, federal stimulus to state action,
fascination with regulatory policy as a tool of intervention, fear of multiple local ordinances
addressing timber harvesting, and a get there first attitude by political actors in the halls of state
government. Other reasons may exist—you can be the judge.

ARE THERE EQUALLY EFFECTIVE POLICY ALTERNATIVES TO PUBLIC
REGULATION OF PRIVATE FORESTRY PRACTICES?

To presume that regulatory programs embodied in state forest practices laws are the only means
of guiding private forestry practices toward more socially acceptable standards of conduct would
be a gross miscalculation. There are other policy mechanisms that may well accomplish the same
purposes, at less cost, and with less political intrusion into the lives of private citizens. For
example, if private landowners are found to be designing, constructing, and maintaining forest
roads in manners that cause unacceptable levels of sediment in streams, a public emphasis on
extension-educational or technical service programs might be in order. By providing landowners
with information about proper road construction and maintenance, landowners might well adjust
their practices for the betterment of all. If their poorly designed roads are the result of financial
problems, state government might be well advised to look to financial incentive programs—pay
the landowner to build better roads via cost share mechanisms or provide indirect yet appropriate
reductions in tax rates applied to forest land or the products produced therefrom. To suggest,
however, that regulation is the only alternative to achieving society wide interest in private forests
is grossly misleading and very inappropriate. Very often, it is the mix of policy tools—including
voluntary guidelines—that is most effective.
IF A FOREST PRACTICES LAW IS JUDGED TO BE NECESSARY, WHAT SUBJECT MATTER SHOULD COMPRISEx ITS CONTENTS?

Development and enactment of a state forest practices law is a significant political event in any forestry community. Intense arguments are likely to occur over the need for such a law. Disagreements will surely occur over the purposes that such a law is to serve. And numeroable issues will surface over how best to administer a forest practices law. Deliberations of such a nature are healthy in any political environment; they should however be cognizant of two major conditions, namely:

- **Forests are not widely uniform in their species or ecological makeup.** Laws, rules, and standards applied to forests should accommodate the diverse conditions which exist in forest environments. Not to recognize this variability ignores some rather fundamental laws of nature.

- **Administrative settings for carrying out laws, rules and standards are often as variable as forests themselves.** Administrators have different political attitudes toward the intensity with which a law should be applied. They often interpret forest practices standards differently when faced with differing on-the-ground situations. Surely they have different intellectual capacities for handling complex legal situations posed when enforcing regulations. Administrators also have varying degrees of compassion for those in the private sector that are subject to regulation. And administrators are often influenced by broader political changes (such as a change in political leadership) that influence the manner in which a law is carried out. Not to recognize this variability in human perspectives likewise ignores some rather fundamental laws of mankind.

But what might be said of the general content of a state forest practices law and the rules that might be set forth to guide its implementation? Recognizing that such laws and rules should be customized to match the political, administrative, and forest resource conditions with a state, consider the following.

- **Statements of Intent should be clear.** Forest practices laws should clearly express the policy objectives they intend to seek, the forest benefits or outputs they hope to foster or preserve, and the forestry practices for which standards should be developed. If sustained, high-level production of benefits from quality forest environments is the reported intent of a law, such should be stated in a forthright manner. If within such a context, concern is with the quality of water flowing from private forest lands, the need to ensure the existence of quality forested watersheds should be clearly identified. And if practices undertaken for timber management purposes are of concern to the accomplishment of such interests within forest watersheds, then timber management practices should be targeted as in need of standards to which landowners must comply. Without clear purposes and statements of coverage, forest practices laws can become administratively perplexing and frightfully disturbing to the public that is about to be regulated.

- **Administrating agency should be explicitly identified.** Forest practices laws should clearly specify who is the responsibly administering agency. Typically a state's forestry or natural resources agency is the focal point for administration—but not always. In Washington, the Department of Natural Resources and the Department of Ecology share
responsibility; the latter department being charged with establishment and administration of water quality standards. For efficiency's sake, however, a single administrative agency is probably best; likewise, a forestry or natural resource agency would seem most appropriate as the administering unit. Regardless, the law should specify who is to be in charge.

- **Rule promulgating authority should be specified.** Forest practices laws should give someone—a board, a commission, or an agency—responsibility for developing the necessary forest practices rules and standards that will be required to accomplish a law's objectives—for example, minimum number of seedlings per acre; maximum acceptable miles of road per acre; or appropriate application of herbicides and pesticides. These detailed forest practices standards should not be incorporated into legislative law. To do so ignores the natural variability that exists in forest environments and neglects the reality that such standards may have to be changed in order to accommodate newly developed knowledge and unforeseen administrative circumstances. Standards in law are like concrete—virtually indestructible.

- **Technical advisory committees should be established.** Forest practices laws should provide for technical forestry advisory committees to assist in the development of forest practices rules and in the development of systems for monitoring the application of such rules. It is through such mechanisms that most technical forestry information regarding forest practices standards flows into administrative systems. Some states have regional committees while others find a statewide technical advisory committee to be most fitting.

- **Landowners and forestry practices to be covered should be specified.** Forest practices laws or rules should clearly specify the forest landowners to which they apply. In most cases, primary interest is with privately owned forest land, both industrial and nonindustrial. Some states, such as Oregon, have chosen to extend regulatory requirements to forest land owned by state and county governments. Some have also developed interagency agreements with federal land management agencies.

Similarly, forest practices laws and rules should specify which forestry practices are to be regulated and which are to be exempted. For example, should timber harvesting be subject to regulation, but not road construction, silvicultural chemicals, precommercial thinnings and reforestation? Some states have enacted laws so strict that conversion of forestland to other uses is prohibited or at least regulated by a permitting process. Practices usually exempted from regulation are those that pose little or no threat to the environmental, such as very small timber harvests and the cutting of firewood for personal use.

- **Enforcement procedures and penalties for noncompliance should be specified.** To insure compliance with established forest practices standards, forest practices rules should clearly specify the procedures that landowners must comply with. Such can be very simple—notify the state of intent to harvest, then proceed. Or very complex—filing a notice of intent to harvest timber and a detailed timber harvesting plan; then wait for agency approval of the plan and permission to begin a harvesting operation. Once approval to proceed has been granted, subsequent inspection of timber harvesting operations are often called for. Inspections are sometimes made before an operation starts in order to determine whether provisions of a harvesting plan will fully protect the
harvested site. Some states make inspections several years after harvest to determine if adequate reforestation has occurred.

Enforcement procedures should also be addressed in a forest practices law. Stop work orders may be called for to halt timber harvesting operations until violations have been corrected. Criminal and civil penalties might also be applied. Some states have provisions to allow the state to repair adverse resource impacts when landowners fail to do so—the cost of such repairs are attached as liens against property. Most forest practices laws establish an administrative appeals procedure by which alleged violators may appeal the charges made against them. Despite available sanctions, states seldom apply penalties as an enforcement mechanism. Rather, compliance is sought primarily through cooperative and consultative means.

- Licensing requirements may be called for. Licensing of timber harvesters may be an important element of a state forest practices law. Massachusetts and California, for example, require the licensing of all timber harvesters. In Massachusetts, such operators must pay a fee and pass a written exam, while in California professional foresters specializing in timber management must be licensed. Only after meeting educational and experience requirements and successfully passing a written exam can foresters prepare timber harvesting plans for forest landowners.

In sum, when contemplating a state forest practices law, serious consideration should be given to what is to be accomplished, the nature of the responsible agency, how rules are to be promulgated, the avenue for technical forestry input, the landowners and practices to be covered, and the nature of mechanisms to be used for enforcement.

WHAT HAS BEEN ACCOMPLISHED BY STATE FOREST PRACTICES LAWS—AND AT WHAT COST?

Are state forest practices laws an effective means of accomplishing the public interest in private forestry activities? Answering such a question is not easy. Analyses are often derailed by our often murky understanding of the relationship between a particular forestry practice and a desired outcome such as improvements in the quality of water flowing from a forested watershed or the presentation of a forest landscape that is more pleasing to the public's eye. Similar confusion occurs because uniform measures are not available for valuing many of the additional environmental amenities that regulation is thought capable of producing. The problem becomes even more perplexing when efforts are made to separate the effect of a forest practices law from a landowner's more general responses to concern over environment quality in general—responses which may have occurred in the absence of a regulatory program.

Measurement problems aside, however, for states that had enacted forest practices laws through 1985, there is considerable agreement that regulation has been responsible for significant improvements in the condition of the resources the laws were established to protect. Water quality is apparently better, fish are more abundant, and more trees are going in the ground. In Oregon, 30-40 percent more area is apparently being reforested than would have been reforested without a law, while in California regulations have resulted in a $2-$3 million dollar annual increase in reforestation investments—an increase that apparently would not have occurred without a forest practices law. Similar accomplishments can be cited for other states.
The clientele of forest practices laws are also apparently satisfied—most do not view regulation as overly burdensome. In a 1985 study of nine major client groups—which included private landowners, timber harvesters, foresters, wildlife, and environmental groups—in seven states having comprehensive forest practices laws, all groups were supportive or at least neutral towards regulation. Even groups carrying the burden of regulation—landowners and timber harvesters—were fairly positive toward regulatory programs as currently administered.

The accomplishments attributed to state forest practices laws have not come without cost. In 1984, seven western states expended $10 million in total to administer their state forest practices laws. Among the significant sources of added costs were legally mandated reviews of harvest permit applications and the inspection of completed harvesting operations. In Oregon alone, the number of inspections annually carried out often exceeds 14,000. In some states, service forestry programs were literally devastated during the first year of their law’s implementation; service foresters were moved in mass to the tasks of approving hundreds of timber harvesting plans and inspecting thousands of timber harvesting operations.

The cost of regulation to the private sector can also be high. In the same seven states, regulation of forest practices has required private landowners, timber operators and consumers to annually expend an additional $120 million for activities such as the preparation of harvest plans, the redesign of roads, and the accomplishment of intense reforestation requirements. Regulations can also mean a direct reduction in timber harvesting revenue for forest landowners and timber harvesters. For example, Washington’s regulations require the leaving of sufficient vegetation to ensure the existence of at least 75 percent of the midsummer midday shade over certain categories of streams considered important for fish habitat. Such can very often involve the leaving of very valuable merchantable trees. Are such costs excessive? The answer obviously depends on one’s opinion as to the magnitude and nature of benefits that accrue from such investments and the nature of those who receive and pay for them.

HOW MIGHT A STATE PROCEED ON THE MATTER OF PUBLIC REGULATION OF PRIVATE FORESTRY PRACTICES?

State forest practices laws and the regulations embodied therein have become a fact of life on the American forestry scene. Many pitched, emotional arguments have raged over the degree to which forestry practices should be regulated, or whether they should be regulated at all. Despite such differences, forest practices regulation often follows the same evolutionary path followed by most regulatory programs: a ratcheted progression toward expanded state authority over forestry practices on private forest lands. The path is traversed in different styles by different states. Some move slow and cautiously, while others take fitful steps of varying sizes. What advice might be given as we contemplate greater emphasis on the regulation of private forestry practices?

- If we’re going have a forest practices act, make it the best available. If the state’s finest political and professional minds acknowledge that a forest practices law eventually will be enacted, attention should be directed toward constructing a law that will be efficient, effective, and operationally workable. Review, for example, the experiences of other states and incorporate the best of each in a proposed law. Set aside heated debate over whether or not such a law should exist; focus professional and citizen expertise on the possible structure of a law and the means by which it can be successfully implemented.
If we're going to have a forest practices act, design it to accommodate varying administrative and forest resource conditions. If a law is to be enacted, make absolutely sure it is capable of achieving desired objectives in manners that accommodate the variety of administrative and resource conditions that exist within a forestry community. Uniform resource and administrative conditions seldom exist statewide—laws should be designed to recognize and accommodate this variability.

If we're thinking about a forest practices act, recognize regulation as but one of many policy mechanisms that are available for achieving the same purpose. If concern exists over the quality of private forest environments, consider a range of policy mechanisms for intervening in the workings of the private sector, including voluntary guidelines, educational programs, cost-share programs, and regulatory programs. Focus on the relative efficiency, effectiveness, and distributional consequences of each mechanism or combination thereof. Similarly, experiment first with those mechanisms that are less costly and less politically intrusive. For example, begin with voluntary guidelines. If such an approach fails to produce the desired results, proceed to augment educational and technical-assistance programs; inform landowners of more sensitive ways of managing their forests. If concerns continue to exist, move toward cost-share mechanisms and, as a last resort, move toward full-scale public regulation of private forestry practices.

And, if we're going to have a forest practices act, recognize that its structure and administration will be improved over time. Newly enacted regulatory programs focused on private forestry practices are seldom examples of effectiveness and efficiency. If anything, the experiences of other states points to the evolutionary nature of regulatory programs. What appeared as an especially deleterious legal provision at the time, very often becomes a nonproblem with experience. And what at the height of intense political debate was considered to be an essential program ingredient, often becomes an ingredient to be abandoned with the advent of experience. Experience is a great teacher; to presume that a newly established regulatory program will solve all environmental problems is unrealistic. Similarly unrealistic is to presume that additional technical, administrative, and political questions will not develop.

Regulation of private forest practices is a sensitive issue of concern to forestry professionals in all states. Regardless, they should bring their forestry expertise to bear on the matter as they would any other issue concerning the use and management of forest resources. Only then will society in general be in a position to fully receive the range of benefits that forests are capable of providing.

Question/answers could not be transcribed.
A Survey of Minnesota Forestry Regulations

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The intent of this presentation is to survey the different kinds of regulations that affect forestry practice in Minnesota. Some of these are directed at forestry practices per se, but actually most of them are not. Nevertheless, they are regulations that have substantial impact on forestry practices on federal, state, county, and private land.

I want to mention something I had not initially planned to talk about, something Professor Ellefson’s talk got me thinking about. How can we extend regulations for forest practices to private land? Isn’t it a bizarre kind of thing to tell a landowner what he can do with his land? Certainly not. It is only new in the area of forest practices in Minnesota. Let me give you an example. I live in St. Paul; I have a house. I paid the going rate for it when I bought it. My lot would be worth a great deal more money if I could tear the house down and run a nuclear waste dump. Why can’t I do that? Zoning laws say I can’t do that. It is a use of my land that would be so contrary to the general public good that my private right to do what I want with my land are overridden by that greater public good. That is what zoning and land use restriction are all about, balancing the general public interest against the individual’s rights to do what he wants with his property. That is precisely the kind of thing we would be talking about if we were going to impose forest practices regulations on the private forest landowner. It is not different, it is not new. We do it with regard to mining, not only the extraction, but also with reclamation. We do it with regard to wetlands. And as I said, we do it with regard to all kinds of land use in urban areas. It is only a new idea, I suspect, when we move it into different realms. And each time it does get moved into a different realm there is the same reaction: You can’t do that. It’s my land, I pay taxes and you can’t tell me I can’t drain the wetland. Well, it is just a new idea for that newly affected segment of the population. It is not legally or socially a new idea at all.

First let me describe the forestry practices regulations that are on the books, that is, those that nominally pertain directly to forest practices. Generally these are things that are ownership specific: federal regulations apply on federal land, state regulations apply on state land, county regulations apply on county land, and there are not really any regulations of this type for private land.

Currently in state statutes we have two different laws that authorize the promulgation of forest practices rules for state forest lands. One of them is in Minnesota Statutes, chapter 89 and the other is in chapter 90. The provision in chapter 89, section 89.031, says that "[a]ll state forest lands shall be under the management and control of the commissioner [of natural resources] who shall have authority to make, establish, promulgate and enforce all necessary rules . . . for the care and management of state forest lands." That is extremely broad authority. And likewise in chapter 90, regarding the management of timberland, "the commissioner shall . . . make such rules, . . . for the care and control of the lands and for sale of the timber thereon, as will best protect the interests of the state." (Minn. Stat. § 90.041, subd. 1). Again, extremely broad authority to promulgate rules for state land.
What is a rule? What are we talking about? Rules are defined by law. A rule is "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure" (Minn. Stat. § 14.02, subd. 4). Rules are the way that administrative agencies fill in the details under the authority that the legislature gives them, and forest practices clearly fit that definition. Forest practices regulations would be rules under our legal system in Minnesota and almost everywhere else.

Oddly, despite the fact that forest practices regulations clearly would be rules, and despite the fact that there are at least two different statutory sources of very broad authority to promulgate such rules, the state has never done it. These laws have been on the books for many years. There are no forest practices rules promulgated by the DNR in the state of Minnesota. The DNR has policies, operational orders, etc. that in practice are applied like rules, but they are not in fact rules that have gone through any rule-making procedure. I don't know why that has come about. I understand that back in the early 1970s there was some exploration of the possibility of proceeding with forest practices rules in Minnesota, but that after some initial inquiries, it was dropped.

Those authorities that I read to you apply to state lands. We also have quite a bit of tax-forfeited land managed by the counties for county benefit that is in fact forest land. Generally speaking those counties manage that land by themselves and the DNR doesn't have a great deal to do with it except in an advisory capacity. But to the extent that the DNR does in fact (or might) develop forestry practices rules, those could, under existing laws, be extended to the counties as well. The law that governs forestry practices or timber management on tax-forfeited land is in Minnesota Statutes, chapter 282, and it provides two interesting provisions: "The county auditor may sell timber upon any tract that may be approved by the natural resources commissioner." And also: "The appraised value of the timber and the forestry practices to be followed in the cutting of said timber shall be approved by the commissioner of natural resources" (Minn. Stat. § 282.04, subd. 1). Now generally speaking, what the commissioner of the DNR does is approve annual timber management plans that counties put together and provide advice when asked. But the DNR could impose a tremendous amount of detailed forest practices regulation on county management of county forest land. The authority exists; I've just read it to you. Again the distinction is between what authority exists and what has actually been done.

As far as federal land goes, state forestry practice laws do not extend to federal land. But many other kinds of state laws that indirectly pertain to forest practices issues do, and to other land ownerships as well. Those are the things I am going to talk about now.

What kinds of authorities do we already have on the books that would apply statewide? Quite a few. For example, fire control. State forest fire regulations apply on all land within the state, regardless of ownership. Restrictions on open burning, emergency situations, road closures, smoking bans, etc., apply on all land ownerships. I remember when I first came to work for the Attorney General in 1976, there was a bad fire period that fall. There were many restrictions on open burning. There was even a ban on charcoal barbecues. The law that establishes the authority for such bans is found in chapter 88 (Minn. Stat. § 88.22), the law pertaining to forest fire control. There is also authority for the DNR to promulgate rules—very detailed rules for exactly how all these restrictions would work (Minn. Stat. § 88.73). Even though in emergency
situations bans on outdoor fires and the like are imposed, the detailed rules have never been
developed. But they could be, and would have statewide applicability, regardless of ownership.

Another area that impinges upon forest practices is the whole area of endangered and threatened
species. Again, this is applicable to all land ownerships. There are both federal and state
endangered species laws that apply. The federal laws apply to plants and animals that are listed
on the federal list. In Minnesota, for example, they include the peregrine falcon and timber wolf.
You are all familiar with the impact of the spotted owl situation on forestry practices out in the
Pacific Northwest. The very same kind of thing could happen here if the right circumstances
arose. In addition, the state has its own endangered species law with its own list, and generally
the same kind of a regulatory scheme. Many of the things on the state list are not on the federal
list. So there are a lot of possible ways that endangered species issues might arise that would bear
upon forestry practices. The bottom line is that you cannot destroy endangered or threatened
specimens or habitat without a permit, regardless of land ownership. And permits, generally
speaking, would be very difficult to get.

Another regulatory area that would bear upon forestry would be pollution control. Now, as I
understand it—I talked with some of the folks at Pollution Control Agency the other day about
forestry practices in Minnesota—thus far, practices in the woods don't generally result in water
or air pollution levels that rise above the state or federal regulatory thresholds, but potentially they
could. Note that I am not talking about plant operation. There are two areas that are of strong
concern to the PCA. One of those is the way fuel is handled, particularly the disposal of
containers that constitute a solid or hazardous waste problem. The other area is the way slash is
disposed. There have been at least some incidences of it either being dumped in the water or left
on the ice. Both fuel and slash directly raise pollution issues, and pollution regulations, that
would bear on forest practices.

Another area is wilderness land status. Now you are all familiar with federal wilderness lands.
We have the BWCAW in Minnesota, and all the restrictions that pertain to it. They apply to
forestry practices as well as lots of other things. But what you probably don't know is that we also
have authority under state law to establish state wilderness areas. That law provides that in the
state wilderness areas, "[t]here shall be no development of public roads, permanent dwellings, or
recreational facilities except trails for nonmotorized traffic. Motorized traffic shall not be allowed.
No commercial utilization of timber or minerals shall be allowed" (Minn. Stat. § 86A.05, subd. 6).
As yet, there have not been any wilderness areas established under state law, but the authority
exists to do it. And again, there is authority for additional rules to be promulgated by the state
to fill in the gaps and details for that kind of land status (Minn. Stat. § 86A.06). Along the same
lines, you have things like state and national parks, state scientific and natural areas, wildlife
management areas, state and federal refuges, state trails, and so on. All of these are subject to
regulations that contain substantial restrictions applying to forestry practices. One comment that
I want to make in passing is that restrictions on harvest don't necessarily mean that there's no
forest management. It's just that in those situations there would be no management for harvest,
which is an important distinction.

Another category of restrictions that can have a definite impact are existing zoning type
restrictions. I mentioned when I started that the whole idea of applying forestry practice
restrictions to private land is essentially zoning. There are already many regulations of that sort
that are not nominally forestry practices regulations, but nevertheless affect forestry practices, for
example, rules for state wild and scenic rivers, rules for state shoreland and floodplain management, wetlands regulations, and the "no net loss" of wetlands law. All of those are essentially land use restrictions where decisions have been made by the state legislature that protecting those kinds of lands and restricting uses of them outweigh the limitations imposed upon landowners as to what they can do with their land. Forestry practices are often affected by these restrictions.

The last category of indirect restrictions is the whole area of advisories and guidelines. These are not legal requirements that will be imposed, but are things that could be imposed through, say, a harvest permit from the state or the county, or perhaps merely as an advisory. Falling into this category would be water quality best management practices. Visual management practices, I understand, are also being considered at this time and would be similar. Other examples are vegetative management provisions, and old growth and old forest types of restrictions and advisories. DNR wildlife habitat management guidelines are guidelines that are followed within the DNR, between those two groups of managers—the wildlife folks and the forestry folks. These have not yet risen to the level of legal requirements that apply to the public at large; nevertheless, even in their current status, they can have a very significant effect on forestry practices because of the effect they have upon DNR's internal decisions about forest management.

Another area that's very broad, and can have a direct impact on forestry practices, is the whole area of what is called environmental review. Environmental review is a general term that refers to various legal procedures whereby governmental decisions, and in some cases private decisions as well, that potentially have impact on the environment can be subjected to scrutiny by the public and by the courts, and examined to determine whether or not they're reasonable and in compliance with law. There are state and federal laws of this type and there are different kinds of laws that bring environmental review to bear. Let me just mention several of them.

One is the environmental impact statement process (Minn. Stat. § 116D.04). Both state and federal law contain provisions saying that any governmental action that will have significant impact upon the environment must be studied before proceeding. The means of study is the preparation of an environmental impact statement. If the agency itself decides that the proposed action is not going to have any impact and therefore does not do an EIS, anybody else can come along and petition the agency to do an EIS. Then the question of whether an EIS needs to be done will be examined. The kind of government action that would have significant impact on the environment can be either very direct and obvious, like the Bureau of Reclamation building a dam on a river, or it could be very indirect like granting a permit to harvest timber. The granting of that permit is a governmental action, and it may have very significant environmental consequences. It could involve the requirement that an EIS be done.

After an EIS is completed, the results will often lead directly to the next step. First you're determining if there is going to be an environmental impact. If there is, the next step is to determine whether the impact is acceptable, or can be mitigated. In other words, is it reasonable to do what has been proposed? For example, is it a good idea to cut down these trees and is it lawful? Are we going to kill some endangered species? We can't do that. The EIS examination process that was originally intended when those laws were developed in the late 60's and 70's simply as a requirement that government stop and take a look at what it was doing, has now evolved into a very substantive control over government activity that bears upon environmental issues.
Another kind of environmental review, a close relative of the EIS, are laws that provide that citizens can challenge agency decisions based on reasonableness, without going through the EIS process at all. Simply commence a lawsuit. Say, the DNR decides to allow cutting or the county decides to allow cutting or a private landowner decides to pursue cutting—it applies to private activities as well—and somebody thinks this is not a good idea based on the potential impact upon the environment. A law called the Environmental Rights Act, Minnesota law (Minn. Stat. § 116B.03), allows any citizen to bring a lawsuit raising that question. This law allows anyone to bring potentially harmful activity under court scrutiny.

Has any of this environmental review activity, in fact, had any impact on forestry practices? Absolutely. Two cases that I'm aware of. One of them a number of years ago when some environmental groups came into the DNR and petitioned for an EIS on the question of the extent of negative environmental impact from the application of herbicides to state forests for silvicultural purposes. The department had to, in fact, stop what it was doing and examine that whole question. Ultimately, the parties to the dispute decided to proceed through mediation rather than the completion of an EIS, but what started the whole review process was this environmental review.

A second and even more timely and significant example is the current GEIS (generic environmental impact statement) process that's going on. This started when some environmental groups sued the state, the DNR and the PCA, regarding the building of the MacMillan Bloedel parallel strand lumber plant near Deerwood. Now, you must understand that the plaintiffs probably weren't primarily concerned about that plant. What they really wanted was an examination of forestry practices statewide. But they needed a handle and they found that handle in the MacMillan Bloedel plant. They came in and demanded an EIS, claiming that the plant would create a demand for aspen, and that more aspen would be cut to feed it. In fact, as I understand it the decision to cut more aspen had been made before the decision to build the plant, but in any event, the plant was here, and the plaintiffs demanded an EIS to see what kind of an impact the anticipated increased aspen harvest was going to have on forest practices and on the forests statewide. And, in fact, that is what happened. Out of that lawsuit came a settlement which developed money for and then required that the state proceed with the GEIS, the purpose of which is to take a look at the whole issue of forestry practices statewide. There were specific requirements that pertain just to the three counties in the vicinity of the plant, but also we have the question of forestry practices statewide. The DNR will be required as part of the court's order in that case to sit down with those plaintiff environmental groups when the GEIS is completed and talk about how to incorporate the findings of that document into state forestry practices. Maybe it will be done by rule under existing authority, maybe it will provide impetus for a new forestry act. But one way or another it will have a very significant impact on how the forests will be managed in this state.

Here is a little surprise—something you probably didn't know about. An area that may have very significant impact on forestry practices in Minnesota is the whole area of Indian treaty harvest rights. I know in the legislation that was proposed by Minnesota Forest Industries that there is an exemption for Indian trust lands. These are primarily reservation lands and other fee lands. You may say well okay, that is no big deal, how many reservations can there be? Well the problem is not the reservations. The problem is that two treaties in Minnesota create "ceded territories" that include the area from north of the Twin Cities due north up through Vermillion Lake and east to the eastern border of the state, including the whole Arrowhead Region. The
treaties provide that in these ceded territories the Indians retain rights to harvest natural resources. This is not limited to just the reservations. Now thus far when ceded territory harvest questions have come up, and we have been involved in litigation, they have dealt with harvest of fish and wildlife, hunting, trapping, fishing, gathering berries, and so forth. But our remaining open question is whether or not those harvest rights would pertain to the commercial harvest of timber. There has been a decision in Wisconsin that they don't, but that is Wisconsin. The question is an open one in Minnesota; it has not been resolved here and I can tell you that if it were resolved in favor of the Indian bands, which is certainly a possibility, it would have very significant impact. When those kinds of decisions have been made with regard to fish and wildlife resources they often result in bands having the right to harvest half. If courts made similar decisions with regard to timber, it would obviously be a matter of significant consequence to forestry practices.

Questions:

Q: You mentioned the shoreland rules, water quality, and mandatory practices. Can you elaborate on where they apply?
A: There are a number of points where I have avoided giving complete detail on how these things work, for obvious reasons. There is a great deal of variation. I think the bottom line, of course, that for any particular locale that may be involved in forestry practices you need to find out exactly what applies in that spot. And that is not difficult to do.

Q: Wasn't the GEIS inevitable?
A: No, but that is a good point. The GEIS is an impact statement that applies to an activity generally that has environmental consequences as opposed to a specific event, like the building of a plant. That is why it's called a generic EIS. The decision had been made that this GEIS was a good idea before the MacMillan Bloedel lawsuit came along. The problem was there wasn't money to do it and so it was on the back burner. The lawsuit, in my view, was simply a way that environmental groups found to force proceeding with that GEIS, a way to force the raising of money, a way to compel the process to go forward anyway. If they hadn't done that, maybe the GEIS would have gone forward. But economic situations being what they are, there is a fair chance it might have stayed on the back burner for a long time.

Q: Couldn't the efforts to move the GEIS through the courts have failed?
A: Yes. That's always possible. Also, if a lawsuit is completely superfluous, you can try to have it thrown out, or if it does proceed, to force the other side to pay all the costs. But the bottom line in our society is that you can get somebody else into court almost anytime and for any reason you want, at least initially. It is a sort of the sky is falling situation. If somebody sues you, you must respond. You can't just say "oh that is ridiculous." You must defend yourself. It is time-consuming and expensive and very difficult to avoid.

Q: Earlier in your talk you mentioned state laws that have influence not only over state, county, and private forest lands but also federal lands. Could you just reflect a little bit about, if the state were to have the state forest practices law, just what if any influence that law might have on federally owned lands.
A: Well, as a political matter I don't think a Minnesota forestry practices law would apply to federal land. However, other kinds of state natural resources laws do, and it has to do with where we have overlapping management and where we don't. State endangered species laws apply on federal land. Another area where there has been a lot of dispute is regulation of water. The state has maintained its right to regulate water even though it might lie inside a national forest or the BWCAW, for example. But we seem to have a tacit agreement with the feds that there are certain areas where we won't overlap and forest management is one of them.

Q: Doesn't the potential for an EIS come with any development that constitutes disturbance?
A: Absolutely, that is exactly the way it comes up. Somebody wants to build a shopping mall, or a plant, or harvest trees, and somebody else thinks that's a bad idea. If any governmental action is involved—such as the granting of a permit—then the potential exists for an EIS.
We have heard some interesting discussion this morning regarding forest practices laws and other regulatory approaches applied to forest resources management and use. What I would like to do is spend the next 20 minutes or so describing the typical administrative structure of forestry boards or commissions. Although there are many names given to these bodies, such as boards, commissions, councils, and committees, I will often refer to them as simply forestry coordinating entities. However, their specific structure and function depends, to a large extent, on whether a state has established comprehensive forest practices regulations as well as how these regulations are administered. As I will discuss in the next few minutes, states may establish what we call a forestry board or commission to deal with such laws.

The first question is just what is a forestry board or commission or, as I will call it, a coordinating entity? It is a formalized decision-making body that deals with forest resource management and use issues in the state. There are two keys to describing a coordinating entity: (1) it is a state decision-making body and is typically located within the executive branch of government (there are a few exceptions where the responsibilities lie within the legislative branch of state government); and (2) the focus is on state forest management and use, or at least a component of that. We have seen that there are some forestry boards that deal with other land resource management issues, but the primary focus rests with state forest management and use issues.

The question then becomes, why are state forest boards and commissions so prevalent in states where they have forest practices laws? In a general sense, forestry boards, and commissions provide a forum in which a framework for establishing and administering forest practices laws can be developed. They do this in four major areas. First of all, a forestry board or commission can help bring together diverse interests to make decisions regarding the types of forest practices laws needed. In bringing together diverse interests, a coordinating entity can be composed of particular stakeholders such as representatives from the environmental community, forest industry, tourism or recreation sectors, or it can consist of citizen members. Irrespective, these interests bring to the table diverse value systems, opinions and thoughts on the development of forest practices regulations and how to structure forest practices laws. The second purpose of a forestry board or commission with regard to forest practices laws is to help the state promulgate rules. That means they must consider what types of rules are necessary to carry out forest practices from a regulatory standpoint. Third, forest boards and commissions are also established to help to develop administrative procedures. Those procedures make sure that the laws and rules they promulgate are actually carried out in an effective and efficient manner. Finally, we see that forestry boards and commissions are used by many states with forest practices laws in a judicial capacity. In other words, they take a look at cases where the prescribed rules they have established and promulgated have been violated and, in many instances, we see forestry boards and commissions reviewing cases where these violations are occurring. In certain instances, a coordinating entity may be the method of appeal for a landowner who has been cited as having
violated forest practices. Thus, a forestry board or commission may serve a number of different functions regarding the development and implementation of state forest practices laws.

I should point out that forestry boards and commissions also exist in states where they do not have forest practices laws. At the same time, coordinating entities are not used exclusively in states that have forest practices laws. In the last year and a half, I took a look around the country to see which states have a forestry board, a forestry commission, or similar coordinating entity. We found that about two-thirds of all states have either a board, a commission, a council or some type of committee that has been asked to deal exclusively with state forest management and use issues. But what was interesting was that when we examined the types of structures that states have established, some very strong trends emerged. What one finds is that there are four major categories of state-level coordinating mechanisms for forestry that can be discerned: forestry boards, forestry commissions, forestry councils and forestry committees—each with definite characteristics.

Forestry boards, for example, typically have a very small membership often consisting of seven or eight individuals. They are also viewed typically as having the most influence of the four types of coordinating entities. A major focus of the charge of forestry boards is statewide forest policy development. They don't just administer state forest practices laws; but often also deal with substantive issues regarding statewide forest policy. Forestry boards are usually legislatively established.

In contrast to a forestry board (and on the other end of the continuum) is a forestry committee. There are a number of states that have forestry committees. They typically have a very large membership. On average, a forestry committee will have twice the number of members as a forestry board, typically 14 or 15 individuals. Also in contrast to a forestry board, a committee might not be established legislatively. Rather, it might be established through informal agreement among the different land managing agencies (e.g., counties, the state forestry agency, federal government having significant landholdings in the state). Forestry committees also typically do not deal with substantive matters involving statewide forest policy. They usually serve in a very informal capacity with a primary objective of getting together to discuss forestry issues that might be affecting the different land managing agencies.

You will find that a number of states have these boards, commissions, councils, or committees. However, typically the ones that have the most influence on forest management and use in the state are boards. In general, the ones that have the least influence are committees. If one looks across the United States, you will find eight states have forestry boards, and another seven to nine states each have a forestry commission, council, or committee.

What about the states that have state forest practices regulations? What type of characteristics do their coordinating entities have, i.e., their boards or commissions? As Paul Ellefson alluded to earlier, there are a dozen states that have some sort of comprehensive forest practices regulations. The majority of those states have a commission or board in place to help deal with administering their forest practices laws. I found that only two of those twelve states don't have some sort of coordinating entity. In other words, they don't have a board or commission to help administer their forest practices regulations. In these two cases, the power with administering forest practices regulations rests solely with the state forester or the commissioner of conservation and natural
resources. That was a very interesting finding. Thus, the trend is that if a state has a forest practices act, typically it will also have some type of board or commission.

A second central thread is that all these commissions or boards were established by legislation. Thus, states were required by law to create a forestry board or similar entity. The other thing that is interesting to note is that regulation, i.e., developing and administering the forest practices act, is typically not the only function that a forestry board serves. As a matter of fact, about half the states have forestry boards that deal with statewide policy development and coordination. About half the states also have forestry boards or commissions that deal with long-range and strategic planning and policy evaluation, with a specific focus on forest policy and program evaluation. They also become involved in coordinating research within the state. So when a state has a forest practices act and uses a board to administer that act, the board typically provides a lot of other functions in addition to administering forest practices regulations. In terms of the membership, most forestry boards and commissions that are used in states with forest practices laws have a very small membership, typically seven or eight individuals. In the ten states with comprehensive forest practices acts, the number of members on a forestry board or commission ranges from six to ten, and usually has seven or eight individuals.

Representation on a forestry board or commission can take one of three forms. It can consist exclusively of special interest representation. In these cases, the enabling legislation typically identifies a certain number of individuals represented from a particular interest such as the forest products sector, environmental or tourism community, or small private landowners. Alternatively, a forestry board or commission can be mandated by law to have membership composed of citizens with no particular background or affiliation, or at least they are not appointed to that board or commission because of that affiliation. A third means by which states with comprehensive forest practices laws structure the membership of their boards or commissions is a combination of both interest representation and citizens. When you look at specific stakeholder representation, the forest industry is, by far, the major entity that is represented on a forestry board or commission. In fact, between 25 and 40 percent of all the membership from special interest groups is focused on individuals who represent a forest products industry sector. Other interests that are represented on a forestry board or commission that dealt with administering state forest practices laws are public fish and wildlife management agencies, public forestry agencies, landowner associations, small individual landowners, and particularly in the West, the range and livestock industry.

As I said, almost all forestry boards or commissions have least some component of citizen representation. As a matter of fact, membership on the forestry board in one state is made up entirely of citizens with no identified special interest. In this state, appointments are based on congressional districts—one from each congressional district in the state. More common, however, is a mix of both citizens and special interests. For example, if a forestry board has eight members, it would not be uncommon to find six required to represent specific interests with the remaining two being citizens appointed at large. So you see a mix. Some have exclusively special interest representation, some have citizens exclusively, but the majority have a mix of the two. And when you have special interest representation, it is typically the forest products industry. However, I must say that we are seeing a shift in membership representation. As states move toward establishing a board or commission, representation on those most recently enacted boards or commissions reflects a balancing of membership by drawing from environmental, tourism, conservation interests along with forest products industry interests.
In terms of who these coordinating entities are accountable to, most are accountable to state agency administrators. However, some report to the governor and, as I indicated earlier, one state's forestry coordinating entity reports directly to the legislature. For the most part, however, these boards and commissions report to the executive branch of state government, typically the commissioner of natural resources or the state forester. They also can be linked very closely with the state forestry organization or, in broader terms, a state's conservation department or its natural resources agency. Thus, the accountability of these coordinating mechanisms can vary extensively.

Let me give you an example of a forestry board and how it is used with respect to the state's forest practices laws. I talked in general about those boards that are used in states that have forest practices laws. I think California is a good example. Since Paul Ellefson talked a bit about the California situation, I thought it would be appropriate if I highlighted the California Board of Forestry. In California, they have a nine member forestry board. Of those nine members, three have to be from the forest products industry, one from the range and livestock industry, and five are appointed citizen members from at large within the state. With regards to how they are structured, the responsibilities of the board are carried out by the state's Department of Forestry and Fire Protection (i.e., similar to our Division of Forestry). What is interesting is that this board has a full-time staff. It doesn't, like most boards or commissions, rely on the staff within the department. It has an executive director and full-time support staff. That is very important in terms of what they do because this board has many activities beyond the administration of forest practices laws. They use a series of committees, both committees consisting entirely of board members as well as citizen committees, to help them carry out their responsibilities.

The California Board of Forestry is the major forest policy board within the state. They develop the statewide forest policy and they look to the Department of Forestry and Fire Protection to administer the policies they develop. The board also plays a very important role in conducting strategic and long-range planning for forestry in the state. In addition, they are responsible for licensing state foresters. So, California's Board of Forestry does a lot of things beyond simply administering state forest practices laws.

What's particularly interesting about California's forestry board is the manner in which they administer the state's forest practices laws. One of the things they did, as Paul Ellefson also alluded to earlier, is develop technical advisory committees. Because California is so large and the conditions of the forest resources within that state vary so much, a series of regionally-based technical committees have been created. California has three technical committees, a coastal, a northern and a southern technical committee—committees that in many ways mimic the board itself. For example, similar to the board that has nine members with a certain representation, these technical committees also have that same representation. The primary purpose of the technical committees is to help provide local insight to the board in the establishment and promulgation of rules relating to forest practices. So they serve a very important function in that they help provide a local perspective of what the most appropriate and the most effective regulatory forest practices should be for that particular region of the state.

Finally, what I would like to focus on in the last few minutes are some important considerations for Minnesota if it is going to pursue development of a comprehensive state forest practices law and establish a board or commission to help administer state forest practices regulations. First of all, the most important consideration is to clearly define the coordinating entity's specific
functions. Should it be very narrowly focused in Minnesota so that its sole purpose is to administer and enforce state forest practices laws? That is a critical question. If not, should it be broader in scope? Should it be responsible for developing statewide forest policy in Minnesota? Should it be responsible for other functions regarding review of forestry programs or coordinating forestry research? These are all critical issues that need to be addressed. We have to clearly define what the specific functions of this board are, and whether they go beyond simply administering state forest practices laws.

With regard to state forest practices laws, we also have to define what specific role the state forestry board or commission might play. Are they responsible only for promulgating rules? In other words, do they just establish what types of actions are required and what types of actions are prohibited on forest land managed within the state, or should they be involved in administering the rules and perhaps setting up the processes for administration? Should they be involved in helping police those rules? Should they be involved in a judicial capacity, as some state forestry boards are, in terms of reviewing cases where violations are cited? There are a lot of different functions that a forestry board can play, even if their sole focus is just on administering a forest practices act. Well, that is one key issue that needs to be addressed—clearly defining the specific functions of the board.

A second critical issue is to carefully structure the board's membership. As I indicated earlier, we see states doing a lot of different things. Some states have special interest representation; some have citizen representation; but most states have a mix of both citizens and special interests. The question is what should we have in terms of representation? Well, the first thing we need is a balanced representation. You can accomplish that a number of ways. From a standpoint of trying to get all interested parties represented, we need to have representation from major stakeholders such as the forest products industry, environmental community, and conservation groups. Including these interests can go a long way in making sure many of the key forestry stakeholders are represented on the board. The problem is, and as we found it in the GEIS process through our Advisory Committee (which is a somewhat similar process), it is very difficult to draw the line regarding who should be included. Where do you say that we have enough representation, particularly with regard to keeping the number of individuals on the board at a minimum? If you get too many individuals involved, it just becomes overwhelming in terms of trying to administer the board. So it is important to keep that in mind. The downside is that it is very difficult to draw a line saying we have included who we think the major stakeholders are with regard to forest practices regulations.

The number of individuals on a board is also an important consideration. I would argue that you should have ten or less. Obviously, there needs be some critical minimum number to ensure a functional board, given not all members may be able to attend every board meeting. But you don't want to get into the situation of having 20 or 25 members. There is one state that has a 30-member forestry council. Can you imagine trying to administer that council getting resolution and decision when you have 30 members, particularly individuals with such diverse backgrounds? So it is important that you keep the number of individuals limited and I would argue for no more than 10 or 11 members.

Then we have some very technical questions like, who appoints these individuals? Is it the responsibility of the governor—which is often the case with state forestry boards responsible for administering its forest practices laws? If so, what type of criteria is used to make these
selections? It is interesting that some states, particularly those where they have citizen appointments, require that members are very knowledgeable technically on matters relating to forest management and use. Do we want to impose that type of criteria so that anyone who is a member of the forestry board has to have a basic knowledge and understanding of forestry, forestry principles, and forest management as it applies to the state of Minnesota? And, of course, how long do they serve as members on the forestry board? Typically, you will find that an individual appointed to a forestry board or commission has a term of about four years. Member selection processes and criteria are important considerations that cannot be overlooked.

Third, it is important to clearly define the role, authority, and decision-making ability of this forestry board. In particular, how does a forest board, if Minnesota were to establish one, fit in with the current decision-making processes within the state's Department of Natural Resources or the Division of Forestry? Who has authority for what? Where do you draw a line between the authority of the state forester with regards to operations on state forest land? How about the commissioner's authority? Where does the state board fit in with regards to that authority? Who is the board accountable to? Is this forestry board accountable to the state forester? Is it accountable to the Department of Natural Resources? Is it accountable to the governor, state legislature, or a combination? Also, it is important that the roles of the state forester, the commissioner of natural resources, and the forestry board are clearly defined. If not, there may be major problems with crossing lines of authority and administrative responsibilities. It is important from the outset that the board's purpose is clearly defined as well as who the board is accountable to and what the limits are in terms of its role in state forest policy or state forest practices.

Fourth is to make sure that we provide adequate administrative and technical support. This is very, very important. How is this entity, this forestry board, administered? I work for a board—the Minnesota Environmental Quality Board—and I have had the experience of seeing how that board operates. To keep the board functioning, good staff support is essential. There has to be adequate staff that is able to work with the board and help further its mission and actions. Without that support, it is very difficult to keep a board or commission effectively carrying out its mission. The question is, like in California, is there a need to create a separate staff for this coordinating entity? If so, should the board have a separate staff that is not associated with the Department of Natural Resources or should staff be taken from within the department and assigned to the forestry board? That is an important distinction that should not be overlooked. You have to identify where the staff support is going to come from.

The last thing is financial resources. This may not be at the top of anyone's list, but just who is going to finance this forestry board? These things just don't exist without any money. Obviously, if this board is going to have a staff, there has to be some financial resources to help administer the board's programs. Boards typically meet once a month. If you look at other states, these forestry boards or commissions often meet in outstate locations. How are the costs associated with board meetings held at outstate locations going to be paid for? Where is the funding going to come from? It is important that the types of financial arrangements be identified. These are important items because for this board to successfully fulfill its mission, all these things will have to be addressed.

In closing, I would like to recap that there are a number of states with boards, commissions, and committees in place. With states that have established forest practices laws, almost every such
state has some type of board or commission. As we have seen, one can establish a board or commission a number of different ways, not only in terms of their functions within state government, but in terms of who is on the board, the representation, how they are administered within state government, and who they report to. There certainly is an opportunity for Minnesota to take a look at what other states have done and try and pull together some of the best attributes. If, in fact, Minnesota is going to establish a forestry board or commission, I think the key to success is to look at some of the alternative arrangements and establish one with a thoughtful process so that it can be the most effective and efficient in accomplishing its objectives.

Questions:

Q: In view of Minnesota's situation, how appropriate is a board?
A: Are you referring to the jurisdiction of a board? If you look just immediately to the east in Wisconsin and Michigan, you will see that the boards that were established in those two states deal with matters beyond just forestry. They are actually boards established for the entire natural resources agency. Right now, we don't have that in Minnesota. The only thing we have with respect to forestry is a coordinating committee. Further, this committee was established informally—I think the state forester probably took the lead in establishing the committee. The committee does not have decision-making power; they get together periodically primarily to discuss forestry issues. So the focus of a board has varied—you can do it a number of ways—but the discussion has been typically toward forestry only.

Q: When you were reviewing those other states, did you find they were cumbersome in dealing with forestry?
A: I think the question is: why do you draw the line at forestry? Why is forestry unique as opposed to fisheries and wildlife?

Q: To what extent do or could forestry boards serve as the coordinating body not only for regulations that deal specifically with forestry, but all the other kinds of things so that the public is provided a one stop approach and they know exactly where decisions lie?
A: I think you will find that a number of states, particularly those with forestry boards, have taken that approach. The forestry board is the one stop place with regard to state forest policy. And I think there are some virtue in doing that. Again, I get back to what type of specific needs exist within that state? Is the need just to administer state forest practices regulations, or is there a need to provide some type of coordination among the different land managers? In Minnesota, there are obviously a number of different land management organizations. I staffed the Governor's Blue Ribbon Commission on Forestry a couple of years ago. One of the major recommendations (findings) that came out of that commission was that there really does not exist a central means of coordinating state forest policy in Minnesota. There was a perception that such a coordinating mechanism is needed. Further, the recommendation went beyond just forest practices—the focus was on coordinating the development of forest policy in Minnesota.

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Q: Could you give us some indication of, on the average, how many state agencies are involved in forest activities in a particular state?

A: You are taxing my memory, but I believe there are over nine. In other words, a state has on average over nine different entities that in one way or another deal with forest management and use. The most obvious ones are the state forestry organizations and the USDA Forest Service. But the environmental protection agencies, the soil and water conservation agencies, and various components of the Department of Agriculture (aside from the Forest Service) also may be included in many cases. Many different agencies at state, federal, and oftentimes municipal and county levels are involved in administering in one aspect or another the forestry program within the state. So the need for coordination of policy among all of those has become considerable, particularly in states where you have a number of different public entities working toward the same goal but through different administrative structures and rules.

Q: In your description of the makeup of the California Forest Practices Board, it seems conceivable to me that there is a possibility that there wouldn't even be a professional forester on that board. Any thoughts about that?

A: The state forester in California is not a member of the board, but he is the liaison between the board and the state Department of Forestry and Fire Protection, our version of the DNR Division of Forestry. He is the one who has to administer (i.e., his department has to administer) the policies developed by the board. He is probably the only professional forester directly associated with the board. But in California, the requirement of all five citizen members is that they be knowledgeable about forestry and state forestry management and use issues. That is the law.

Q: Who pays? Can you give us some facts how these are financed in some of the states?

A: Well, it really varies. Most board operations are financed from general fund appropriations. But in most states, the staff support for a board or commission comes out of the natural resources agency. California is an exception where they have a separate staff with a separate budget item for support staff, the executive director, and the professionals that provide the support to that board. However, in general, most states have staff identified in the department of natural resources, and typically that is covered with general fund money.

Q: Regarding representation on the board, do you feel it is important to have a balance between Twin Cities metropolitan area vs. representation outstate?

A: My personal feeling is that you can do it a number of ways. It is not really so important to balance geographic location or to have special interest versus citizen representation. In my estimation, the key to a successful board is getting the right people. The people that are broad in terms of their thinking—they need to think beyond their own special interests. I think that is the key to the success of a board.

Q: Picking up on that, you probably didn't have time in your study, but did you find or was it your sense that the board that had rather concentrated membership, less diverse members, were perceived more as one type of political actor, or in other words were they themselves perceived as a special interest actor as opposed to what a board should be, representative of all? I am concerned because that legitimacy question can always used to pull the rug out from under a board.
A: You imply that the perception might be that they are just another arm for promoting forest products industry growth in the state. As I indicated earlier, in some of the states that have more recently enacted a board or a commission, the representation is much more diverse and balanced than what we have seen on commissions or boards that were established 10 or 15 years ago. I think it is partly a reflection of the fact that they do not want be perceived as having a slanted viewpoint in one way or another.

Q: How might a board become involved in judicial review?
A: In some states, they do actually get involved in a judicial capacity in reviewing violations. Most of the boards help promulgate the rules and they help establish the administrative procedures to carry out the rules, and in the long-run, if the penalties are criminal penalties, which there can be, they get involved in judicial review. I know of one state (this is one state where they do not have a board or commission) where if you violate a forest practices law, you face a $1,000 fine and/or one year in jail. In that case, you go to district court—you do not deal with the forestry agency since there is no board. If it is a criminal penalty, you can appeal it in district court. But in most states, the appeal goes back to the board or the natural resources agency via the commission or the state forester. The state I mentioned is an exception.

Q: The state that you just talked about .... who files the complaint?
A: Within the state division of forestry, they have a forester who will go through training—go through a course on law enforcement training. Basically, it is to get an understanding of what the forest practices are and how to cite violations and fines. The individual who administers this program said that what they found is that because of the severity of penalty for each violation, up to $1,000 and one year for each violation, they typically see less than a handful (i.e., less than ten violations) per year. But yet, they have a very elaborate administrative procedure in terms of filing a permit to cut timber and review of the harvesting practices and follow-up by foresters. There is a very comprehensive oversight of what is going on. When a state imposes such severe penalties, they find that the number of violations are pretty minimal. And, in the words of the administrator I talked to, "it scares the hell out of a lot of people." Thus, they just don't see the violations occurring when you have penalties like that.
Alternatives to Regulation

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Forest practices regulations are guidelines for managing forest lands. They usually are aimed at protecting or perpetuating certain selected natural resources that are considered to be public goods which will be needed by future generations. People who advocate forest practices regulations apparently assume that landowners or managers with short planning horizons or lack of knowledge about the effects of forestry practices will reduce the quantity or harm the quality of these public goods unless their actions are regulated. These public goods include, among others, a perpetual wood supply, high quality water, productive soil, an abundance and diversity of wildlife, and a scenic landscape.

While the other speakers at this conference are focusing on regulations that now exist or that might exist in the future, I will concentrate on alternatives to regulation. Regulation is a strong intrusion into the management of private lands. It is not always the most effective and efficient means of protecting public goods. Let's view regulation as the hammer in a tool box. Other tools may be more effective in some situations.

Alternatives to forest practices regulations include education, research, technical assistance, occupational regulation, cost-sharing, tax incentives, and voluntary guidelines. Let's take a closer look at each alternative.

EDUCATION

To influence how forests are managed, we could offer more education to landowners, loggers, and foresters. By being better informed about the consequences of forest practices, these people presumably would better manage our forests to protect our wood, water, wildlife, and aesthetic resources. Driven by economic or other personal goals, some of these people still may choose to maximize short-term gains at the expense of long-term resource sustainability, but I am optimistic that most people want to be good stewards of the land. While it can be argued that for many years we have conducted education programs aimed at landowners, loggers, and foresters, the fact is these programs have been grossly underfunded. The collective efforts of many agencies and organizations still reach only a fraction of this audience.

RESEARCH

Some of our educational efforts also fall short because we do not have the necessary research to inform us about the results of certain forest management practices. By increasing research on a wide range of forest practices and incorporating these results into formal and informal education programs, landowners, loggers, and foresters can make more enlightened decisions. Research, for example, could tell us more about how to regenerate and thus perpetuate oak forests, how to sustain the productivity of aspen stands, how to design buffer strips along streams to reduce sedimentation, and how to manage forested landscapes to account for the aesthetic preferences of people who use them.
TECHNICAL ASSISTANCE

Technical assistance could be increased to offer more one-on-one contact with private woodland owners. I have heard DNR foresters estimate that only about 15 percent of the timber harvested each year is done so with the advice and counsel of a forester. Loggers and landowners who are far less informed about the consequences of timber harvesting and related activities than foresters are making decisions on 85 percent of our forest land. Even when landowners contact a forester, they often must wait several months to a year before receiving assistance. There appears to be a severe shortage of foresters who can assist private landowners.

Historically most of the technical assistance available to private landowners has been provided by the Minnesota Department of Natural Resources. A public policy that supported free or low-cost technical assistance plus a timber market that offers relatively low timber sale revenues have suppressed opportunities for private consultants. The new Stewardship Incentives Program, however, will offer cost-sharing to landowners to pay for management plans. This incentive may stimulate the private sector to help fill the technical assistance void.

OCCUPATIONAL REGULATION

Occupational regulation is another means to influence forest practices. It also could be blended with the increased education, research, and technical assistance already mentioned. Occupational regulation includes accreditation, registration, certification, and licensing.

Accreditation is the formal review and approval of a degree program at an institution of higher education. This accreditation process generally is conducted by a professional society. For example, the Society of American Foresters periodically reviews the forest resources curricula at the University of Minnesota. This is a rigorous review process by a team of foresters from outside Minnesota that includes an on-site inspection of the program and interviews with key people at the University. Accreditation is aimed at insuring that forestry graduates have learned certain basic information essential to the profession including knowledge about a wide array of forestry practices and their impacts. Many employers will hire foresters only from accredited institutions.

An important part of this review is a self-analysis of the faculty and curricula by the Department of Forest Resources. Historically there has not been a major effort to involve the forestry community or special interest groups in this analysis. There might be some value in involving a wider range of natural resources professionals and special interest groups in the self-analysis process to insure that the curricula reflect the needs of Minnesota's forests and its people. We all know, however, that many foresters working in Minnesota were educated out-of-state. Refining the curriculum at the University of Minnesota or other institutions in Minnesota will have no affect on degree programs offered at out-of-state locations.

A year ago all forestry-related professionals in Minnesota were surveyed to learn about their continuing education needs and their opinions about occupational regulation. In order of preference, the respondents preferred registration first, certification second, no occupational regulation third, and licensing fourth.

Registration is a voluntary procedure by which a state attests to minimum professional qualifications of specific individuals. Examinations may be required. Registered foresters are listed on an official state roster and may use the title, forester. Nonregistered persons may
practice forestry, but they may not use the title forester. Registration by itself does little to advance the practice of forestry, but it provides a marketing tool for legitimate foresters to sell their education, training, and skills to private landowners.

Certification is a voluntary procedure by which a nongovernmental organization attests to the professional qualifications of specific individuals. To become certified, the person must meet minimum standards of professional education or experience. Examinations may be required. Certification is a form of peer recognition of an individual's professional ability. Examples are the Society of American Foresters' Continuing Forestry Education Certification program and the USDA Forest Service's certification of silviculturists. Certification is most useful when employers give it credibility and force their employees to participate.

Licensing is a compulsory procedure by which a state grants qualified individuals the right to engage in forestry, a practice which would be illegal without the license. To be licensed, a person must meet minimum standards of education and/or experience, generally by passing a state examination. License renewal often is contingent upon participation in continuing education.

In Minnesota there are no strong programs of registration, certification, or licensing for foresters or other natural resources professionals. If we want to improve the practice of forestry, then we should give serious thought to initiating a certification or licensing procedure. You should be aware that Minnesota statutes make licensing a difficult goal to achieve.

Whether or not we initiate some form of occupational regulation, there is always the need to participate in continuing education. Employers and independent consultants alike need to recognize the rapid advances in our profession and the new technologies available to help us balance the many conflicting uses on forest lands.

**COST-SHARING**

The ideas mentioned to this point are all indirect means of influencing forest practices. Cost-sharing, though, is a very direct means to affect forest land management. By offering partial funding to private landowners for implementing certain practices, the government provides a strong incentive to manage lands. Traditional cost-share programs such as the Forestry Incentives Program (FIP), Minnesota Forestry Incentives Program, Agricultural Conservation Program (ACP), and Conservation Reserve Program were aimed mainly at increasing timber supplies or reducing soil erosion by tree planting or timber stand improvement practices. The brand new Stewardship Incentives Program (SIP) offers the opportunity to carry out almost any management practice that enhances or protects our natural resources. It offers tremendous opportunities to enhance wildlife habitat, fisheries resources, recreation, and endangered species protection on private lands.

The forestry profession has the opportunity now to be truly creative in designing land use practices that sustain the long-term productivity of our forest resources. Each of us needs to become informed about this program and contribute some personal energy toward making it succeed.
Whether or not SIP will be perceived as an economical use of public funds remains to be seen. Previous economic analyses of the FIP and ACP programs indicated that both were economical uses of public funds although program efficiencies could be achieved. The SIP program will be more difficult to evaluate by economic criteria alone because many of the natural resources improvements funded by this program are not commonly valued in the marketplace.

**TAX INCENTIVES**

Government services are financed largely by taxes. While taxes are a means to generate revenue, they also can be designed to create incentives for investment in certain natural resources projects.

Our federal income tax system offers an investment tax credit for expenses incurred in reforestation or afforestation. This is the only investment tax credit that still survives and as such becomes an incentive to invest in tree planting compared to some other activities that may have similar investment periods and risks.

Persons actively participating in timber growing businesses may fully deduct management expenses in the year they are incurred, but investors may deduct only those expenses that exceed two percent of their adjusted gross income and persons who are passive participants in forestry businesses may deduct expenses only up to the amount of passive income they receive. These tax laws encourage forest landowners to become actively involved in a timber growing business.

Our property tax system also stimulates forestry investment through the Tree Growth Tax Law. Persons who enroll their land under this system must manage their woodland for wood products, but they generally qualify for much lower taxes than would be due under the ad valorem system.

Historically tax deductions have been used to stimulate timber production, but if our public policy makers want to stimulate management for other resource amenities, then tax laws could offer deductions for protecting endangered species, improving wildlife habitat, preserving water quality, or other objectives that are deemed to be public goods.

**VOLUNTARY GUIDELINES**

A final alternative to forest practices regulations is a system of voluntary guidelines. We now have voluntary guidelines for harvesting timber to protect water quality. There also is a system in place to monitor the extent to which these guidelines are being followed. A system of voluntary guidelines could be developed for a broader spectrum of natural resources concerns. To be acceptable, these guidelines need to be developed with participation by all relevant parties including policy makers and special interest groups. Voluntary guidelines must be accompanied by a massive education program affecting natural resources professionals, landowners, loggers and any other people involved in decision making or management. Monitoring the impacts on our natural resources is a key ingredient to their success.

**SUMMARY**

In summary let's consider forest practices regulation to be just one means to protect the public goods derived from forest lands. Other alternatives include education, research, technical assistance, occupational regulation, cost-sharing, tax incentives, and voluntary guidelines. As natural resources professionals we can fuel public debate by offering our insights into the relative merits of each of these strategies. We have a long history of success with these alternatives.
Q: How could a voluntary program or nonregulatory program fit into the current regulatory framework?
A: Forest practice regulations are basically legal constraints on how forest lands are managed. I can see that voluntary guidelines may not be under the purview of a board that promulgates these kinds of rules and regulations, but I see no reason why a board can't support and encourage voluntary guidelines as one of the things it does. It might depend on the purview of the board that might be created to administer these regulations. As Mike pointed out, some boards simply administer forest practice regulations, others have much broader responsibilities dealing with setting agendas for forest policy development on a wide range of issues. If we created a board that had a wider range of responsibilities, it could administer forest practice regulations, but also pursue forest policies through voluntary guidelines and other means.

Q: Have there been any studies comparing the economic efficiency of incentive programs that encourage better management of private forest lands?
A: The only ones that I am familiar with are analyses that look at the financial efficiency of things like the Agricultural Conservation Program and the Forest Incentives Program. These tend to look at individual programs and determine whether it is a financially efficient use of public funds. I haven't seen too much in the way of studies that compare all these different alternatives. Paul Ellefson and I have had a long-term interest in doing some of this research, but I am not aware of studies that have been done to compare a range of alternatives and their relative effectiveness. Part of the problem is that typically you only have one or two of these programs installed and it is difficult to do a comparison. I am currently in the process of studying property tax laws in Minnesota. I am studying how forest lands are managed under tree growth compared to the ad valorem tax and I'm doing an economic analysis of tax laws to determine what it really costs the state to subsidize forestry practices under tree growth.

A: P. Ellefson. A very large national study on the economic efficiency of the Forestry Incentive Program was conducted in the mid-1980s. We found the internal rate of return was very acceptable. So the program itself is very good. But, Mel is right when he says we really don't have a very good handle on what is the relative efficiency of each of the different types of programs.

Q: Has there been any assessment of how changes in the treatment capital gains from forestry investments has affected forest land management?
A: The only thing I am aware of is a study by Phil Hoover at Purdue who took a sabbatical and among other things did a survey of tree farmers in Minnesota to learn to what extent they use capital gains before and after the laws were changed. I think he found that investments had declined. I think he did find that people were claiming they were investing less in forestry as a result of losing the capital gains treatment of their investment. Personally, I don't think his sampling which dealt only with tree farmers was a particularly good research design.
Experience with Local Forest Practices Regulations

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It is a pleasure to be here this afternoon and to have this opportunity to talk with you about the topic of local regulation. Before I get started into the presentation itself, I wanted to mention that I can't claim full responsibility for the information that I will be presenting here. This information is really part of a team effort. The information has been compiled as part of a study that is being done by the Southern Forest Experiment Station for the 1993 RPA Assessment Update. Bill Siegel, Economics Project Leader at the Southern Station, is the one that is supervising this study and Chris Martus, a graduate student at Virginia Tech, has been working very closely with us on this. He is the one that is responsible for compiling much of the information. I was at the Southern Station until about four months ago, and was involved in this study until that time. The project now continues in my absence.

Public regulation of private forestry is not new in the United States. In relatively recent years, however, there have been a number of important changes in the forest practices regulatory area. Prominent among these changes have been the following three things: the expansion of state forest practices acts to address the broader range of environmental concerns; the enactment of federal environmental laws impacting upon forestry; and the proliferation of local ordinances that regulate forestry activity. The focus of this paper is going to be on the last of these changes, and that will be with reference to the situation in the eastern United States. This is the region where most local regulations exist. Specific objectives of the paper are threefold. First, to identify the types of local forestry regulatory ordinances that have been adopted and to describe their key provisions. Second, to document the extent to which such ordinances have been enacted. Third, to highlight important subregional differences and the nature and extent of local regulation. Finally, to speculate briefly about future trends in the local forestry regulatory burden.

The information I will be presenting was compiled from June to December of 1990. In each state a wide array of people and agencies who we thought might be knowledgeable about local forestry regulation were contacted by either telephone or letter. This group included state forestry agencies and associations, industry trade associations, state extension foresters, university forestry faculty members, and industrial and consulting foresters. As local ordinances were identified, any steps needed to obtain copies of them were undertaken. As the ordinances were received, each was reviewed and a digest of its key elements was developed. The information that I will be presenting is believed to provide a fairly accurate depiction of what the local forestry regulatory situation was in the eastern U.S. as of the first of this year; but two cautions are in order. The first is that some ordinances may have been missed in our initial survey. The second is that some new ordinances may have been enacted since our survey was conducted. Regarding the first point, local forestry regulatory ordinances are not always easy to recognize. They can be concealed through vague language or by incorporation into more general purpose types of laws. Regarding the second point, as we will see, local forestry regulatory ordinances are an extremely dynamic area of public policy. New laws are constantly being adopted and older ones either amended or replaced. To check on these potential problems, certain key information sources are
in the process of being recontacted. I suspect this will indicate that some additional ordinances that have been enacted since our initial survey. The point I want to make here is that the specific figures that I will be showing in terms of number of ordinances that exist in a particular state may no longer be totally accurate. However, the general impressions that you will be getting in terms of the types of local ordinances that exist, the nature of their key provisions, and the relative importance of local regulation in different geographical areas of the East—all of this information will still be on target.

Let's begin with some background on the nature of local forestry regulatory ordinances. Our study shows that, in the eastern U.S., local ordinances have varying objectives that reflect the differing concerns of the local governments that enacted them. Often single ordinances have multiple objectives. Nevertheless, it is our feeling that every ordinance can be meaningfully placed into one of five categories based on the primary reason for its enactment. These categories are what we have called (1) public property safety protection ordinances, (2) urban/suburban environmental protection ordinances, (3) general environmental protection ordinances, (4) special feature/habitat protection ordinances, and (5) forest land preservation ordinances.

To give you some idea of how these five categories of laws differ from one another, we will briefly review the intent and common regulatory requirements of each. Penalties for noncompliance and other statutory provisions will also be reviewed, but not by class of legislation.

We will first look at public property/safety protection ordinances. These types of ordinances have normally been enacted to accomplish either or both of two objectives. The first has been to protect public investments in such things as roads, bridges, drainage ditches and rights of way. The second has been to limit interference with normal traffic flows and to protect motorists from potentially hazardous driving conditions such as might result from the presence of mud or other types of logging debris in close proximity to public roadways and bridges. Towards these ends, such ordinances typically regulate both the transport of roundwood products and logging related equipment and also any harvesting activities that occur in the immediate vicinity of public roads, bridges, drainage ditches, or rights-of-way.

When we look at these types of ordinances in terms of their common regulatory requirements, we find that most contain things like the following:

- Obtain a permit or license—sometimes the permit or license specifies the routes that must be traveled and the times of the day during which operations can be conducted.
- Post a surety or performance bond—usually the bond is for some specified amount, but it may vary anywhere from $1,000 to $25,000. Sometimes the bond is set at the estimated cost to restore potentially damageable property to its pre-existing condition.
- Remove debris, including mud, from roads, rights-of-way, and drainage ditches.
- Notify the administering agent or agency at the start and end of operations.
- Prohibit the loading or unloading of logs and logging-related equipment along public roadways.
- Require that culverts or bridges be installed at water crossings.
- Restrict the use of unimproved roads during wet weather.
- Require graveling of access points to prevent tracking of mud onto roadways.
- Prohibit the use of tracted or rugged vehicles.
Now we will look at the second major category of local ordinances, urban/suburban environmental protection ordinances. These are intended to protect the environmental values that can result from retaining individual trees or wooded tracts in urban or suburban settings. These benefits include such things as improved aesthetics, reduced erosion and sedimentation, improved water and air quality, amelioration of climate, reduced energy consumption, and reduced noise. Oftentimes a secondary objective of such ordinances is the protection of urban and suburban property values. To achieve these goals, laws of this type regulate timber harvesting associated with land clearing and development, sometimes restricting the removal of individual trees.

When we look at these ordinances for their common regulatory requirements, we see that they include such things as the following:

- Obtaining a permit or license—depending on the thrust of a particular law the permit could be for clearing a stand of trees or for removing individual trees.
- Post a surety or performance bond—again, the amount of the bond is normally fixed but it may vary anywhere from $5,000 to $25,000.
- Require an erosion and sediment control plans prepared by a professional engineer—usually the erosion and sediment control plan is to specify the area involved, the existing soil types, the existing and proposed topography, the storm drainage provisions, and the erosion and sedimentation control provisions.
- Require a site plan prepared by a professional engineer or landscape architect—typically the site plan, which is not synonymous with the erosion and sediment control plan, is to specify the type and location of improvements to be made; the number, location, and diameter of trees to be left or to be removed; and the vegetation replacement measures that are to be employed.
- Require replacement of trees that are removed or payments to a replanting fund.
- Prohibit the removal of certain types of trees such as those that are unusual because of their age, size, or historical significance.

The third category of local ordinances is general environmental protection ordinances. These are intended to protect the environmental values associated with well-managed commercial forests. These values include things like high natural beauty, low erosion and sedimentation, high air and water quality, diverse habitat for wildlife, and sustained soil productivity. To achieve this goal, most laws of this type regulate timber harvesting and harvest-related road construction practices. A smaller number of ordinances broaden the regulatory umbrella to include other forest practices, particularly those that can cause soil disturbance.

Analysis of these ordinances in terms of their common regulatory requirements, indicates that they include such provisions as the following:

- Obtain a permit or license—sometimes separate permits are required for different activities such as harvesting, stream crossings, and road construction.
- Post a surety or performance bond—usually the bond is for a fixed amount, but again the amount can be highly variable—anywhere from $1,000 to $25,000. In a few cases we found that the bond amount depended on the acreage of the harvest area or the anticipated value of the timber to be cut.
- Knock down slash and remove debris from drainages.
• Require a harvest plan prepared by a professional forester—typically the harvest plan is to describe the physical characteristics of the area in terms of soil, topography, and drainages; it is also supposed to specify the harvest methods and equipment that will be used, the proposed locations of access roads, landings and stream crossings, and the steps that will be taken to control erosion and sedimentation and to reforest the area.
• Require the use of recognized BMPs—normally this provision is not included where an ordinance lists specific BMPs.
• Leave buffers along streams and lakes—sometimes partial cutting is allowed within these buffers.
• Leave buffers along property lines and roadways—again, partial cutting is normally allowed within these buffers.
• Require culverts or bridges at water crossings.
• Prohibit clearcutting without a special variance from the administering agent or agency. Normally, to obtain a variance, landowners must show that: (1) there will not be a significant increase in erosion, sedimentation and water pollution; (2) that fish spawning grounds will not be damaged; and (3) that denial of the variance would cause an undue hardship. Sometimes a public hearing has to be held before the variance can be granted.
• Require that roads, skid trails and landings be properly retired at the completion of the harvesting operation.

Now we can move on to the fourth general category of local ordinances, special feature/habitat protection ordinances. These are intended to protect areas or habitats that are special because of their scenic value, environmental sensitivity, or the natural functions that they perform. Examples would include scenic river corridors, shorelines and coastal zones, wetlands, and areas occupied by threatened or endangered species. To achieve their goal, most laws of this type regulate timber harvesting and harvest-related road construction practices. Once again, however, a number of laws broaden the regulatory umbrella to include other forestry activities—particularly those that have the potential to cause soil disturbance.

Analysis of these ordinances to determine their common regulatory requirements indicates that they normally include the following:

• Obtain a permit or license—as the with the general environmental protection ordinances, separate permits may be required for different activities such as harvesting, road construction, and stream crossing.
• Require a harvest plan prepared by a professional forester—generally the planning requirements are similar to those mandated for general environmental protection ordinances.
• Require leaving buffers along streams or lakes—for this type of ordinance normally no cutting is allow in the buffers.
• Prohibition timber harvesting within designated zones.
• Limit the percent of timber volume harvested during specified time periods, or the size of openings created.

Now we can consider the last category of local ordinance, forest land preservation ordinances. These are intended to perpetuate forests in use and to maintain a relatively undisturbed forest condition. To achieve this goal they regulate land use, generally by zoning restrictions. Analysis of these ordinances reveals that they typically include the following provisions:
- Prohibit a change in land use without approval of the administering agent or agency.
- Prohibit timber harvesting without approval.
- Obtaining a permit or license.
- Require a public hearing.

As this listing indicates, most statutes of this type include a mechanism whereby landowners may be allowed to make a change in land use or conduct a timber harvest. Typically, however, a very stringent process is required to obtain the permit or license. Normally a public hearing must be held and, in some instances, the landowner must demonstrate that the proposed action would be in the public interest.

What penalties exist for noncompliance? We find that many laws, essentially one-third, do not explicitly set forth penalties. Instead, violation of the ordinance is deemed to constitute a misdemeanor or the possible consequences of which are spelled-out somewhere else in the local government's legal code. When penalties are explicitly mentioned, they generally consist of a fine or a combination of fines and imprisonment. Fines vary in type and amount and typically increase for repeated violation. Some fines are a specified amount which may range from $250 to $5,000 per offense. Other fines are assessed on a daily basis with amounts ranging from $250 to $2,500 per day of violation. Finally, some fines, particularly those associated with urban and suburban environmental protection ordinances, are levied on the basis of each tree illegally removed—with amounts varying anywhere from $100 to $3,000 per tree. Imprisonment, where it was a condition of a possible violation, was normally for a period of 90 days or less but, in some instances violators could receive up to one year in jail.

Other provisions that we observed in a significant number of local ordinances included such things as the following. Those applying for a permit or license had to pay an application or inspection fee. Often the fee was nominal, such as $25, but in some instances it amounted to several hundred dollars. Another common provision was that the administering agent or agency could revoke current permits and halt operations. Some laws provided that timber cut from certified tree farms or tracts that were being managed under a plan approved by the state forestry agency was exempt from regulation. Some ordinances provided that timber cut for fuel or other personal use was exempt from regulation. Finally, some ordinances provided that timber harvesting operations of certain types, such as those removing diseased or insect infested timber or those not exceeding certain sizes such as two acres or 20 cords, were exempt from regulation.

Enough said about the types of local ordinances and their provisions, let's now look at the pervasiveness of such legislation. For this discussion the eastern U.S. will be broken down into four subregions shown in figure 1. We will begin by looking at the situation in the northeast because this is where local regulation began and it is also the area in which such ordinances have increased at the fastest rate.

![Figure 1. Map showing boundaries of four geographical subregions recognized for this review.](image-url)
As of January 1, 1992, we had found a total of 271 local forestry regulatory ordinances in the northeastern states. The states where ordinances were observed and the number of laws in each were 13 in Connecticut, 19 in Maine, 36 in Maryland, 2 in Massachusetts, 3 in New Hampshire, 87 in New Jersey, 38 in New York, and 55 in Pennsylvania. The first ordinances in the region appeared before 1970 and the number of laws has grown steadily. Although local forestry regulation originated in this area, most of the laws are relatively new. We found that two-thirds of the existing ordinances had been enacted during the last 10 years and almost half during just the last five years. All types of local governments have been involved in enacting forestry regulations in the northeast, but municipalities and townships have been the most active with each accounting for about two-fifths of the laws. All five categories of local forestry regulatory ordinances were found in the northeast, but nearly half the observed laws were concerned with general environmental protection. Significant numbers were also concerned with urban and suburban environmental protection and special feature/habitat protection. Ordinances aimed at forest land preservation and public property/safety protection were of relatively minor importance in the northeast.

Moving on to the southeast, we found that as of the first of this year there were 45 local ordinances. The specific states where ordinances were observed and the number of laws in each included 25 in Florida, 18 in Georgia, and 1 each in North Carolina and Virginia. The first regulatory ordinances in this region appeared in the early 1970s and again the number of laws has increased steadily since that time. As in the northeast, most of the legislative activity has occurred in the last decade. Almost 90 percent of the existing laws were enacted in the last ten years and over three-fifths in just the last five years. In the southeast, 96 percent of the existing ordinances have been enacted by county governments. Only two laws have been passed by municipalities. All but one type of local ordinance was found in the southeast. Nearly half the observed laws were directed at urban/suburban environmental protection—which is not particularly surprising considering the rapid urban growth that has been experienced in Florida and parts of Georgia. Of the remaining statutes, 14 were concerned with public property/safety protection, 6 with protection of special features and habitats, and 5 with general environmental protection.

Moving on to the south central states, here we found that as of the first of the year there were 33 local ordinances. States with ordinances and the number of laws in each were 3 in Arkansas and Mississippi, 23 in Louisiana, and 4 in Texas. Most regulations in the south central states predate 1970 but again, consistent with the pattern observed elsewhere, most of the activity has been within the last decade. Nearly 90 percent of the existing laws were enacted within the last ten years and almost three-fifths in just the last five years. Every local ordinance in the south central states has been enacted at the county or parish level of government. In the south central states, the protection of public property and motorist safety is by far the dominant local forestry concern. Thirty-two of the 33 existing laws were directed at this objective. The one exception was an ordinance enacted by a parish on the outskirts of New Orleans which we classified as an urban/suburban environmental protection law.

At this point we can turn to the region which is undoubtedly of greatest interest to this group, the north central states. As of the first of this year we had identified only ten local forestry regulatory ordinances in this subregion. The states where ordinances were observed and the number of laws in each were four in Indiana, five in Michigan, and one in Minnesota. Local regulation in the north central states dates back to the early 1970s, but nevertheless seven out of ten of the existing laws have been enacted within the last five years. The distribution of ordinances by the types of
local governments that enacted them shows that counties and municipalities have been equally active, each accounting for half of the observed total. Four types of local forestry regulatory ordinances were observed in the north central region. Four laws were concerned with general environmental protection, three with public property and safety protection, two with urban/suburban environmental protection, and only one with protection of special features and habitats.

I can offer a little more information about the one Minnesota ordinance that we have found. It was an ordinance that had been enacted by Winona County in 1989 as part of its zoning law. We classified it as a general environmental protection ordinance. The primary objective, as stated in the law, is to minimize accelerated or excessive erosion due to activities such as agricultural production, timber harvesting, and land development. Major provisions of the law are: (1) that timber harvests have to be conducted under the provisions of a soil conservation plan approved by the appropriate soil and water conservation district; (2) that the gross soil loss cannot exceed 5 tons per acre per year; and (3) that operators have to secure a license in order to conduct a commercial timber harvest. Applicants for a license must be able to demonstrate at least one year of experience and are required to post a $1,500 performance bond. Additionally, the law specifies that in conducting a timber harvest, certain practices must be adhered to. All cuts, access roads, and stripped slopes are to be restored to reasonable condition; all slash is to be disposed of in a safe manner; all actions needed to prevent or suppress forest fires are to be taken; all cutting must be performed in cooperation with the state conservation program; and all needed timber stand improvements must be made. The ordinance is administered by the county planning department through the planning director. No specific penalties are set forth for noncompliance.

Let's now turn our attention, for a few minutes, to the future outlook for local forestry ordinances. The results of our study strongly suggest that such ordinances are going to continue to increase in number in the years ahead. As we've seen, most legislative activity has occurred in the last ten years and much in just the last five years. Other researchers who have looked at local ordinances and reached essentially the same conclusion. The primary rational is that many of the factors that were instrumental in contributing to the past proliferation of such laws still continue to be operative. Two things have been particularly important. One has been the shift of population from urban to more rural settings. This trend is significant for two reasons. First, the former urbanites typically have fewer personal ties to the rural agricultural and forest economy. Often they continue to work in the city. And second, the former urbanites typically relocated to the country to achieve a certain lifestyle—one characterized by high amenity values. Thus, they are quick to seek a public response when they felt this lifestyle is being jeopardized by unregulated agricultural or forestry activities. A second major contributing factor has been the concern over the quality of the environment. This trend is important because the public's concern has manifested itself in increased pressure on elected representatives at all levels of government to take whatever steps are needed to ensure that the environment is protected from abusive practices, including perceived abusive forestry practices.

On the opposite side of the coin, a number of analysts feel that there are certain legal considerations which, although they have not had much impact to date, could ultimately slow the future spread of local ordinances. Of these, probably the factor of greatest importance would be the concept of state preemption. The concept of state preemption traces its origins to the fact that under our system of government, in the event of conflict, federal laws are considered to take precedence over state laws and state laws over local ordinances. The concept of preemption is
important because it means that in a particular state—if the checkerboard pattern of regulation that was to emerge through the passage of diverse local ordinances was to prove to be very disruptive to the forest economy of the state—the state’s legislature could respond by enacting state legislation that would preempt or limit local regulatory authority. This has already happened in a few cases, Massachusetts’ 1982 Forestry Practices Act and Georgia’s 1988 Open Burning Law were both enacted, at least in part, due to the proliferation of local ordinances. New Hampshire, just last year, enacted what they call a Right to Harvest Law that contains the following clause … “Forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by the use of municipal planning and zoning powers or by the unreasonable interpretation of such power.”

In summary, there are five points that I want to stress concerning local forestry regulations in eastern United States. These are:

1) Ordinances can be grouped into five types or categories—considering the entire region, 40 percent are concerned with general environmental protection, 32 percent with urban/suburban environmental protection, 14 percent with public property/safety protection, 12 percent with special feature/habitat protection, and only 2 percent with forest land preservation.

2) Ordinances occur throughout the East but are particularly prevalent in the northeast—of the 359 ordinances identified, 75 percent were in the northeast, 13 percent in the southeast, 9 percent in the south central states, and only 3 percent in the north central states.

3) Ordinances have been enacted at all levels of local government—the percentage breakdown for the entire region is 33 percent by counties and parishes, 31 percent by townships, 30 percent by municipalities, and 6 percent by boroughs.

4) Ordinances are a relatively recent phenomena—considering all of them for which enactment dates could be determined, essentially three-quarters have been passed within the last ten years and half within just the last five years.

5) Ordinances are likely to increase in number in the years ahead.

Questions:

Q: Have local ordinances attempted to respond to state actions?
A: There are a few instances where local ordinances in various states have been enacted in response to some state legislative authority. I can't think of specific examples, but in the northeast there were certain areas. To illustrate, there might have been a major river corridor that was identified by the state for protection. It was left up to localities to decide how they were going to do this. Some of them have enacted local ordinances in response to this state mandate. These were the exceptions rather than the rule. There have not been very many instances where local ordinances have been enacted in response to some kind of state or regional initiative.
Q: What do you attribute the relatively few number of local ordinances in the Midwest vis a vis the rest of the regions in the country? Why do the southeast and the New England states differ and what is going on that things are different here?

A: Well, I wish I knew more about the West. I know we did not find very many ordinances in the western states. I didn't show the West here, but at the end of our initial survey we had identified only 18 ordinances in this entire region. The small number of ordinances in the West seemed to be due to the fact that a number of the states had enacted fairly comprehensive state forest practices acts which served to preempt the local ordinances. You probably know better than I what the local and state forest practices regulatory situation is in the Midwest, i.e., whether or not state preemption is a factor here—I really can't give a good explanation for that.

Q: In the state of Minnesota there is quite an impressive list of cities and municipalities that are listed as Tree Cities. To achieve that status, they are required to have tree and/or related ordinances. So I am surprised by the small number of municipalities your report mentions for Minnesota.

A: Ordinances that were strictly what you might call street tree ordinances were not considered in this particular study. We do have the class of urban/suburban environmental protection ordinances, but the ordinances that we included here were not concerned with what someone did with the shade tree on the parkway in front of their home, etc. Our study focuses on ordinances that are primarily concerned with protecting green areas in urban settings or with regulating urban growth as it moves out into suburban areas.

Q: There are several metropolitan communities that have developed wooded area ordinances that regulate, based on diameter, the size of trees you can remove in developing the area. Some of these ordinances also have replacement requirements. I was also wondering about the state shoreland regulations as they relate to tree cutting; how do these fit into your study?

A: I can respond to that in a couple of ways. First, as I mentioned at the outset of my remarks, this work is being done as part of a comprehensive study for the 1993 RPA Assessment Update. The larger study mandates that we look not only at local regulation of forestry activities, but also at state regulation. In looking at state regulation, we are supposed to look not only at state forest practices acts—but also any other types of state legislation that impact upon forestry. Examples of these other types of legislation would include coastal zone laws, inland wetlands protection laws, scenic river protection laws, and shoreline protection ordinances. So these other types of statutes are being considered for purposes of the overall study. I didn't report on these other laws here because I have not been involved in these segments of the effort. As far as the fact that we may have missed some local ordinances, I would agree that this is almost certainly the case. The figures I've presented are now almost a year and half old. Given the rate at which these types of ordinances are being enacted, we realize that we are shooting at a moving target. I don't think anyone associated with the study feels we will ever have a totally accurate picture of the local regulatory situation. Indeed, each time that I've spoken on this particular topic, someone has come up to me afterwards and mentioned an ordinance that we had not identified. When that happens, we incorporate the new information into our database.
Q: Have you heard anything about whether or not the Supreme Court has accepted a case this year involving landowner property rights, and that some of the judges, particularly I think, Souter and Thomas, have already indicated in other statements that they are apt to go one way, the way of the individual in this case. Do you think that will have any effect on future trends?

A: I am not familiar with the particular case that you’re alluding to here. Of course, there is a long history of litigation concerning the impacts of public regulation on private owners and the question of when such regulation becomes a taking of the property that requires the payment of just compensation to the landowner. If you look at the cases in the past, you’ll find that for the most part the regulatory ordinances have been upheld. As long as you can show that the ordinance was directed at a valid public objective, and most ordinances concerned with environmental protection can show that they are addressing some valid public objectives, and as long as you can show that the landowner is left with some feasible, potentially profitable use of their land, even though it may not be the most profitable use, in most instances the courts have upheld the ordinances. Of course, the Supreme Court is becoming more conservative over time, and how this might affect these kinds cases in the future is difficult to predict.

Q: Is it possible the rural ethic is stronger in the midwestern states than in other states, i.e., where the population in the northeast is actually moving out of the cities into the rural areas and taking with them a more urban ethic?

A: I think that could well be a factor. I don’t really have a good feel for this, but I have the impression that within the northeastern area, local governments have always been a rather powerful entity compared to state governments—note that the idea of the town meeting arose in the northeast. Historically, local governments have been more influential in the northeast than in some other parts of the country. This might also help to explain why local ordinances have tended to proliferate more rapidly there.

Q: Could you say more about relations between local and statewide forest practices regulation and cases where statewide regulation overrides local regulation? How true is that regionally?

A: Well, other than to reinforce the point that I made earlier—namely that we found fewer local ordinances in states that have a state forest practices act—I couldn’t really add much more. I don’t know how many state laws explicitly preempt or preclude local regulation. I guess that since we observed fewer local ordinances in states with state forest practices acts, we just inferred that the state law had, so to speak, stolen the thunder from the localities.
Western States Experience with State Forest Practices Legislation

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INTRODUCTION

Your conference theme—Demystifying Forest Practices Regulation: Developing Your Minnesota Perspective—is intriguing. You are entering uncharted waters, and as resource professionals, you can determine where you wind up. Like foresters in Oregon, you will not be comfortable in designing forestry regulations, even though you must. Throughout your journey, you will encounter very diverse opinions about which path to take. Take strength from this diversity, and in the end you will wind up on a truer course.

I am excited and privileged to be here and share with you some of Oregon's experiences with forest practices legislation.

There are two parts to my presentation this afternoon. In the first part, I will give you a brief history of the development of the Oregon Forest Practices Act. This will include a brief history of the original Oregon Forest Practices Act. It will also include a brief summary of the 1987 and 1991 amendments to the Oregon law. This part of the talk has four major themes.

- What led to the original legislation, and the 1987 and 1991 amendments?
- What did the original legislation and the amendments do?
- The responsibilities of the legislature versus the Board of Forestry in the original act, and each of the major amendments.

In the second part of the presentation, I will provide you three ideas. You can consider them as you go about discussing and carrying out a Minnesota Forest Practices Act.

DEVELOPMENT OF THE OREGON FOREST PRACTICES ACT

The Original 1971 Act.

What led to the original act?
Oregon's Forest Practices Act was the first legislation of its kind in the nation and is celebrating its twentieth anniversary. Forestry leaders wanted to be sure that Oregon would always have viable, productive commercial forest lands, and protect its natural resources. They felt this was especially true considering foreseeable federal legislation on clean water and air.

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What did the original act do?
The act defined the resources it protects, and the types of activities it regulates. For example, it protected forest productivity by requiring reforestation after harvest, and addressing maintenance of soil productivity. The law addressed other resources as well, such as fish and wildlife and air and water quality. The law set minimum standards for practices including road construction, application of chemicals, harvesting, and slash disposal.

The law contained a strong statement of purpose. It provided for regional committees to advise the Board of Forestry on rule development and regional variations. It also gave direction for interagency coordination.

Legislative versus Board of Forestry responsibilities.
The original Forest Practices Act provided a strong framework for the Oregon Board of Forestry to develop policies and administrative rules. This included authority to develop basic administrative rules and enforce them. It authorized the board to develop an administrative program to carry out the purposes of the law.

Public participation in policy and rule-making process.
The Department of Forestry staff worked primarily with three Regional Forest Practices Committees to develop and propose administrative rules for the board to consider.

The statute set the composition of the regional committees. Each committee had nine members. The law required that six had to represent forest landowners. The regional committees would usually hold hearings and collect testimony from technical experts and other interested parties. They would then formulate their recommendations and present them to the Board of Forestry for adoption. Most of these rules were technically based. Usually the board adopted these recommendations as presented.

Oregon administrative law requires all agencies to conduct public hearings before adopting any administrative rules.

The 1987 Amendments

What led to the amendments?
Throughout the 1970s, and in the first half of the 1980s, the act remained largely unchanged.

In the mid 1980's, conflict developed between various interests over the relationship of the Forest Practices Act and Oregon's statewide land use planning laws. Under Oregon law, each county must develop and gain the state's acknowledgement of a comprehensive land use plan. These plans must meet specified land use goals. These include such goals as economic development, and orderly urban expansion. It also includes conservation of farm and forest lands, and protection from natural hazards.

In addition to the requirements on local government, the law addresses state programs. It requires each unit of state government to submit programs that affect land use to the Land Conservation and Development Commission for approval. The commission approves these programs based on
compliance with statewide planning goals and compatibility with local land use plans. The Forest Practices Act was the first program submitted to this process.

During the approval process, other agencies and interest groups commented on the act. Some groups claimed that the act did not adequately satisfy some of the land use planning goals. They referred specifically to protecting threatened and endangered species sites, wetlands and other sensitive sites.

State law prohibited counties from regulating forest activities. They had their comprehensive plans challenged for relying on the Forest Practices Act to meet these goals because the state land use agency felt the Forest Practices Act was inadequate.

In 1987, then Governor Goldschmidt’s natural resources staff formed a group to develop amendments to the Oregon Forest Practices Act. The goal was to address the relationship between the forest practices act and the land use planning laws. They also addressed other issues.

**What did the 1987 amendments do?**
The 1987 amendments resolved the conflicts between land use planning regulations and the Forest Practices Act. The new law specified that forestry activities are not subject to regulation by local government. The new law exempted the Forest Practices Act from land use planning goals and regulations, and review by the Land Conservation and Development Commission.

The amendments changed the number of members of the Board of Forestry, and dropped the required composition of the board. The new law created a seven-member board with no particular quota for membership, other than each of the three geographic regions of the state be represented. It specified that no more than three members may derive a significant portion of their income from activities subject to the Forest Practices Act.

The amended law required the Board of Forestry to adopt rules requiring detailed written plans for certain operations. The new law required a plan for operations within specified distances of Class I streams and other sensitive sites.

The law provided interested citizens a process to receive and comment on these plans. Any citizen who makes timely comments on a plan, may appeal the state forester’s approval of it. They must show that approval would result in a violation of the rules of the board.

The law clarified the role and reduced the responsibilities of the regional rules committees.

Finally, the law gave the board civil penalty authority to enhance enforcement and provide uniform treatment for violators of the act.

**Legislative versus Board of Forestry responsibilities.**
As in the original legislation, the 1987 amendments provided a strong framework within which to work. For example, the amendments gave the Board of Forestry exclusive rule-making authority for regulation of forestry activities on nonfederal forest land.

The legislation also put some requirements into statute. For example, the law directed the Board of Forestry to inventory and prescribe protection practices for four specific types of sensitive sites.
These consisted of sensitive bird nesting, roosting or watering sites, and threatened or endangered animal species sites. They also included significant wetlands, and biological sites which are ecologically and scientifically significant. It also directed the board to require written plans for certain types of operations.

Public participation in policy and rule-making process.
The 1987 amendments changed the role of the regional committees to be one of reviewing staff prepared rules for clarity, practicality, and technical feasibility. This is in contrast to the earlier role where the committees were more active in identifying issues and developing rules.

The department used an advisory committee to carry out the 1987 amendments. This advisory committee included members representing interests involved in developing the bill. A retired chief justice of the Oregon Supreme Court chaired the committee. The department used a consensus-building approach with the advisory committee to develop the various sensitive site inventory and protection rules. This was an expensive proposition because of the increased staff effort required to achieve consensus. It gained credibility for the Department of Forestry among many of the interest groups. It resulted in considerable agreement among those parties on the final product.

The department also held public hearings.

1991 Amendments

What led to the amendments?
In 1990, a combination of events and circumstances prompted forest industry leaders to conclude that additional changes in Oregon's Forest Practices Act were necessary. They believed changes were necessary for forest landowners to continue to grow and harvest trees economically in Oregon. There was a growing public expression of dissatisfaction with forestry practices in Oregon, particularly clearcut harvesting. The industry believed there was a potential for a successful initiative petition to ban or restrict forestry. They thought this might prove to be very damaging to forest landowners.

Industry leaders conducted input gathering sessions and consulted public opinion polls. They decided they would develop legislation to lead a move to more restrictive forest practices. Their intent was to exercise a greater influence on the nature of such restrictions. The outcome was the hard fought passage of Senate Bill 1125 within the last two days of Oregon's 1991 legislative session.

What did the amendments do?
The bill contains 35 sections.

It contained statutory language regulating some forest practices. For example, the law limits the size of clearcut harvests to 120 acres with certain exceptions. Landowners cannot create larger clearcuts on a single ownership without meeting certain conditions. The existing harvest area must be greened-up with reforestation of at least 200 trees/acre at least four feet tall. Otherwise operators must leave a 300-foot-wide buffer of standing timber.
Operators must leave at least two snags or standing live trees per acre. They must also leave at least two logs or pieces of downed wood of a certain size per acre. This applies to clearcut units greater than ten acres in size.

Landowners must begin reforestation of clearcuts, including site preparation, within 12 months after completion of harvesting. They must complete planting within two planting seasons. Five years after completing planting, landowners must, have at least 200 seedlings per acre, free-to-grow surviving on the site. This introduces mandatory stand maintenance to an already highly successful reforestation regulation. Further, the law directs the Board of Forestry to review its rules on exemptions from reforestation in changes in land use. Only legitimate changes to uses not compatible with forest cover shall be exempt from reforestation.

The board must review its classification of waters of the state and create a system with at least three classes. The law requires they pay particular attention to the protection of certain streams which are not major fish-bearing courses. These are perennial, relatively low slope streams, and have an important influence on downstream fisheries.

The amendments establish specific scenic state and U.S. highways and requires landowners to maintain visually sensitive corridors along them. Operators must leave standing trees of a certain minimum stocking density along these corridors when they clearcut adjacent lands. These trees must remain uncut until green-up has occurred in the adjacent units, and the replanted trees are at least ten feet tall.

The 1991 amendments require the state forester to conduct or contract out three studies. The first is a study of the availability of the native Pacific Yew. This tree is valuable for its use in producing the cancer fighting agent Taxol. The second is a study of harvest rates and cumulative effects. This study is to determine rates of harvest and growth in Oregon's forests and the effect on economics and community stability. Further it is to examine the cumulative effects of forest operations on various resources. These include soil, air, water, and fish and wildlife resources. This must address at least three distinct geographic regions of the state. The third study is to determine the relative role of forest operations in the decline of anadromous fisheries in western Oregon. This is to be done by examining existing literature and research. The authors of the study must then make any necessary recommendations to further protect habitat to restore the fisheries.

The law directs the board to adopt rules to restrict forest practices if the results of the study on cumulative effects show that is necessary. The amendments further direct the board to make rules granting the state forester authority to condition certain forest operations. For example, on operations where there is a significant potential to damage protected resources, the state forester could require written plans. These plans would address the timing, extent, and rate of harvest.

The law gives the Forest Practices Act exclusive authority to regulate water quality on forest land. It did this by clarifying the roles of the Environmental Quality Commission and the Board of Forestry.

The Environmental Quality Commission, which has the primary responsibility to carry out the federal Clean Water Act in Oregon, sets water quality standards. The 1991 amendments require the Environmental Quality Commission to recognize the highly variable natural conditions of
forest runoff in setting water quality standards. The Environmental Quality Commission may petition the Board of Forestry to revise best management standards.

The new law prohibits the Environmental Quality Commission from taking direct enforcement action against a forest operator if the operator follows best management practices.

The Board of Forestry is responsible for developing and enforcing the best management practices for silvicultural nonpoint sources of pollution. The board may petition the Environmental Quality Commission to revise its water quality standards.

Finally, the law appropriated an additional $2.9 million in the Forest Practices Program's biennial budget. This includes about $1.1 million to conduct the studies described above.

**Legislative versus Board of Forestry responsibilities.**
The 1991 amendments retained some of the framework for the board from the earlier laws. However, to a much greater extent than in earlier versions, the legislature set into statute certain forest practices requirements. This takes the responsibility for developing forest practices rules out of the hands of the board, and resource professionals, and gives it to elected officials. It reduces the board's flexibility, because the legislature must enact a law to change these practice specifications.

**Public participation in policy and rule making process.**
The department and board have not decided on how to involve the public as they carry out the 1991 amendments. The 1991 amendments did not change the part of law on the regional committees, and their role will remain one of technical review. The time frames set by the legislature are very short. The department will likely not have the time necessary to achieve the degree of consensus they did in carrying out the 1987 amendments. The aim of the public participation effort will be to achieve enough support so the board and department can carry out the amendments successfully.

The department will also hold public hearings.

**SUGGESTIONS ON HOW YOU MIGHT PROCEED**
The second part of this presentation offers you three ideas, based on the Oregon experience. You may wish to consider these as you go about discussing and carrying out a Minnesota Forest Practices Act. First, always clarify policy issues. Second, try and look at whole systems when developing forest policies and rules. Third, give both the regulators, and the regulated public flexibility to deal with technical issues that science has not adequately addressed. There are many other ideas that we would be glad to share with you. Please see me after the presentation if you would like to discuss this further.

*The first suggestion is always clarify policy issues, both for decision space, and identifying the basic questions.* To give you an example of what I mean, Oregon has developed a series of policy continuum. We use these to help focus on policy decision space. In a simplistic way, these continuum provide a context within which policy makers can choose options. For example, there is a continuum for wildlife. The idea is to focus on what the Forest Practices Act goal should be
for wildlife on lands protected under the Forest Practices Act. The continuum has as its extremes
the maximum biological potential for these lands, and extinct. The policy choices within these
extremes include the Department of Fish and Wildlife goals for wildlife. It also includes viable
populations, threatened, and endangered. By focusing on this policy continuum, it helps policy
makers to understand the choice in regulating wildlife populations and habitats on nonfederal
forest lands.

Here is another idea that we use as we develop policy and administrative rules for the program.
We identify the basic, or root, policy questions early in the policy or rule-making process. By
answering these basic questions, all other policy issues and questions flow from the answers. For
example, the 1987 Oregon Legislature directed the Oregon Board of Forestry to develop
inventories of specific types of sensitive resource sites. The law also charged the board to develop
rules to protect these sites. One of these types of sites was sensitive bird nesting and watering
sites.

The department and the advisory committee had difficulty getting started on this group. Finally,
we collectively realized that we had policy anchor points to grab onto. So we identified the
following seven root policy questions.

- How many sites should the inventory contain?
- How are protection levels determined for inventoried sites?
- Are exceptions to protection of an inventoried site allowed?
- When should the board decide about the level of protection?
- How does the department define "site" when referring to the area that, within 300 feet,
  requires an appealable written plan?
- How does the department define the area that requires special management or protection
  around the site?
- How are landowners told of a site on their land?

The department staff wrote an issue paper which discussed each of these questions. The
department and advisory committee developed options for the board to consider to resolve the
questions. The department then made recommendations to the board. The board was then able
to focus on a few issues, and come to grips with them. The department could take the decisions
to these basic questions, and go ahead with the rest of the process. Once we started down that
path, the process went a lot faster. We were able to gain consensus on most of the remaining
issues.

The second suggestion is to try and look at whole systems when developing forest policies and
rules. This is especially true in water quality issues. I can give an example of what I mean here.
This example deals with regulation of nonpoint sources of water pollution. In Oregon, the
Department of Environmental Quality is the state agency responsible for water quality. Oregon
law delegates control of forestry nonpoint source pollution to the state forester, through the state
Forest Practices Act. There are three main causes of nonpoint source pollution. These are agricultural, urban, and silvicultural runoff. Oregon only regulates silviculture. An existing regulatory program can become a magnet for further regulation. In the past, the Department of Environmental Quality often wanted to focus on forestry nonpoint source pollution problems and issues. This is because there was a regulatory program in place. In response, the state forester and Board of Forestry argued that the state must examine all the major causes of nonpoint source pollution together. I recommend you strongly urge decision makers in other regulatory agencies to consider a systematic approach to nonpoint source pollution issues.

The final advice I would offer is to give both the regulators, and the regulated public flexibility. They need this flexibility to deal with technical issues that science does not adequately address. The regulated publics believed the legislature and board based their laws and rules on science under the first Oregon Forest Practices Act. In the last twenty years, however, we learned there are some very complex forest interactions that scientists don't understand very well. In these cases, we don't feel comfortable about designing forestry regulations. This is true, even though the law requires the board to develop them.

We learned the most effective way to develop and carry out these rules is to allow foresters, wildlife biologists, and other resource professionals to use their professional judgment when they carry out the law. We think this is a cornerstone of our law, and I strongly urge you to consider using this same approach.

CONCLUSION

In this presentation, I gave you a summary of the development of the Oregon Forest Practices Act.

The 1971 law came about because forestry leaders wanted to be sure that Oregon would always have viable, productive commercial forest lands. They also wanted to protect its natural resources. They also believed that the state should develop forest practices laws, and not react to the federal government.

The legislature made amendments in 1987 primarily to clarify the relationship between two state programs. They also wanted to be sure the Forest Practices Act adequately protected resources formerly by county comprehensive plans.

The 1991 legislature changed the law again. This was primarily because forest industry leaders believed that without any changes, there was a potential for a successful initiative petition. They believed such a petition might ban or restrict forestry. They thought this might prove to be very damaging to forest landowners. They wanted to exercise influence on the changes to the law.

The original Forest Practices Act provided a strong framework for the Oregon Board of Forestry to work. The board developed the forest practices requirements in rule form.

As in the original legislation, the 1987 amendments also provided a strong framework within which to work, although the law did contain some language directing the board to do certain things. The board continued to develop rules governing forest operations.
The 1991 amendments set into statute forest practices requirements to a much greater extent than in earlier versions. The law reduces the board’s requirement and ability to develop rules. Thus it also reduces the role of resource professionals in developing forest practices requirements. As a professional forester, this troubles me.

In 1971, the public participation goal was to develop rules that the forest landowners would support. To achieve this goal, the Department of Forestry staff worked primarily with three Regional Forest Practices Committees, consisting of principally forest landowners, to develop administrative rules and policies. The department often saw this as a technical rule-making process, and therefore did not seek broader public involvement or support.

In 1987, the goal was to achieve consensus from a variety of interests. The department realized that a variety of interests were now stakeholders in the Forest Practices Act. Therefore the department used a consensus building approach with an advisory committee made up of people representing a variety of interests to carry out the new law. The advisory committee helped to develop policies and administrative rules.

In 1991, the goal is to achieve the necessary level of public support to allow the board and department to carry out the amendments successfully. The department and board have not decided on how to meet this goal.

Oregon’s evolution in involving the public in the policy and rule-making process raises an interesting question in my mind for you folks in Minnesota. I wonder if the department had used a different public involvement strategy in 1971 that included more diverse interests, if this would have resulted in a better educated public in 1991. Further I wonder if a more involved and better educated public might not have been so dissatisfied in 1991, which in turn might have reduced the fear of the forest industry about an initiative petition?

The public will at times support you, and at other times severely criticize you. Pay attention to what people tell you. Let them know their ideas are important. Explain to them why you did or didn’t take their ideas. They will then allow you to determine the course.

I also offered you three suggestions based on our experience in Oregon.

The first suggestion was always to clarify policy issues. You can do that by clearly defining the policy decision space. Then you can identify up front the root policy questions within that decision space. Then you can develop the options.

The second suggestion was to try and look at whole systems when developing forest policies and rules. If agricultural practices, urban runoff, and forestry practices affect water quality, then deal with all of them. You will develop better regulatory policies, and you will avoid focusing forestry because the state already regulates it.

Finally, I suggested you give both the regulators and the regulated public flexibility. They need this flexibility to deal with technical issues that science has not adequately addressed. You will likely find there will be some interactions that scientists don’t understand very well. In those situations, allow the professional foresters, wildlife biologists, and other resource professionals to
decide issues. If possible, give the resource professionals the goals or targets, and let them decide how to achieve them.

So, good luck to you, and I wish you well on your adventure.

Thank you for allowing me to share with you a bit of Oregon's history and experience.

Questions:

Q: You seem to have that whole picture including the urban and agricultural sectors, how do you pull that off...I mean it's easy to say, but how did you actually achieve this?
A: Well I didn't say we pulled it off, but thank you very much for suggesting that. Actually, there are a number of approaches to that. One of them is just strictly political. The regulating agency for water quality in Oregon is the Department of Environmental Quality, and their commission is the Environmental Quality Commission. We've actually had discussions between the two boards and the commission. The legislature also had something to do with that during the 1991 amendments in that they did address the relationship between the Forest Process Act and Water Quality in some ways. But I think mostly it's a matter of just starting at the very beginning when the EPA or whoever was going to be looking at nonpoint source and just pretty much insisting that we look at the whole thing all at once. It's not easy, and I don't have any cookbook solutions for you. I guess the point is not to tell you how to do it, just do it. Kind of like the Nike commercial says. Because if you don't do it, you'll find yourself a target for increasing regulation on forest land with agriculture not regulated. There is some discussion, by the way, in Oregon and I'm not sure how far it's going to go, but there is some discussion of an agriculture practices act. So, perhaps, in the next three to five years, we might see that develop in Oregon.

Q: What is the relationship between the spotted owl and the Forest Practices Act on private lands?
A: The spotted owl, as most of you know, is federally listed as a threatened species. It's also listed under state law as a threatened species and therefore comes under the jurisdiction of the Forest Practices Act. The board is directed to adopt rules to protect nesting sites of threatened and endangered species. So, there's one connection. Second connection is that we've had a lot of discussions in our agency with the Department of Justice. The Department of Justice has pretty much told us that, yes, you are required to do something and, no, we don't know exactly what it is. You bring back a proposal and we'll let you know if it's okay or not. My wife is an attorney, so I can tell you, that's exactly how they think, too. Anyway, you probably know that the federal government often gets involved in cases concerning threatened and endangered species. They have some guidelines for the bald eagle and some for the spotted owl. One alternative that we considered was to adopt the federal guidelines, which are draconian in nature, in my view, and which, by the way, the states of California and Oregon, and Washington did do. They had actually adopted those federal guidelines as trade rules. We took a different approach. We found the point where the Department of Justice says if you go a tenth of an inch more we will not support you; and we said, okay, we'll stop right here. And that was that. We have
a 70-acre core area around the nest that, fundamentally, no activity takes place in. And then we issue a caveat saying that our act in no way relieves you of the responsibility to follow the federal guidelines. I would like to make myself clear, I probably don't need to, but, I'm not implying with my weird sense of humor that it's not important to protect the spotted owl. I don't mean that at all. What we didn't want to do in Oregon, though, was to basically take a federal regulation and make it into a state law. That's really what we were trying to do. Long answer, hope it is satisfactory.

Q: What does it cost in your state to administer your forest practices?
A: Oh, yes, I told you I'd mention that and then I didn't. In Oregon, the Department of Forestry runs on a biennial budget, which means a budget that goes two years. That runs about one hundred and twenty million dollars in total for all programs. About twenty million of that is state general fund. The other one hundred million, basically, is state land revenue, protection funds, federal funds, on and on. The Forest Practices Act is ten million dollars of which 60 percent is general fund, and 40 percent is what we call harvest tax. The harvest tax is basically paid by all people that harvest timber in Oregon, including federal land. So, to answer your question, it's about ten million dollars, six million biennial, six million of which is general fund. It's really the cash cow for the forestry department. General fund is a scarce commodity in Oregon and, yet, the legislature is really, really glad to have a strong Forest Practices Act program and they are certainly willing to fund it.

Q: You talked a little bit about how Oregon used to have an approach where the plans and regulations were related to specific sites and resources versus all private forest land. How does that compares with other states and why that option was selected?
A: Okay, I'm not sure if I understood your question. I think your question is that the Forest Practices Act talks about nonfederal lands and why did we choose nonfederal lands?

Q: It appears to focus on selected resources ...
A: Okay, how did we pick the resources that we were going to protect?

Q: Yes, why that approach versus all forest land?
A: Okay, help me out if I'm missing the point here. I'm not sure what you mean by all forest land. Again, going back to what Paul Ellefson said this morning, I think his point was that we should have a strong sense of purpose and a strong set of objectives. Oregon's law does that by identifying what the resources are that the act will protect, and then what the activities are that will be regulated to protect those resources. So, there's the setting for the statute in terms of why they were chosen as opposed to just forest land in general. I think generally it's the idea that the legislature wanted to identify the important public resources on private lands that they felt were important enough to be protected by regulation. I'm not sure if that answers your question or not. I'll give it a second try or a third try.

Q: So it was just a set of means of eliminating the areas that we have that would require a written plan. If you don't have one of those selected resources on your land, you don't have to have a written plan or meet all of the requirements?
A: Okay, now I think I maybe understand your question better. There are certain types of resources on private forest land that need to be protected in Oregon. Now, a small subset
of those include resources where, if you have operations near them, you must have a written plan. And, those were chosen, basically, through a political negotiation process.

Q: If a Spotted Owl happens to nest on my 80 acres of land, and I can't go out there ... as far as restricted kinds of activities... then isn't that a taking of property?

A: The gentleman before me from Washington, D.C., talked a little bit about that. Let me answer the question in two ways. First of all, there is no system in place to compensate land owners if they have a spotted owl on their land, that's point 1. Point 2 is that the forest industry associations, two or three of them, are just looking for the case to test this, i.e., finding 70 acres where all economic value of the land has been removed. And when that happens, I imagine probably the choices will be two, I would guess. Maybe there will be more. One choice is to simply compensate the land owner, which is what I suspect would happen. The other choice would be to impose less restrictive practice guidelines, which I don't think will happen. So, I think what will happen is that it will go to court. The court will say yes, all economic use of the land is taken and the land owner is entitled to compensation. Okay? Thank you.
Eastern States Experience with Forest Practices Legislation

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I guess I could call myself a "Maine-iac". After close to fifty, almost sixty years of Maine, that kind of qualifies me. I'm telling my age. It's with great pleasure that I do come to you this afternoon and discuss with you Maine's Forest Practices Act.

Although the act is not as detailed as acts in other states, the act we have developed really fits the needs for Maine. As I began to prepare my remarks, I became aware that another fellow, by the name of Pete Ludwig, who works for Champion International, gave a similar speech in Michigan about a year ago. He shared a copy of it with me and gave me permission to use his remarks as I saw fit. And as a result, I'm drawing very heavily from his remarks because he did a good job in summarizing the issues.

In 1989, Maine passed what has become known as landmark legislation for the state. This legislation with ensuing rules contained significant restraints on activities in a state which has a long history of private forestry and concern for private property rights. I was and continue to be an active player in the development of these rules and in working with the act itself.

I would like to present this discussion in four sections. First, I would like to give a little background information on what led up to the development of the act. What combination of forest conditions, public perceptions, and political-will actually started the ball rolling in the state of Maine. Next comes probably the most important part of the act, the process used to forge the present day regulations that we have. I will then briefly highlight some of the contents of the legislative product. Finally, I will share with you some of the results after one year. This is a relatively new experience for us, and we're still feeling our way along.

Aside from certain crustaceans that appear in Maine waters that turn red when being boiled, you can say that the forests are the essence of Maine. To stay clear of a battle of superlatives, I can say that the economic and cultural importance of the Maine woods, to its people and its visitors, is comparable to that here in the Midwest.

I will keep the statistics to a minimum. Only enough to give you some idea or some feel for the state of Maine. We have about seventeen and a half million acres of commercial forest land in our state. About eleven million of these acres are owned by fifteen forest products firms, primarily paper companies, but we do have some other firms in other portions of the state. There are some small forest land owners. We have about eighty thousand small forest land owners owning in the neighborhood of ten to a thousand acres each. These small ownerships account for about 30 percent of our commercial forest land. Public ownership in Maine is very small. We have less than 5 percent of our land in public ownership. This low figure reflects the longstanding practice of private land being opened to public use. It is by and large a working forest. Few people could call it a wilderness.
We have integrated sawmill operations, further increasing the demands from our forests. The spruce budworm, an unwelcome guest from the Canadian provinces, arrived in the mid-seventies. This pest, through mortality and growth loss of fir, spruce, and hemlock, competed, of course, with our mills for the big wood. Concern for the drain of the spruce-fir resource required us to put together a fairly sophisticated computer modelling program. That allowed us to check a shortfall in our spruce-fir resource to meet the demands for our mills in about twenty or thirty years. The spruce budworm epidemic accelerated clearcutting, as landowners tried to salvage as much dead and dying spruce and fir as was possible. Issues of logging safety and the small size of spruce trees salvaged in the operations caused a lot of rapid mechanization. Also bringing along a lot of mechanization was the high worker's compensation rate in the state of Maine.

Maine has entered into the wood for energy business, with over ten stand-alone plants currently on-line, in addition to about fifty cogenerating units at mill facilities. This caused a fairly large biomass harvesting operation to occur, however clearcutting was not necessarily the sole harvesting practice used.

And then entered the public. "People from away," as we call them, migrated to Maine in search of what they thought was the good life, and I agree with them. Outdoor recreation mushroomed in concert with the fitness craze. Seemingly all outfitted by L.L. Bean (you recognize that name) and directed by an excellent travel atlas of the state, the recreationists found the road systems and migrated into the deep woods. In an effort to control this runaway migration, a system of gates and fees were introduced into the north, and that created a lot of headaches. Environmental awareness soared in the state. This was mentioned by Paul Ellsston earlier this morning. People became aware of acid rain, ozone, wildlife, and the list goes on. As you would predict, this mixture was very combustible. Forest practices got high exposure and folks did not always like what they saw. Thinking globally and acting locally seemed to be translated into, "Have you criticized your landowner today?"

Various towns began to develop their own harvesting rules, called ordinances. I'm going to disagree with an earlier speaker because, at our latest count, we have about 27 towns that have developed their own ordinances. Most of these ordinances were, or are, one issue ordinances. The issue, primarily, is clearcutting. To add fuel to the fire, a corporate landowner fell prey to a leverage buyer, and in the dismantling that followed, faith in the corporate long-term commitment took a beating.

Almost concurrently with all of this going on, there was a tremendous boom in the development of rural Maine. There was aggressive marketing going on in places like Boston and New York selling the state of Maine, if you will, to these developers. Some of the most desirable recreational land became private. Private in the sense that it was not open to the public as other private lands had been for generations. And there was a tremendous threat of a loss of public access to these lands because people from away were buying the lands for their exclusive use. So these were interesting times in Maine. A lot of effort went in to try to shape the trends that were about to occur.

Now, who were some of the characters, who were some of the people that were involved. The small woodland owners were represented by an organization we call a Small Woodland Owners Association of Maine. They have a membership of about fifteen hundred. Industrial timberlands, land-management companies and both large and small landowners joined with some three hundred
other forest products firms to form what they call the Maine Forest Products Council. It's important to remember these kinds of organizations. This particular organization is very capably led and has very high credibility with our state legislature. Mainline environmental groups included the Maine Audubon Society and the Natural Resources Council of Maine. Both organizations have permanent staffs specializing in forestry matters. And, of course, the guardians of the Maine forest, the public guardians of the Maine forest that is, include the Department of Conservation (DOC) which I'm a part of. We have a number of bureaus who deal directly with forestry issues. One being the Maine Forest Service, another is the Land Use Regulation Commission (LURC). This commission is a zoning organization which does the land use zoning in the unorganized parts of the state, roughly, one-half of the state. There are, of course, other players outside of DOC. One such agency is the Department of Environmental Protection. This is an organization which deals primarily with water quality issues. They have developed model zoning ordinances to control what happens in the shoreland zones around some of our larger bodies of water, including timber harvesting. Then we have others, such as the State Planning Office, which administers the Critical Areas Program. This is a voluntary protection program for some of the areas that we want protected.

With this background, let's move into the politics and trace the steps that led to today's regulatory package. In 1985, a legislative push was made to do something about the forest. They produced what we call the Citizens Forest Advisory Council and a Forests for the Future program. In effect, what this did was postpone action pending a thorough study and report. By the way, this organization and program have subsequently been dissolved. In 1986, Maine Audubon invited participation in, what they called, an Industrial Forest Forum to address the spruce-fir shortfall that I spoke of a little earlier. Many, including industry, joined in since the forum was not tied to any legislative initiative. Also at that time, Audubon leadership was committed to cooperative action and the organization had a track record of responsible positions for forestry matters. In addition, some of the hard liners had given way to some of the hard liners in other areas. Government, as well, had given way to a new generation of managers who believed that the public had a legitimate stake in private land.

There were some common objectives. Some of these show a clear definition of the public's interest and the state's role in Maine's forest economy:

- More public support for the small landowner.
- There was interest extending the Land-Use Regulations (water quality regulations) statewide. As I mention earlier, LURC is concerned only with the unorganized parts of the state. They have developed standards dealing with water quality issues in that part of the state. Now there is some interest in extending these standards statewide.
- Better and more reporting of forestry activities. We needed that.
- And then, a removal of disincentives for management, such as unfavorable taxes.

There was another factor. The environmental groups saw industry as an ally against what was a new black hat in town, that being the developer. They both saw, or at least felt, that the developer was an enemy to both, and this helped them get together, join forces, and eventually come up with the act as we have it. As this forum progressed, talks between the groups flowed very freely. The agenda changed, however, from a spruce-fir shortfall to devising a scheme to ensure the long-term sustainability of the forest and to consider the total forest resource including timber, wildlife, and recreation. Of course, there was some philosophical differences between the groups. Both sides believed that they were right.

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In 1988, the dynamics of the Audubon Society changed, and there was no clear consensus, if you will, on how to proceed, or at least how they perceived that they should proceed. So on their own, they developed a model bill and presented it to the legislature. However, the legislature at that time said—this is not the year. Landowners were split. The legislature had other issues and they just did not have time that year to deal with it. Later on, they reconsidered what they had done and at the same time the Maine Forest Products Council realized that there was going to be, very soon, a tremendous effort to push a forest practices act in Maine. Meanwhile the Audubon Society withdrew their initial legislation, but then they decided to resubmit it. At the same time, the Maine Forest Products Council, saw the handwriting on the wall, and decided they had better put something together and they did. As you would expect, the Maine Forest Products Council, being representatives of industry, and Maine Audubon, the representatives of the general environmental community, had some tremendous differences. The legislature didn't feel that they could deal with these two opposing views at the same time and they instructed the Department of Conservation to get the groups together to negotiate changes and see if there could be some consensus between the two ideas. In fact, the department spent a number of months reviewing the two proposals and eventually were able to present to the legislature a product which answered most of the concerns that both parties were trying to resolve.

Now, let's take a look at some of the things that did come out as a result of this effort.

- First of all, the Maine Forest Service was given a strong advisory role.
- A Forest Management Information Clearinghouse was set up as part of this package.
- The State Field Forestry Staff was strengthened, after it had been gutted earlier. (It is now back to sixteen positions where, up until recently, it was only nine.)
- A Natural Resource Educator position was also developed.

This whole package developed what we call a harvest notification data collection and reporting system which strengthened the reporting requirements in particular. We have had reporting requirements for a number of years, but there were no teeth in the law. If landowners did not report their activities, there was really nothing we, at the state level, could do about it. This new package changed that and put a fine on noncompliance for landowners who did not report.

The package discussed taxation. I've heard that in the State of Minnesota you have a Tree Growth Tax law. From what I've been able to gather, your law is similar to the one we have in the state of Maine. This particular Forest Practices Act added strength to the Tree Growth Tax law in that it required landowners over the next ten years to develop a forest management plan for all lands in tree growth. Why do I say ten years? They tiered the process where, for example, people who were in tree growth as of the enactment date would have ten years to prepare while new owners going into the Tree Growth Tax program had to have a plan before the land would be accepted. Another provision in the tax package was intended to help pay the cost of these forest management programs. The state saw fit to enact an income tax credit of up to $200 for landowners who did have plans prepared. That's to help pay the cost of forest management plans.

We also have another tax law in the state which we call the Commercial Forestry Excise Tax. This tax applies to forest landowners with 500 acres or more. It is intended to pay the cost of fire protection throughout the state. Nearly all of the cost of fire protection was paid by this tax. Well that was not fair in the opinion of these landowners. Thus, through the Forest Practices Act, it was changed so that the general fund now does pay 50 percent of the cost of forest fire
protection. Another provision in the taxation that came as a result of the Forest Practices Act was that the tree seedlings used for commercial forestry became exempt from the state sales tax program.

The last area that I will talk about is the forest regulations themselves. The act did little more than define the structure of the regulation. It left the fleshing out to be done via rule making by our Department of Conservation. You heard this discussed earlier this morning. The statute set the stage for the forest practices regulations, but the specifics were to be developed by rule making. I strongly urge that if you in Minnesota do that, you'll be happier if you put the detailed stuff in rules. Rules can be changed a heck of a lot quicker and easier than a statute can be changed. It was interesting the way my boss put it, referring to our experience in Maine, he said, "the legislature whipped up the frosting, but left us to bake the cake," and I think that's true.

So, we went through a process where, once the statute had been passed, we were faced with developing rules. We held 15 workshops throughout the state, gathering information on what the rules were to cover. We went to the public to find out how we should approach regeneration and clearcutting matters. (By the way, this was all done by the Department of Conservation; we had no legislative advisory committee. This was a job that the department had to do on own.) In addition to the workshops throughout the state, we assembled an ad hoc committee made up of foresters, wildlife, environmentalists, etc. to help us review the different proposals for dealing with the issues. We also had the Citizens Forestry Advisory Council as a sounding board to help us zero in on the rules that were being developed. We depended very heavily on our Department of Inland Fisheries and Wildlife to deal with the wildlife aspects of what the rules were to cover. After this was all put together, draft rules were developed. Then we then went back to the public in the official rule-making process. The results were rules dealing with clearcutting and regeneration. They went into effect in January 1991.

What are some of the specifics that the rules deal with? I've already mentioned regeneration. It requires that within five years following the harvest, there must be adequate regeneration and the rules themselves spell out exactly what that means. For example, it's got to be a minimum of 350 acceptable tree seedlings per acre on the stand within five years following the year of the harvest. We did not have very much difficulty coming up with the regulations for regeneration. In the state of Maine, we're rather lucky in that if you go cut an acre of forest land, almost instantaneously it comes back to trees.

Next, we were required to deal with clearcutting. Clearcutting is specifically defined but we had a hard time defining what was a clearcut. It's now specifically defined as a harvest area over five acres in size. The rules basically say that any cut that reduces the stand below 30 square feet basal area per acre within a 10 year period is, in fact, a clearcut. The statute, and then the rules themselves, state that clearcuts over 50 acres must have a management plan prepared for that type of a harvest. Additionally, the management plan must be kept in effect until at least ten years has passed and the softwood regeneration reaches at least five feet in height, or the hardwood regeneration must reach ten feet in height. That plan must remain in effect until those three or at least two of those three conditions have been met, i.e., until the height of the softwood and the hardwood are reached and the ten years have passed.

In our statute, towns still retain the right of local regulation. Home rule is alive and well in the state of Maine. We have a statute that, in fact, addresses home rule and it addresses it in a very
broad way. However, the Forest Practices Act says to the towns: yes, you may develop your own forest harvesting regulation or ordinance, but you must consult with the Department of Conservation in doing so. We've had probably six or eight towns to date that have been in consultation with us as they continue to develop their own regulations.

Finally, the legislation did put some teeth in the laws. Violation of any portions of the Forest Practices Act can draw a fine of up to $1000 and each day of the violation is considered a separate violation. So if you're supposedly in violation for five days, you could be subject to a fine of up to $5000.

In a nutshell, I've reviewed what the Maine Forest Practices Act covers. I think you will notice it is, in our opinion at least, a very simple act. We've tried to keep it as simple as we could and still meet what we felt the public wanted. I have not gone into a lot of the specifics, but I'd be glad to do so, I guess I'll stop right there and say that I'd be glad to answer to answer any questions.

Questions:

Q: What effect has the act had so far on your service forestry programs, that is for other programs the Maine Forest Service is involved with?
A: Of course, we've had to put the implementation of the act onto the backs of our current workforce. I mentioned the fact that the act itself gave us up to 16 forestry positions—that was seven more than we had at the time. Because the state of Maine is in such difficult financial shape, we've lost those positions. So, in fact, implementation of this act has been put right on the backs of our current force, meaning that our foresters now, instead of being out advising landowners—yes, they still do that—they also have to be our enforcement force for the Forest Practices Act. I might mention, as far as enforcement is concerned today—now remember the meat of the act didn't go into effect until this past January—we have been more in an educational mode rather than enforcement mode. If we find what we perceive to be a violation, we will do everything we can, and have been to date successful in this, to help the landowner turn it around and do it correctly.

Q: What is the total number of acres covered under your program?
A: It's the full state of Maine. We have a very small ownership by federal government. I guess technically the federal lands are not covered. But state lands are covered and, of course, private lands and most of Maine is privately owned.

Q: With you budget restraints as they are, how far behind has the rest of your staff fallen?
A: I don't know. I know that in talking with the field staff they're just being swamped.

Q: Does the forestry program that you set up for regeneration stay with the land and not the landowners?
A: The regeneration requirements basically say that it has to meet the standard in five years following the harvest, thus it goes with the land. For example, if I own the land, have it harvested, and next year decide to sell it and you purchase it from me, that requirement, then, is on your shoulders.
Q: Can you explain the forestry licensing portion of this bill or what is now required in Maine to practice forestry?
A: Practicing foresters in Maine are required to be licensed. I'm a licensed professional forester. It's not a part of this bill. In order for me to practice forestry, I must be licensed to meet the standards which the Board of Licensure of State Foresters, as I think they call themselves, have set up. It's a state licensure board, that's a board entirely separate from the Forest Practices Act.

Q: I'm curious about how you formulated the rules for the practices act. How did you handle prevention management and the use of herbicides?
A: The use of all pesticides in the state of Maine are under the administration of the Department of Agriculture, specifically the Pesticide Control Board in Maine. And so, we in the Bureau of Forestry and the Department of Conservation do not have anything to do with the use of any pesticides, be it insecticide or herbicides.

Q: Currently, then, the use of herbicides or any pesticides are not at all covered under the Forest Practices Act in Maine?
A: That is correct. I think you mentioned best management practices.

Q: No, I was talking about vegetation management.
A: Okay, since you brought up best management practices, we have developed a set of silvicultural best management practices, though not required by the act itself, because that comes to us through the federally mandated Clean Water Act. However, the powers that be within the state decided that we wanted these best management practices to be guidelines only, and that's what they are now. I might mention, and I don't know that we're unique in Maine, but besides the best management practices to protect clean water within the state, there are other rules and regulations on the books. For example, we have one rule that says "thou shalt not pollute or cause sedimentation to go into a stream." And if you do allow that to happen you're subject to a lot of penalties. That's administered by the Department of Environmental Protection. This is what they had said to us: if they find sedimentation going into a stream as a result of a forest practice, primarily a harvesting practice, and if that harvester, upon investigation has done the best they can to follow the best management practices, they will give them just a slight slap on the wrist. However, if they find that there was an infraction and there was no attempt to follow the guidelines, they're going to get clobbered. So, in a way, the best management practices are guidelines, but there are other rules on the books, so if they fail or are not implemented, it could mean some serious difficulty for the perpetrator.
Development and Evolution of Wetlands Regulation

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You'll note that what the moderator described doesn't exactly match the title that's in your program. I'm really kind of glad about that. When I talked to Dave Zumeta here earlier this week, he explained that what he was really looking for was a political spin on what happens with resource policy. I was glad to hear that because, notwithstanding the fact that faculty are sitting out here, I'm going to take my poke at the university system. One of my pet peeves of the University of Minnesota—all of our institutions of higher learning—is that they crank us out as resource professionals and do a very poor job of preparing us for the political realities in the world that we're going to work in. We walk out of the doors with the textbook solutions tucked under our arms and our mission from God to save the universe or harvest some timber. Nobody ever talks about the fact that someone else is going to make most of the decisions for us. That's the political process that drives the democracy that we live in.

I'm no forester. And I'm less of an expert on the concept of a state forest practices act than I am a forester. So that should scare you a little bit on how I'm going to handle this. But what I probably do bring to this is some experience with running regulatory legislation through a legislative body. I would encourage you not to freeze up and panic; it's generally a process that's good for some good entertainment. I think that there are about four things I would encourage you to keep in mind as you approach conversations and decision making on a Forest Management Act.

The first one is to maintain some objectivity. Don't come to the issue with your mind made up that it's good, bad or otherwise. Stay objective about whether there is, in fact, opportunity in the process. Second, I want to encourage you to think very carefully about how you're framing the issues associated with that act. As I get into the wetlands discussion, I'm going to describe how we tried to do that on the issue of wetlands. Third, I would strongly encourage all of you to have some empathy for the other person. I doubt that I've dealt with anything that was as emotional as the wetlands bill. You know I worked on Reinvest in Minnesota (RIM). That was nonregulatory but it took us a couple of years to pass it. The Groundwater Protection Act of 1989 was a heavily regulatory piece of legislation. I also had a little fun with legislation that bans the use of groundwater for most of the cooling systems in the Twin Cities—that's 106 buildings including 3M, Honeywell, Pillsbury, General Mills. There were some heavy hitters involved in that. But since that legislation passed, I have not touched anything that has had the range of emotions associated with it that the wetlands legislation did. It's a visceral issue for most people, and particularly for the agricultural community. They come down very strongly on one side or the other of it. What I found is that it really helped in tackling that kind of a sensitive issue if, in fact, you could convey that you understood the other person's concern. If you could show some empathy for the fact that they had some issues that deserve consideration and discussion. Finally, I'm going to suggest that you're going to have to have patience. My experience is that on legislation of this type, you're looking at a minimum of two, more likely, three years to see it pass. Because there's almost an evolutionary process that occurs. When it first pops up, there are knee-jerk reactions and a bunch of posturing that goes on. Then there's a kind of educational.
process where people start asking questions and others go out and start answering those questions. Then the politicians go through a process of dipstick ing the public to find out how they're reacting to the issue. Then you really get down to business and start moving and doing something with the legislation. I would be extremely surprised to see a forest practices act passed in the first year of discussion on the legislation, but particularly in this year, given the budget situation and the fact that it's an election year. The time to pass controversial resource legislation is in an off-election year. You don't do it before they go to the polls, it is just that simple. So I suspect we are going into a session where there will be a lot of discussion, a lot of posturing and opportunity for education, and no real substantive action taken on a forest management act.

What I am going to try to do now is draw from a presentation that I have done on wetlands to set the stage for an approach to the political process. This will be a good barometer of whether I can accomplish that or not. I need to tell you that I am one of those weird, distorted people who enjoy the legislative process. Ray Hitchcock, who's sitting around here somewhere, is constantly amazed because I kind of get energized by the process and playing the games to move stuff through. That trait will probably come through in this and I hope you don't hold that against me. In fact, it has got to be done, and somebody has got to be dumb enough to stand up and want to do that. I will try to integrate some of why I do that as we go through this.

The wetlands issue has always been a sensitive one for the Department of Natural Resources. We went through two law revisions. The first law passed in 1971 or 1973 or something like that. The department was mandated to go out and protect wetlands in the state. It was a miserable failure. We did not have any kind of an inventory base and the public just flat out rebelled. Plus we weren't sure what we were doing. At any rate the act got revised in 1978-79, mandating that an inventory be done. Then we went through about a nine-year painful, bloody process of county-by-county inventory of protected wetland basins. I know many of the staff that worked on it are still in the Division of Waters and none of them would want to do that again. That was not a fun thing for them to do. Three years ago, Representative Marcus Marsh passed a bill in the legislature, a one-line bill that basically said thou shall not drain and fill any more wetlands, and he kicked this whole thing off. We then had to as a department sit down and make a conscious decision on what to do about this. We talked to Marcus and found he was dead serious. He is an avid waterfowl hunter and he had gone out that fall and his favorite duck pond was gone. He just flat out got mad and he became determined that he was going to do something about the issue.

So we sat down internally and started talking about how to approach this. The one thing that I felt very strongly about is that we had to get away from the habitat issue. You had to quit talking habitat and I make this point because again it's a question of how you are defining your arguments. The success of what you do is going to be largely dependent on how you choose to present the argument. Where are the soft spots? Who is the opposition? How do you attack the opposition? By that time I had it right up to here with sitting down at a table on a wetland issue and three minutes into the conversation having some crusty guy sitting across the table with a feed cap on look at me and say, "you can't feed the world duck" or "this is nothing but an issue of ducks against the farmer." So we decided to change the framework of the argument and to get away from talking ducks and fish. As I went around to conduct the educational work on this, I tried to make a point of never using the word "duck" or "fish" in the presentation. Instead, we started looking at all the other values of wetlands in the environment. That brought up the questions of providing flood storage and storm water retention, nutrients leaching, etc., before that
water rushes off into one of our high quality lakes or streams. Sediment entrapment, groundwater recharge and low flow augmentation in the drought of 1988 were great examples to use of the importance of wetlands in the landscape and the damages that occur, particularly in the Minnesota river valley during a drought period. The aesthetics and recreation issue, of course, is largely a case of beauty in the eye of the beholder. But it can be used very effectively depending on the audience. Then there was the issue of shoreland anchoring. What we tried to do here is to set up a basic framework where we said that: look, the historic policy on wetlands hasn't made any sense because the developer, whether it be a farmer, an urban developer, essentially all through history have done nothing but paid the physical cost of filling or draining the wetland. Then they walk away and the public has come along and cleaned up all of the associated costs. We have put the flood storage back into the system, we have had to deal with contamination problems whether they be nutrients, pesticides, whatever. We have had to deal with sediment loading going into our lakes, into our rivers. We have had to worry about adequacy of water supply. We have communities in Minnesota today whose growth potential is controlled by the inadequacy of their water supply. They come in and want permits to take out shoreline vegetation and three years later the shoreline is eroding and they want to know when the DNR is going to fix their lake. What are you going to do about protecting my shoreline? The expectation has been that all of us, the rest of the public, will just keep dipping into the back pocket and laying out the dollars to clean up after these actions. That creates a difficult situation for lawmakers, it puts them in a tough spot because they get accused of making (1) bad policy and (2) bad policy that is costing a lot of money. And they are always sensitive to the reaction from the public on such matters.

In order to make those kind of arguments stick you have got to deal in specifics. Before doing that, I just told you we went through a three-year process to pass a wetlands bill last session. This is a result of the Star Tribune poll conducted on January 10, 1991, before the legislative session (figure 1). When I saw this come out in the newspaper I was absolutely dumbfounded. It shows 100 percent of the Twin Cities legislators support no net loss laws, Twin Cities suburbs 95 percent of the legislators and in outstate Minnesota 79 percent. The previous session, I walked out of agriculture hearings during the House and Senate and wasn't sure I was going to be able to come back to work the next day. Then we come to the 1991 session and you have got that kind of support coming from the legislative body. The evolution had occurred. The information was out and those legislators went home over the summer and found out that there wasn't a big public outcry against wetland legislation. In fact more and more they were going to meetings and hearing their constituents saying that they want this done. And lo and behold they acted. When the legislation passed, I think we had only four dissenting votes in the House and three in the Senate. Incredible action on a really difficult and politically tough issue from the legislative side. My suggestion is to use hard facts when you are talking to the legislature. Use information that prevents someone else from getting up there and irrationally waving their arms and emotionally arguing the thing down. Make them deal with facts. This graphic shows the average annual flood damage in Minnesota (figure 2). We can go back year by year and document the $70 million in average damages. Below the line are soft numbers. Sixty million dollars in lost opportunity. I wouldn't want to stake my reputation on stuff below the line, but the $70 million figure above the line is adequate plus the fact that the state of Minnesota and Congress are committing on the order of $10 to $50 million per year, depending on the funding cycle, to correct this problem.
Support for a 1991 "No-Net-Loss" Legislation

HOUSE
107 of 134

SENATE
52 of 67

COMBINED
159 of 201

Source: Star Tribune Poll
Saturday, January 5, 1991

Figure 1

MINNESOTA FLOOD DAMAGES
[AVERAGE ANNUAL]

- RES/COM/IND
- INFRASTRUCTURE
- AGRICULTURE
- PUBLIC ASSISTANCE
- TRANS. DETOURS
- SNAG-DEBRIS CLEARANCE
- WATER QUALITY
- BUSINESS LOSSES

DIRECT DAMAGES
70 Million

INDIRECT DAMAGES
60 Million

DAMAGES (Millions of Dollars)

Figure 2
The way you deal with that kind of information is to go back to costs, hit them in the pocketbook, and you go back to the policy question. When we have these kinds of damages occurring, when we are making major expenditures of public dollars to correct this problem or minimize it, does it make any fundamental sense to continue to allow the natural storage basins to be taken off the landscape? I think there is only one answer. The money question is already there. We are spending big bucks to correct the problem, it is causing major damages, we should be doing something about it on the land end of the equation. Where is it cheaper? If you drain a one-acre wetland that will hold twelve inches of water during a storm, you have lost one acre per foot of storage in the system. It costs the public 300 bucks to put that flood storage back in the system. Why are we doing this? Again it is shifting the burden to where it ought to be. It is making the developer responsible for all the costs associated with the issue.

I knew we were going to have major opposition to this bill from the Red River Valley and I asked the staff to give me something. I wondered how we could deliver the message up there because that is an area where there is still a lot land conversion occurring. There was a lot of post-World War II ditch and drain era work in the Red River Valley. That is where we went through and ditched out the land and flushed all the water off into the river and across the border into Canada. What we reaped from that were the historic floods in the Red River Valley where we had water running down the streets of Fargo and Moorhead and Grand Forks and East Grand Forks. Does this make any sense? We are spending public dollars to build dams to control the flooding problem. At the same time Fargo and Moorhead don't have enough water in the Red River in July, August and September to meet their water supply needs. Why? Because we flush all the water off the land and down the river in April. Sure as I am standing here today in the next few years, we are going to be standing in front of the legislature asking them for money to go up in the Red River Valley and do what? To put water back on the land to supplement low flows in the Red River Valley so that they have water to drink in Fargo, Moorhead, and Grand Forks and East Grand Forks in July, August, and September. This makes no sense as public policy and no one can turn away from those kinds of hard facts.

Now, we knew agriculture was not going to be happy about this so the question becomes how do you deal with this issue with agriculture. This was the first bit of data that we put together. This represents the expenditures on the farm program 1980 to present. In order for this to make sense, I need to dial the clock back to 1970-71. That was when Earl Butts, Secretary of Agriculture, in his now famous or infamous speech, depending on how you view it, talked about feeding the world on the back of the American farmer. That was the big Russian grain deal, send Poland some wheat, etc. and life was doing to be good in America. He challenged farmers to put every square inch under the plow. The day Earl Butts made that speech we didn't have a farm program in this country. What was the net result of the conversion of millions of acres of wetlands and marginal lands into production? We put ourselves into a surplus driven economy and suddenly we are spending $28 billion a year on the farm program. To do what? To pay the farmer to take land out of production to try to control the surplus and for deficiency payments because he can't get a fair price for his crop on the market because of the overproduction (figure 3). Now here comes the question again, does it make any sense that we continue to allow the conversion of wetlands to crop production at a time when we are in a surplus driven economy and it is doing nothing but costing the public money? I think the answer is pretty clear. Now we have a couple of snags in the data in 1984 and 1988-89. I would like to tell you that this is the result of the genius of the farm program, but I can't. Mother Nature took care of that. In 1984 we had a major drought year throughout much of the south central and southeastern United States.
Drought knocked production down, drove prices up, and we didn't have to make the deficiency payments. Same thing happened in 1988-89. Now I have to tell you the first time I used this in front of the House Agriculture Committee, we did not have a pleasant conversation. The chairman got so upset he sputtered and I didn't know for sure what was going to come out. Finally all he could get out was that "I don't think it is appropriate for the DNR to be looking at the farm program." Some of the other legislators were specific and they hinted and joked that I was pretty good about distorting the information. In fact, there are other dollars included in the information. There are some loan amounts that are not actual outlays but it also does not include the Conservation Reserve Program (CRP) which is another $3 billion a year for a total of $31 billion. We I went back and we looked at it some other ways—this is just one of them (figure 4). Again what you have here is a graph that takes us from the day of Earl Butts speech, 1970, to the present. What you see in the middle is the Minnesota farmers' response to that speech. We did pretty well on pounding acres into production. But ironically look what this did for agriculture. The top line is the real price for soybeans, the bottom line is the real price for corn adjusted to 1982 dollars so we can compare apples and apples. Now you tell me, was this a good deal for agriculture? The message here is absolutely clear. Every time we pounded another acre into agricultural production we shot the farmer in the foot because his crop was worth less on the market. Are we going to allow the continued conversion of wetlands into crop production under this kind of a scenario? I think the answer to that has got to be no. But what you have got to do is frame this stuff so that the answer is clear. The other thing you have to do is avoid letting them get up, wave their arms emotionally, and start talking about private rights. We had farmers stand up through this debate time after time saying you can't do this to me. This is my land, it's not fair. Then what you have got to do is step back in front of that legislative body and say "wait a minute, this is not a question of impact on the individual." If that is the test that you are going to apply, then you have to go back and take off our hazardous waste laws because it is a whole lot cheaper for 3M to keep pouring chemicals in that wetland in Oakdale then disposing of them properly. You have to take off the solid waste laws because it is a lot cheaper for me to dump my garbage in the backyard. It is not a question of the impact on the individual. It is a question of the overriding public policy. The greater public good. And I can't tell you how many times that had to get reframed for the legislative body and those individuals that resent regulation. They want to emotionally go with the individual and they lose sight of the fact that they are actually being asked to make a decision in the best interests of the public at large.

The net result is that we got a pretty good bill. We got a bill passed that establishes a clear no net loss policy and the regulation is tight with the exception of type one wetlands. We are basically going to regulate down to the limits of mapping capabilities, or approximately one-tenth of an acre. It is the tightest bill in the country. We have a good inventory in the National Wetlands Inventory. A side benefit is that the legislature funded the acceleration and completion and the digitalization of the inventory and that is going to provide benefits for everyone. For those of you working in forestry, the key part of the bill is the mitigation and banking program. So if you are going to go in with a forestry practice where you can't avoid an encroachment on a wetland, you have a way to do that through mitigating for the impacts. It provides compensation to landowners for losing some use of their land as a result of the regulation. I think an important element is that there is also a strong local government role. This is basically going to be implemented through counties and municipalities. The department steps back into an ultimate enforcement role. Local units of government have got to start controlling their own destiny on this issue and I think that will happen. We are never going to get the staff or the dollars to be able to manage this statewide within the DNR. Finally, this has a strong element.
Figure 3

FEDERAL FARM PROGRAM COSTS
CCC NET OUTLAYS

NOTE: Figures do not include CRP or PIK costs

SOURCE: USDA

Figure 4

Selected Trends in Minnesota Agriculture

- NH Soybean Price Trend (1982 $)
- NH Corn Price Trend (1982 $)
- NH Land In Crops Trend
of restoration in it. There is $5 million appropriated for wetland restoration in the bill, and $7 million for compensation of landowners. We got a well-funded package out of a very tight legislative session.

Now that leads to the question of how this all happened. When you get into Washington lobbyist circles they talk about the iron triangle of public policy making and it translates very nicely to state government (figure 5). This is where public policy gets dictated, framed, and passed. It doesn't get done by one of these individually. There are those who think that when the DNR wants something we just march up to the legislature, lay it out, they pass it. Not hardly. There are others who think that if the legislature doesn't just pass our programs then there must be something wrong in the way we present it to them, right? They just didn't understand! The fact of the matter is that as we are forming public policy there must be interaction and some basic agreement between the executive branch of government, in this case the Department of Natural Resources, the legislative body, those elected policymakers who are going to go home and have to look their voters in the face, and finally, the special interest groups, who essentially represent the public. The general public has very little influence on the decision-making process. It is the organized special interests that have money and lobbyists, that are the players in this process. Those three parties had better be talking and working through the development of this policy or we are going to be in big trouble in trying to pass it. Now I would suggest to you that any public policy group, in working through this, has got to apply three tests to what they are working on. The first is that the proposal has to be socially acceptable. You can test that in large part through those interest groups. They can go back and dipstick their membership around the country. Find out what their reaction is to it. Will they accept it? Will they support it or are they adamantly opposed? The second thing is that it has to be politically acceptable because the legislature isn't going to go along with it if they can't vote for it, take that vote home, look their voters in the eye, and have half a chance to be elected the next time around. That is reality. Finally, it has got to be economically feasible. None of those players are going to support it if it doesn't meet that test. The public is not going to dig that deep in their pocket, and the executive branch is not going to hang themselves out on a limb supporting something that is ridiculously expensive and where the legislature is not going to be able to go home and look voters in the face. Those three tests have got to be met as the players work through the policy development process.

I don't know where all of you are going to fit into this. Some of you will be talking with local legislators, some of you will be talking with interests groups, some of you are from interest groups that will be talking with our people. But I think you have a kind of framework here that you can use. The first step is preparation. I hope I have shown you with the wetland concept that you need information. You have to get that stuff knocked together, get comfortable with it, get it into
the hands of enough people so that you can start communicating that information. People have to understand the three players in the iron triangle. The next step is to set up an active education process. Go out and reach those people in the triangle. I have taken the wetland presentation to the Minnesota Farm Bureau, the Holstein Association, the wheat growers, the corn growers and, of course, all the people on our side of the equation, Sierra Club, Audubon Society, right on down the line. But you cannot selectively take it to one side and not the other side. Level the table up, make sure they all get the same information, some won't like what they hear, but if your information is good they can't challenge it. I have never had anybody from the farm community come up with anything that could challenge those numbers on the farm program. You need good information. Network. Build coalitions. In today's political climate one group standing alone is likely to fail. Try to forge a coalition with groups that share common goals, but also try to bridge the gap with groups that have traditionally been opponents.

That does not mean you have to come to agreement on everything. With the wetlands bill, we created a 23-member work group and all of us sat down at a table. Remarkably, by the time we got done talking through a series of 12 or 13 meetings there were only a couple of issues where differences remained. What you have done by this is narrow the universe for the decisionmakers. They are not rolling their eyeballs around trying to settle all of this stuff, they have most of it behind them. They may have a couple of tough decisions to face, but they do that pretty well. Finally you have got to be ready to compromise. A democracy runs on compromise. And going in and taking the position, "this is it, this is what we want, and we won't accept anything else" isn't going to work. It makes you look like a monkey in the process because somebody else is sitting there with a different view they can defend. I am not totally satisfied with everything that is in that wetlands bill. We comprised on some of it. The rest of it is the result of the process and I think it is generally sound.

Most of you have probably heard that old saying that, "anybody who enjoys sausage and respects the law should never see either one made." Some of what you see in that wetlands bill is an example of sausage grinding at its best. That bill came out of a conference committee at five minutes after five in the morning on the last day of the legislative session. We had 47 hours of conference on that bill. I had spent about seven hours in bed the last three days of that session. The conference committee is where it all happens. You stand in the hall and you cut deals for millions of dollars or make major public policy decisions in four or five minutes after months of testimony in front of the legislature. The folks who get skinned in the process are the ones who hang in there through the policy committee process, but when the bill is in the conference committee they go home. It doesn't work that way. As you are watching the process don't stop watching too soon because those conference committees will call the shots.

Some general rules for you as you work through this.

- Number one is honesty. Don't try to con anybody. There is nothing worse than getting the word out to decisionmakers that you are not to be trusted. So be honest above all.
- Know your material. Make sure you don't get all tangled up in front of a legislative hearing or a presentation like this and have information, data or whatever that you can't explain because it neutralizes the value of it.
- Know your audience. How you present the material to the people in the room is as important as what you are presenting to them. You have to know where they are coming from. I am not saying that you avoid the hot issues. I took that agriculture policy stuff
right to the agriculture groups. But you need to read the audience and then present your information accordingly.

- You can't hold grudges in this process. With legislation like the wetlands bill you are going to get some things you like and some things you don't like. Don't get mad at the people that won because they may be your best friends on the next issue that comes up. So you can't hold a grudge against them.

- Finally, it will take a year-round effort. If the Forest Practices Act gets stirred up in this session of legislature and gets a few hearings, then people start talking. You can't lay off it all summer and expect to trot back in the day the legislature convenes and pick it up and keep rolling. It won't happen that way. You have to keep pushing, you got to keep your educational effort on, you have to keep looking for new data and new information all the time if you are going to drive the decision-making and policy-making process.

Questions:

Q: What effect/impact does this legislation have on so-called ditch laws? Or does it?
A: It has some impact and it depends on the ditch we are talking about. In fact it will protect a lot of wetlands in the state that have redeveloped along ditches and around ditches that have not been maintained over the years. I think the grace period was 25 years. If the ditch has not had maintenance activity done on it in 25 years it is effectively considered abandoned and the wetlands reestablished along it are protected under this law. This covers a lot of ditch systems in certain parts of the state. However, if you get down into the active agriculture areas in southwest it doesn't have much impact on those.

Q: Has a study ever been done to compare the cost of holding water in the watersheds rather than using the Army Engineer's straightening?
A: There are all kinds of studies that show that it is more cost effective to catch the water and hold it where it falls. It is just that simple. A lot of what I told you here is obvious, but I didn't give you the whole pitch on the wetlands. The economic arguments are overwhelming that leaving those natural basins there to catch water, to capture nutrients, to capture sediment is a lot cheaper than trying to deal with it after it has gotten into one of our rivers or into one of our lakes. I am one of those who would suggest to you that it is a folly for us to be spending the money that we do on our fish stocking program. Walleye, for example. I think it costs us six bucks by the time we stock a walleye and one of you put it in the bag. Unfortunately we typically are getting into that practice because the Lake Association or a sportsman group notices that the fishing has fallen off in a lake and they jump on us because the fishing is bad. Our reaction is to go stock the lake with some walleye and the fishing perks up a little bit and everybody feels a little better. My question is did we really solve the problem? I would suggest to you that we are treating the symptom and we never bother to take the time to figure out what was wrong with the population to start with. Are the tributary spawning streams silted in? Are the rock/gravel spawning beds in the middle of the lake silted in? Should we be spending that money and time on sediment control in the watershed rather than stocking the lake with walleye? Those are the kind of fundamental decisions we are talking about.

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Q: If this forest practices legislation goes through, I am not sure what role the DNR will play. For example, what do you personally see as your role as this goes through the process? What can we in the SAF, for example, do to help you get educated, do the homework, or whatever?

A: My role will be kind of managing the issue. I don't intend to try to get up and give a bunch of technical testimony on forest management in the state. Rather, I would work with Jerry Rose and his staff on providing some advice on how you manipulate the political process to get where we want to go. As far as what you need to do with me, I think really Jerry and some of the folks at the University have started that process. We have had one internal session on this already. We have a conference coming up at the end of the month to look at the various options. Today was a good education for me as I sat back and listened to the experiences from other parts of the country. I think the big thing you need to do as an organization is to have the guts to take a position. I am a member of professional organizations and some of them are so weak-kneed about taking a position on a piece of policy legislation that I have never seen them influence anything. Part of that is the membership. Many have members from federal agencies who are afraid they will find themselves in conflict with their agency's position. But you ought to get together and take a position. You don't need to dig into the specifics of the bill. Talk about the overriding policy. You don't need to tackle your parent agency on some specific issue they are negotiating. Talk about sound forest management, talk about the advantages of a statewide approach, of consistent standards. You don't need to specify what those standards should be.

Q: You talked earlier about some steps in the process and the importance of not taking a position too early. Timing is critical on this. We debate about positions and how we develop them, but I think we are still in the education phase yet. What role do you see for us?

A: The next presentation here should set you up to start the course of discussion to decide what does and does not feel good about the content of the proposed act. So I think your posture is very appropriate. You are definitely still in the education phase. I think I would be the most surprised guy in the universe if that bill passes this session of the legislature because it takes money and this is an election year. It isn't going happen, so you have some time to get yourself postured on it.

Q: Nearly all of the states that have forest practices laws have a board or commission that have responsibility either for promulgating rules or broader responsibilities for coordinating or even initiating forest resources policy. What is your perspective on this whole board/commission?

A: Well, I already told you I believe in networking. One of the provisions in the wetlands bill is something called a Wetlands Heritage Advisory Committee. That is a broad-based group, all sides of the issue represented if you will, that will sit at the table and help with rule development, and will conduct a periodic review of the success of the program and recommend changes. They are not the policy maker. They are a group to go to for advice, to test how things are going and I think that is an appropriate role. I think you would have to push long and hard to get the department to totally surrender our policymaking role to a board of any kind. But it is certainly appropriate to bring in other players to get opinions and help.
The Current Minnesota Forest Practices Proposal

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I have been asked to talk about the legislation that was introduced toward the end of the previous session of the legislature. I will attempt to be reasonably brief in reviewing it. I was interested to hear to Paul Ellefson talk about some of the various components that legislators ought to consider in developing forest practices legislation. I was ticking them off in my head as Paul was going along and I think that the act introduced by Senator Lessard and Representative Battaglia follows that general outline closely. It does start out with a page or so of policy findings (fairly standard fare for foresters) on the need to manage the state's resources in the best manner possible, to grow trees, and to provide other benefits of the forest. The act as introduced would in fact cover all lands, public and private, within the state that are larger than 40 contiguous acres and that are not owned by the federal government or held in trust by the Bureau of Indian Affairs for a Native American population in the state. So, yes, it would cover private forest land, state land, and county land. It is very comprehensive in its approach. As with most pieces of legislation, it has extensive definitions which I won't bore you with. If anyone would like to see it, I have a copy of the bill with me.

As with most forest practices acts, and as with most states that regulate forest practices, this piece of legislation establishes a board. That board provides a balanced representation of both the regulated parties and the interests in the state forests that exist out on the landscape today. It includes four positions on the board that are legislatively established, one being the commissioner of the Department of Natural Resources or a designee, one being the dean of the college of Natural Resources at the University of Minnesota, one being a representative of the forest products industry, and one being a representative for environmental groups. Those four seats are established. It provides for some additional appointments by the governor with the advice and consent of the Senate. These seats are designated for a variety of interests. Those interests include nonindustrial private forest landowners, industrial forest landowners, loggers, representatives of nongame interests in wildlife management, and representatives of county interests. I think we all know counties have extensive holdings and therefore they need to be a player in any forest practices act or board. Regarding tourism interests, I am not sure if other states recognize them explicitly in forestry regulation, but this proposed legislation does. With the two industries, tourism and forest products, being as large as they are, I think it is important that tourism be included in this landscape. Finally, the seventh seat would be a representative of the management of game species and wildlife, such as deer and grouse hunters, etc.

Next, the bill establishes a technical advisory committee. I don't think that legislators expect in establishing the board that each and every person appointed would be an expert in the field of forestry and forest management policy. So it provides for the establishment of a technical advisory committee. I think it would certainly be the intent of the Society of American Foresters to encourage those appointed to the forestry board to designate people for the technical advisory committee that, while representative of the perspectives of the individuals on the board, would in fact actually have technical knowledge. It is pretty tough to guarantee that in a piece of
legislation. People are going to appoint who they want. But for any forest practices act to be usable on the ground and to be supportable, it is going to have to be heavily influenced by people like yourselves in terms of the creation of policies, rules, and practices.

The bill as written gives powers that are fairly extensive to the state forestry board and to the technical advisory committee. This is something that obviously, as Ron Nargang mentioned, might cause some heartburn. It is not something that we have done in this state in the past and we have to look to the guidance of other states as to how that operates. So, the forestry board and the technical advisory committee do have the powers to promulgate rules in order to implement the policies sections that are contained within the act.

Those policy sections of the act cover a wide variety of forest practices from harvesting, to site preparation, to the use of disposable lubricants, to herbicide applications, and a number of other areas. Policy statements are broadly worded. I think it is true, as several speakers have mentioned, that attempting to write specific technical practices into legislation creates a very difficult and cumbersome system. But having broad policy guidelines established by the legislature for the management of resources that affect the entire public makes sense. And from those broad policy statements would come the ability to promulgate rules consistent with the policy sections in order to implement the forest practices act.

The proposal includes an enforcement mechanism which is, as I read it, not a heavyhanded enforcement mechanism. I think the mechanism that is included in the draft legislation leans toward informing people if they are in violation of the act, and getting them to come into compliance rather than relying on a very heavily litigious system that would involve substantial penalties and substantial resistance on the ground. I think that in establishing and drafting any piece of legislation, we need to be mindful that we are working with the people who are in fact out on the ground, either foresters, loggers, or whomever, and thus, the piece of legislation and rules that are promulgated must be workable in a practical sense.

The final thing I would note that is included in the bill is local preemption. Without local preemption you really don't have a statewide forest practices act. The bill contains a passage that preempts local ordinances dealing with forest practices and that is a very, very important part of the bill. This is a fairly simple bill. It is a fairly straightforward bill. I am not sure how many of you have taken the time or have had a chance to read it, but I think it is readily understandable by lay people, including those that are not involved in the legislative process.

So with that review of the forest practices act proposal, the real question becomes how are we to regulate forest practices here in the state. It is not a question of if we are going to regulate them, because we already regulate forest practices, and we regulate them very extensively and at many levels of government. It is a moot point. Steve Masten this morning related to us a number of the existing statutes and other guidelines and policies that impact on forest practices activities. I think that it was one of the best presentations on the topic that I have heard. It delineated the types of statutes that exist and their impact on forestry. I think that most of us have a tendency to think: well, Minnesota doesn't have a forest practices act. These other states have got forest practices acts and they regulate forest practices. They have a heavy hand where we don't have that kind of a regulatory burden here in Minnesota. The fact of the matter is we do have a regulatory burden here in Minnesota. The burden is a changing landscape depending on whether you are operating in one township, one county, on state scale, or in different areas. Minnesota, in addition
to some of the items that Steve Masten outlined this morning, has counties that license loggers. Licensing of loggers is something that is not included in this bill. It is very controversial. I will tell you that I have members from within the Timber Producers Association that are strongly opposed to licensing. And I will tell you that I have members within the Timber Producers Association that would like to see all loggers licensed. There are counties that license loggers. There are also counties that require loggers and landowners, when they are engaging in harvesting activities, to post cash performance bonds before they commence activities. We have counties in the state of Minnesota right now that are considering adding licensing laws. We have counties in the state of Minnesota right now, as I speak, that are considering requiring harvesting plans on both county lands and on private lands adjacent to various types of bodies of water. So to suggest that we don't have regulation, I believe is naive. We also have townships within Minnesota that have enacted various types of zoning ordinances that affect how forest practices are conducted on lands within their jurisdiction. Soil and water conservation districts are beginning to get into the act also. So there are a whole variety of legal and legalistic types of restrictions that exist in Minnesota.

There are also many restrictions on landowners, be they public or private, but particularly public landowners, regarding sales. I think anyone that is involved in harvesting and purchasing or selling timber is well aware that the timber sale specifications will include access considerations, time of year, slash disposal, and many other types of restrictions. They may not be formal forest practices acts, but they are the regulations for how forestry activities are conducted on the ground here in Minnesota. The state of Minnesota has requirements for reforestation on state lands. We don't have anything similar on private lands, but we do have it on county lands. So the landscape that is out there for people that are involved in "on the ground forestry activities" varies greatly from one location to the other. I think one can make a very persuasive argument that right now Minnesota is moving and moving at increasing speed on initiatives that are formed at the more local units of government. Yet, that can lead to an unworkable checkerboard system of regulation. A multijurisdictional system where:

Let's say I decide to shed my suit and tie and go out and start logging. Let's say I decided that I wanted live somewhere in Grand Rapids and became a logger of a reasonable size. Well, if I was a logger of a reasonable size operating in that area I would have things to comply with on state lands. However, they would be the same no matter which state lands I was operating on. But if I was operating on lands in St. Louis County and in Itasca County and perhaps in Crow Wing County, as I might be if I was a reasonably sized operator, I potentially would have different types of restrictions and regulations to deal with for each of the governments. Maybe there are some active townships in that area, which there are in some of those areas, and they may have other types of prescriptions and restrictions I would need to comply with. I would have to be aware of those and familiar with those in order to be a good logger. I would not want to be out there doing things wrong. I would want to be doing things right. I think most loggers who are in fact the primary on-the-ground instrument in management and harvesting, want to comply and want to do what is best for the forest. But we are heading toward a system where they are not going to be able to comply because they simply don't have the time and the knowledge to comply and be knowledgeable about checkerboard regulation.

So I think what the state of Minnesota needs is an orderly, rational, and workable system of forest practices regulations. One that people can understand, both lay people and people that are involved in our business. One that can be workable and implementable on the ground. We can
talk of lofty visions for different types of legislation, but the fact of the matter is that it has to be understandable and it has to be workable on the ground. If it is not workable on the ground, we are not going to have compliance. If we don't have compliance we are not going to have good activities. I think the goal, in beginning the debate on forest practices regulations, and hopefully the end goal will be to provide for the better management of our state's forests, both for ourselves as well as for future generations.

One of the key questions that has been raised in suggesting that maybe this is not an opportune time to move forward with a forest practices act here in the state of Minnesota, is how does it relate and interrelate with the Generic Environmental Impact Statement on timber harvesting? The GEIS, I think most people in the room are familiar with it, is a comprehensive study of a wide variety of issues that has been initiated through the Environmental Quality Board. Mike Kilgore, who spoke earlier today, is the project manager for that, and I would say he is doing an outstanding job dealing with the Advisory Committee in a very difficult and somewhat politically charged atmosphere. But how does the forest practices act interrelate with the GEIS? That is an important question. The state is spending $850,000 to develop all this information through the GEIS process. So we ought not just pooh-pooh it and say—well it doesn't make any difference about what's going on with the GEIS, that this is a separate type of an issue and kind of mixing apples and oranges. Well they are not apples and oranges, they are in fact interrelated. I think in reviewing the forest practices act, you will find that the legislation introduced is much more heavily weighted to government operations and decision-making processes as opposed to regulating or prescribing in statutes specific practices on the ground. If you closely consider the act as introduced you will find that the policy sections are broadly drawn to accommodate new information, to accommodate differing views on that information, and to provide the mechanism for dealing with that information. Excepting a formal system for dealing with the GEIS, we will hopefully be presented, come July or August of next year when the GEIS is completed, with a wonderful document that tells us what the landscape of activities and impacts is in the forest right now. And, hopefully it will be something that meets our expectations. I think it probably will.

But what are we going to do with it when it is done? Having another study on the shelf doesn't help anyone. It doesn't help the industry, it doesn't help the environmental groups, and it doesn't help professional resource managers if we are just going to sit it on the shelf. We need a mechanism for implementing it. We can't just have it completed and have it sit on Commissioner Sando's desk or on the land commissioner's desk or wherever. The forest practices act which includes this type of decision-making mechanisms, will provide the means for taking that information, implementing it through the guidance of the policies that the legislature would establish, and putting it into practice on the ground, as opposed to merely having to go on the shelf. I don't believe that there is a compelling reason to wait for completion of the GEIS before moving forward with consideration of a forest practices act.

Finally, I think the other thing that the forest practices act, and the subsequent creation of policies and a new state forestry board, will do is provide the opportunity for resource managers and foresters to be resource managers and foresters. Minnesota right now has a lot of interest in forest management activities. Those interests, which are competing, competing very strenuously every day I can tell you because I am one of them along with some of the environmental interests, tending to put pressure on the public land managers. I don't think that is any big secret. We do it, the environmentalists do it, the tourism industry does it, the wildlife people do it. It is part of our system of government. But because of our involvement in the forestry sector, resource
managers within the Division of Forestry or within the various county land departments, or at different levels are being asked to in effect mediate these disputes among the competing interests. It is not something foresters are trained to do. It is not something that you ought to be asked to do. Your training and professional background is to manage the resources and to manage those resources consistent with the public policies that are enacted and to do the best job you possibly can on the land for the forest. But increasingly you are being asked in the public sector to mediate these disputes, to be arbitrators, to attempt to please competing interests. I think that we would all be better served if resource managers were freed up to manage resources.

Let the state level of government in Minnesota set up a mechanism to resolve and implement some of the policy disputes and considerations that go on. The rule-making process is outlined in the bill as introduced. There are ample opportunities within that rule-making process both through a forestry board and through the public hearing process for promulgating rules. Under Chapter 14 in Minnesota, the public and competing political interests do have to have their day in court, if you will.

With that I would be happy to take any questions.

Questions:

Q: How have the environmental groups responded to this proposed bill?
A: Well the only thing I have seen on the record, I'm not always willing to quote hearsay, was something in the Northstar Chapter of the Sierra Club's newsletter that came out a few weeks ago calling the bill as introduced the unimproved forestry practices act, the bill whose time has never been or clearly isn't here now. I think that they make a couple of points. One was wait for the GEIS. I think that the argument to wait for the GEIS does not make any sense. Why when you are embarking upon a process to come up with new information that you think is going to be important on a policy basis in an important issue area, why would you want to wait until after you have that information to set up a mechanism for dealing with that information. It seems to me that if we wait until that information is out, then people are going to take varying positions on what type of implementation mechanism ought or ought not be set up. If the GEIS comes out and says that the forests are going to hell in a handbasket there is going to be strong pressure immediately from the same environmental groups to set up a highly restrictive forest practices act. If the GEIS comes out and says everything is great and wonderful out on the ground in the forests of the state of Minnesota, it may be that some of the legislators that are supportive of a forest practices act are going to say—well, whew, we got through that. I think from a public policy basis you ought set up a mechanism for dealing with information before you get the information so people don't use the information to skew the process.

The other point they make is that the board, as established in the legislation, is heavily skewed towards timber interest. I think that is a fallacy. Look at the board in the draft legislation and try to count noses either way and my guess is that you are not going to be able to figure out what perspective the board is going to take. Obviously there are a few people on the board that would tell their perspective. For instance, the forest products industry seat, I mean people are going to understand our perspective. The environmentalist seat, people are going to understand their perspective. I am not sure you
can have a universal handicapping of what perspective nonindustrial private forest landowners are going to have on the whole myriad of issues that are apt to come before the board. So I think that the board is a reasonable representation of both those people and entities that are going to be regulated as well as the differing interests from environmental groups, tourism, recreation, and wildlife groups that exist here in the state.

Q: I recall from reading the act some time ago, that the focus of the regulations is on the operator, not the landowner. Why?
A: My guess would be that, particularly as it relates to private ownership with the checkerboard pattern of ownership that we have got out there and with some absentee ownership and in order to ensure compliance with the act and activities, having the person that is doing the activity, the operator, be responsible for complying is probably a more workable system. Obviously in the harvesting end of things, this is going to fall most heavily on the logger. On the other hand, we discussed this at great length at the Timber Producers Board of Directors meeting yesterday, one of the board members said, "What am I going to do if the landowner says do this and I know it is wrong?" So, it is designed to be put on the back of the operator. No question about that and I think that the person that is doing the operation is probably most responsible for ensuring compliance particularly in the harvesting area.

Q: Is there a dollar figure for the necessary appropriations?
A: I never used my economics degree from the university. I can't tell you. I would imagine that the Department of Natural Resources has looked at that sum, but I don't think that anyone has developed any firm figure on it right now. Obviously, given the current fiscal environment of the state, it is going to be a tough issue.

Q: What is the major problem this addresses?
A: I think the biggest problem it will solve is that it will move us very quickly away from a checkerboard pattern of regulation at different levels of government and different types of ownership to a more rational, if you will, one stop shopping type of regulation where people will know across the variety of ownerships what is expected of them in performing activities on the forest. I think it will provide, secondly, a far more rational and workable system for dealing with information any of the competing interests for implementing forest policies in our state. It is clear in our system of state government that the legislature sets the policies. Carrying out the policies is a different story and this will provide a mechanism for doing that.

Q: Is there any discussion of funding the cost of administering the program through a separate tax rather than general appropriation fund?
A: Well I certainly haven't brought it up. I think on a public policy basis it is part of the purpose of any forest practices legislation to ensure better management of the state's forests for all of the public purposes of forests and all of the values both timber and nontimber of the forest. The proposal does not specifically put the burden of funding the implementation of the act on the landowner or the harvesting entity. Such proposals would narrow the focus of payment for an act whose benefits are to going accrue broadly to the public. So it seems to me that it is most appropriate to have a general fund appropriation.
Q: What is the impetus for this legislation?
A: The problems for on the ground activities of loggers are probably not enough to turn the crank to make the sausage of legislation for the general public. But I think we have seen in Minnesota over the last several years increasing interest in forest management among the public and among many different constituencies that in the past have not been interested. I think that the forest practices act needs to be framed and looked at always in the context of how can we better manage our forests. How can we ensure that those forests are going to be healthier? How can we ensure that they are going to be more productive. The regulatory burden on the state's loggers isn't a persuasive argument for someone that lives in Madelia. But having better forests and having a more comprehensive system of managing those forests is a persuasive argument.

Q: What is the difference between the GEIS and the forest practices act?
A: Why forest practices before GEIS? Why GEIS before forest practices? I think that if a forest practices act was enacted that had very specific policies sections that got down to how practices were going to be conducted in individual instances, be it clearcut size, slash disposal or whatever, then clearly you would have to go back and modify those laws each time that you had new information put into the system. It is easier to modify rules than it is to modify laws. The GEIS is an exercise to assemble, compile, and develop information on the state of forest management and the forests in Minnesota. The argument for having a forest practices act enacted prior to the completion of the GEIS is so that you have a system that is comprehensive and in place to deal with that information. With a comprehensive system in place, you build the system and then you put the information through the system. Because once you have all of this information, i.e., what is going to come out of the GEIS, people are going to modify their positions on the system.

Q: Does this suggest that any information coming out of the GEIS would have no relevance on defining the system but only to be incorporated afterwards?
A: I think we are mixing government operations with forest policy considerations. I think the government operations aspects of the legislation would create a system similar to some of the state systems that you see described here today. I don't believe the GEIS was designed to speak extensively to the governmental operations systems of the state for dealing with these issues. It will have a small section on that topic, but that is not the prime focus of the GEIS process.

Q: What is your perspective on the time table of a forest practices act? In other words, do you see it happening this legislative session?
A: What I see depends on what my bosses tell me to see. It is a short session, money is tight, and it's a significant piece of legislation. There is a hearing that I understand has been scheduled in the Senate, yet the House has not indicated whether or not there is going to be hearing there. The session doesn't start until mid-February. It is tough to pass any significant piece of legislation in a short session. This one will be a difficult piece of legislation to pass in a short session. I don't think there is any question about that.

Q: You are trying to pass legislation, but what has industry done to continue to build coalitions with environmental groups?
A: Well we are always amenable to building coalitions with environmental interest groups when they are willing to discuss the issue before they blast it. Blasting the issue in the newsletter of the Northstar Chapter of the Sierra Club, without ever having discussed it, certainly is not a productive way to start any type of discussion. I guess we would like to build coalitions, that needs to be done. The industry is only one player, one of those interest groups. The environmental community is another. I am certain the DNR is going to have significant views on this because it is within their purview for a lot of areas. County land commissioners are going to have significant views. There are probably things in the bill that cause everyone heartburn. There are things in this bill that cause my employers a lot of heartburn. They think that moving forward with the forest practices act is important and the right thing to do, but I think you can rest assured that there are going to be any number of suggestions for improving the bill as it has been introduced. I think the authors were wise in introducing the legislation last session, you know way back in May of this year (1991). That has provided a very lengthy opportunity for people to look at the legislation and discuss it. We have had discussions with any number of groups and individuals on it. I am sure that will continue without any formal negotiating session. I have certainly had a number of personal conversations with representatives of the various environmental groups on the topic. Most of them have been pleasant too.

Q: What is the value of education and financial assistance with policy-making tools?
A: The area of incentives is one that I wish we had the money and the willpower as a state to get more heavily involved with. I think education for both the landowners and the people that would be defined as operators is very, very important. I know one of the suggestions that Paul Ellefson has made in my discussions with him is that there might be consideration given to a tiered approach in a forest practices act. I am not endorsing or opposing a tiered approach, but I think the suggestion as I understand it is having a mechanism where you have incentives and education. Then you have, as the gentleman from Oregon was suggesting, a continuum of options for dealing with different problems. I think the argument for that would be: if a problem is severe, it has to be addressed with hard and fast rules; if a problem is not severe or is more readily amenable to the carrot rather than the stick, then the carrot is probably better. That is very, very important. Unfortunately we haven't had a lot of money in the state to get into those types of things. It certainly is something that we ought to be doing more extensively than we are.

Q: Can you explain the relationship between the DNR commissioner, the director of the Division of Forestry and the board?
A: The board would be charged with promulgating the rules to implement the policies that are laid out in the act. I think that there probably is going to be some heartburn on the part of the DNR that the board may be encroaching upon policymaking authority that currently exists within the DNR. The director of the Division of Forestry is going to continue to work for the commissioner of the Department of Natural Resources. The commissioner of the Department of Natural Resources does not work for the State Forestry Board, neither does the state forester, i.e., the director of the Division of Forestry. They are going to have somewhat different roles. They are going to have more people formally codified into promulgating the rules and policies consistent with any act that will be carried out both on their lands and on other ownerships. They are going to have differing roles. I am not sure that they become more powerful or that they become less
powerful. They just will have the ability to exercise their power differently. You know that right now we are dealing with a lot of these issues through the GEIS with the various constituencies sitting at the same table as the Advisory Committee. That committee is attempting to work most of them through. I think that the GEIS thus far has been very successful in putting ten different people with ten different viewpoints into a room on a regular basis and reaching, if not consensus where all ten people agree, at least eight or nine of the ten people agree on the issues. I think as a public policy maker, some one's job, be it the director or the commissioner, is far easier in terms of implementing practices and policies if the stakeholders in a formal way are in agreement. This means eight or nine to one or whatever. Not if they are evenly split down the middle and having pitched battles all the time. The roles will be different, but how they will be different is somewhat open to speculation.
Forest Practices Considerations in Minnesota

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It's a pleasure to be here. I haven't been around functions like this for a long time. With a real estate career, a computer career, and other assorted things to occupy my time, I kind of got away from the professional side of forestry. I want to assure you I keep up to date on how to grow trees. I still have a personal interest in forestry and we'll talk a little bit about that as we go through this.

Dick Skok, it's a real privilege and pleasure to be here with you. I've known you as a teacher, colleague, professor, and a boss. I want to assure all of you that he was great in all of those roles. We'll miss your presence. Congratulations on your receiving the Gifford Pinchot Award from the Society of American Foresters.

I want to talk tonight about the general issue of forest practices. I don't think there is anything I can say with great firmness about the position of the department. There is a lot left to be done. I want to give you some thoughts, raise some questions, and give you some ideas to mull over. Jerry Rose hit it right on the head today when he said, "If anything is to pass the legislature and ultimately result in the establishment of forest practices legislation it will be a relatively slow and lengthy process." I think that's as it should be. I think it is important to discuss this and I'm really pleased to see the effort of this organization to do so. It is a vital public policy issue. It is one that I think we'll learn from as we progress through the debate and the information and knowledge that we need to accumulate. I think it will be a productive activity for all of us.

There has been a lot of change in Minnesota's forestry programs and picture in the last 10 years. I'd guess I'm talking to the choir here, but in the last 10 years the enormous expansion and consumption of timber, the major increase in capital investment, and modernization of the pulp and paper industry in Minnesota has left us literally in a world class position with respect to industry. Total wood harvest has grown from a little over 2 million cords to about 3.5 million cords. There has been a lot of change. The increasing number of logging trucks rolling down the road has sensitized the public, which is also changing. There has been a change in the structure and the mindset of the general public. We enjoy it or you might want to think maybe we don't enjoy it, but forestry has certainly attracted the attention of the majority of the citizens. They are clearly more interested and concerned with the management of their environment. We have a steadily growing population with an increasingly urban focus, and that is one of the issues. The urban focus is something we need to keep in mind.

Recently, I was in Duluth with the Environmental Quality Board and we took some testimony about Minnesota's environment and environmental future. Some of the people who spoke at the "open mic" were very opinionated, and they should be, and quite focused. The most interesting one for me—I want to tell you this story—was the person who was complaining about the air quality in the Twin Cities. He was actually talking about the air quality during rush hour in the Minneapolis loop where it turned out he lived in a condominium. He went through a long
discussion about how it was so dismal to live there. I almost wanted to reach out and say "Well geez, you should move, there are some other places." Nevertheless, that is an increasing frame of reference for our citizens. Most of the people in Minnesota have a focus on improving the environment. But many of them do this from a frame of reference that has limited opportunity to participate in the outdoors and when they do they're there for fun and recreation. They see forestry practice as a potential conflict. They have an interest in the environment and they do a lot of reading and information gathering. Much of that information comes from the media and thus their attitudes are influenced by those who often do not portray the values of forest management as perhaps we might. Instead, the media dwell more on the problems associated with forest management. I don't think that's unusual, I think that's news. Some of us in public office tend to think that they pick on the problems rather than the good news and that's maybe the way it should be. Nevertheless, I think there is a real lack of appreciation among the general public about what's going on.

We also have a population that is more affluent. They have more spare time or if they haven't more spare time, they want to use their spare time in higher quality, more pristine places, at least in their view. The 30- and 40-something generation and some of us a little older than that are beginning to recognize that our time on the planet is limited. They have children and grandchildren and they want to have an impact, they want to leave a legacy. There is also some inner reexamination of values. There's certainly been a change in values. There is more and more focus, and in all the surveys we see there is far more support for the environment. Surveys generally say 80 percent of the public is interested and want to preserve, protect, enhance, etc. and do all those wonderful things for the environment. The other 20 percent we catch in our road checks. About 20 percent of the people who come through our road checks are violators of some sort. Generally drugs, open bottles, firearms, knives, and, once in a while, a dead deer. But there is a resurgence and a focus on environmentalism and it takes a lot of twists. In fact, I think that the people who live in the heart of an urban area may have a stronger and more focused interest on improving environmental quality than others. After breathing dirty air, surviving rush hours, and living in high density populations, people have more of a need for change. But nevertheless many stay in those environments, or they are forced to. Then they try to turn that back toward other kinds of activities or question the activities of people like ourselves or agencies like the DNR. I think that is a trend. The older generation is turning their focus outward and trying to decide what we should do for the future. At least they have greater concern about how we manage our natural environment. And while I'm sure they have a simplistic view, more than anything else it is perhaps the basis and reason why we're here talking about forest practices regulation.

A by-product of all these changes has been an increase in demand and consumption or use of our natural resources. Our state park system steadily shows an increase in use. Our deer hunter population continues to go up, our fishermen tend to continue to go up, the participation in a wide range of outdoor recreation pursuits continues to go up. There is far more interest in wildlife, far more interest in aesthetics, and generally more participation. Given our limited resource space, these simultaneous and growing demands raise conflicts which are essentially unavoidable. That's not news, that's just the way it's been. There has also been a continued growth in population. This is not new to most of you. What is new is the demand for us to do something. If we look at how we could address conflicting demands and values for natural resources, one of the opportunities for us is regulation. In fact, we are subject to a great deal of regulation. In most aspects of our everyday life we face traffic laws, criminal laws, building codes, safety codes,
pollution laws, etc. This is all part of our lives. With regard to natural resources in Minnesota, most activities or uses are subject to some form of regulation on public and/or private lands. The environmental review process has clearly played an important role, especially in large projects. Take wetlands protection. If you are a lakeshore owner you get involved with shoreland regulations, water permits for working in the beds of public waters, water appropriation permits, game and fish laws, recreation rules, and some of the land use rules. Wild and scenic and recreational river rules are a good example of the kinds of things developed to regulate standard approaches to land use. But there are few regulations on the books dealing directly with forest or vegetation management. I think our colleague and lawyer this morning pointed out that they could be on the books but the commissioner hasn't decided to do that yet. I'm not sure the commissioner will and I'm not sure the commissioner won't. This may be my turn.

Incidently, as I go around making these kinds of talks—and I'm still kind of a rookie—people ask me what is it like to be the commissioner? Joe Alexander had a good line for that, he said, "Well, it's a living. It's no heavy lifting and indoor work. A day like today, I like that." When I first occupied the desk in the office there were some artifacts from other commissioners. There was even a note from Bill Nye. His note read, "If anybody asks what's it like to be Minnesota's commissioner tell them the smell of tar and feathers makes me sick to my stomach." It's probably a little like the moth flying around the flame. Nevertheless I personally have enjoyed it—we have had some pleasant times.

But if we look at forest management, there are no real prescriptions or regulations yet in place. If you look at the general structure outside the shoreland and wetland areas, private landowners can do just about anything they want to do with their forest lands. Over the years we have traditionally tried to work with people on the development of cooperative programs, incentives, professional expertise, free advice, etc. We have cost-share incentive programs with FIP, ACP, and SIP. We have had some educational programs, and we are enjoying some success with best management practices and cooperative extension via the university. Examples are various workshops, technical assistance, PFM programs, etc. Soil and water conservation districts are now involved. We've also had some outstanding help in the recognition of good managers through the Tree Farm Program.

We have a limited number of tax incentives, but not in the county in which I own a piece of forest land—yet. As a matter of fact we should address taxes. This is certainly an area to take a look at, if in fact we drop regulation on someone. There may very well be landowners out there who may say: if you're going do that to me, why am I paying such high taxes. There are so many rights and freedoms that are encroached upon, regulation may not be easily accepted by many landowners. That is a background item that really needs to be looked at as we discuss whether or not to regulate private landowners.

There are some gaps in existing regulations. Current regulations focus on protecting surface water, wetlands, and visual quality of shoreland areas. The regulations affecting harvest and management in nonshore areas are relatively nonexistent. There are broader ecosystem and watershed impacts and objectives that are emerging. You probably have heard about or have dealt with one or more of all of these. Biodiversity is certainly a resource management goal that is not limited to forest lands. However, forest lands are part of the ecosystems that we need to look at in terms of maintenance of the diversity of species that are present in Minnesota. We've had a lot of discussion about old growth. As you are aware, we have some guidelines that the DNR is
working with. Then there is the continuing question about old forests, which I'm sure will lead to interesting dialogue as we move ahead. The concept of forest fragmentation and some of the impacts it has on resources, particularly the songbirds, is important. Cumulative watershed impacts on surface water availability and quality as well as groundwater quality are of increasing concern. These are major issues that need to be looked at in the context of coordination between and among landowners. It's a case where all parties might be innocent, but together they accumulate to perhaps impact things like visual resources in recreational travel areas or water quality. If we address these regulatory gaps with cooperative programs, and there are opportunities to do that through assistance, incentives, and education programs, they need to be specifically addressed so as to also address the gaps. Critical to any nonregulatory approach will be the ability to reach and affect management of enough private forest land owners to be acceptable to those parties who are proponents of regulation. I think many people in our society would favor regulation. Our society has tended to approach most things with regulation where problems have been difficult. That certainly is true in many environmental areas. It may or may not be possible to reach enough owners to really make a difference. But there is a limit, no matter how great your resources, to the amount of voluntary participation. If you don't believe that, you ought to drive the rush hour traffic in the Twin Cities and see how many people are driving 55 mph. If you drive 55 mph, you take your life in your hands. You know the highway patrol; they won't even go near the freeways in the morning. They're afraid. You can take that to the bank. I've talked to some of those troopers, they'll say, "Well, I'm not going out there unless I have too." Probably many well-intentioned people would do the right thing just given the information and knowledge. Still there are people who won't and have no intention of doing that and, in fact, may not comply with the regulatory program either.

The big question is how should voluntary programs be structured, expanded, and how should we look at assistance, incentives, etc. There is a key link between any of these approaches through a legislative solution and the GEIS. Wayne Brandt and I may disagree slightly on this—he made a strong case today for proceeding toward legislation and there is merit in that case. If you're aware of what you want to do with a forest practices program, then we could proceed on that. But I do think the GEIS will be a study that will identify activities which are likely to cause significant environmental impacts. Hopefully it will also identify appropriate mitigation strategies. In any case, I'm sure it will shed a great deal of light on the total problem and how to restructure if you want to establish new cooperative programs and/or regulations to address the gaps in the situation. So as James Watt would say, "It's the paralysis of analysis." But, in fact, it may be a good study—one we can lean on to provide the answers and take a good look at a deliberate and progressive program toward making changes.

That brings me to the question that was given to me on the invitation to come here. What is the department's view of forest practices regulation? At the moment, we probably don't have a uniform view, but I can give you my view. In the near future I think it would be prudent to debate the issue, gather information, talk about it, hold meetings like this, and also rely on the GEIS process for information. But I also submit that the GEIS process will help with some of the raw nerves and the politics that are out there. Looking at how the GEIS came about and the players, I think there's a need to be very aware that it is a highly charged political atmosphere with widely varying differences of opinion. Although it is not a perfect process I have a lot of faith in the GEIS process. I think there is real opportunity to learn from this. I don't believe in necessarily stalling, but there is a lot of educational information that has to get into the minds of many, many people. I think sometimes those of us in the profession will say, "What's the
problem?" The problem is that a lot of people just simply don't have the knowledge base and don't understand the situation and the implications. There is such a rapidly changing view of what should be done that it is confusing the objectives. We can go back to some of those, say biodiversity, preservation of old growth, preservation of rare and endangered species, etc. These objectives are hardly trivial. They're there in law and they're there in the minds of many people and, after all, they are our concerns.

One serious problem is that I don't believe there will be any financial or staff resources available to begin implementing any kind of forest practices program if it is enacted before fiscal year 1993-94. Realistically it may be even later than that. You know that setting up a core of the tree police is going to take some dough. If you are familiar with the legislative process, adding new programs is a very difficult thing to get done. There are so many competing entities reaching for the dollars, that the tree police may not be the highest priority in the minds of many people. Until it is, you probably won't be funded. The legislature may give us the assignment, and that is a real risk. They may give us the job and we might proceed with what could be an erroneous approach. There are many tasks that we could talk about that we have been given and probably not had sufficient staff and/or money to deal with effectively.

I want to emphasize that the department does not want to be a barrier to progress toward ultimate resolution. We don't want to take a stand and say we're opposed to the legislation. But at this time we also don't want to take a stand and say we're really in favor. There is a lot of work yet to be done to determine if, in fact, either of those steps should be taken. We also have a process in place. You probably have heard about this, we've talked about it in the past. The DNR is arranging roundtable discussions on forest practices legislation in cooperation with the university and the social scientists on our staff. We hope to gain some ground by taking a good look at the issues with 15 to 20 opinion leaders and perhaps expand that to include a broader cross-section of the public. We plan to meet in January. We've used this technique on other resource issues, most notably the fishing roundtable. If you think this is a hot problem, you should deal with the fishermen! Some of you are fishermen, I'm sure. If you want to talk to me later about it I'll be happy to, but the kinds of high conflict resource issues we're working with need productive techniques to help people communicate what their concerns are. That is an important way to help the competing factions derive the kinds of basic programmatic directions that lead to sound public policy and long-term success. We're convening other roundtables as well. If you go to Lac LaParle to hunt geese, we'll invite you to the next roundtable. We need to take a look at what we do with that goose flock. There are, believe me, widely differing opinions about who should do what with the flock.

In the long-term I'm not sure that the department necessarily will embrace or will not embrace the forest practices regulation approach. There are some very productive opportunities to expand some of the continuing cooperative programs. There is also a need for new ideas. We need new ways to deal with it without getting the tree police out there in their tree bark camo—I'm sure they'll have to sneak up on the loggers. That leads to a vision of a whole new uniform. Ray Hitchcock knows we have continued discussions about what should the department uniforms look like. But, we're now convening a group of swamp police. They will start in about a year on the "no net loss" program. This may sound facetious, but it really not. The nuts and bolts of administering a regulatory program have me concerned, both in terms of expense, effectiveness, and continuing the saga of bash the DNR. After I got this job, a guy that I know said, "Do you know the difference between a duck and the DNR commissioner?" and I said no, not yet. He
said, "They close the season on the ducks." This is the same guy who told me the story about his wife going duck hunting with him. I asked him if she liked to hunt ducks and he said, "Well, she really didn't like it all that much. She chews on the ducks and she doesn't like the cold water." This leads to a fundamental question that I want to put before you: Is this necessary and what is the problem that we're trying to solve? Is regulation the most cost-efficient method of addressing the concerns that the public has?

I would be more confident if I was getting a lot of mail about this. We get thousands of cards and letters and phone calls. I haven't had many of them on this issue. We have had comments about some of the issues. We've received mail about old growth. I think the spotted owl has stimulated a lot of sensitivity about old growth. Maybe it is appropriate, maybe we need to be sensitized to take a look at it if we have an opportunity. We have the obligation to deal with various resources that are present in old growth stands. But I don't get a lot of mail saying: please give me a forest practices act. I don't know if anyone is getting that kind of mail. If so, I'd like to see it. I don't read editorials about it. It's not that it's not necessary or appropriate, but I just don't believe that a lot of people are sensitized to it. I don't believe they're looking on it as an opportunity. I also don't get a lot of mail saying: please improve the forest incentives program, etc. I know we're struggling with some very difficult political issues and also some difficult resource issues—concerns focusing on harvest impacts. I'm not so sure there is a great groundswell of political opinion about it. I harken back to Ron Nargang's comments that when the policy makers get hit with this, they'll go back and ask a question, and the people will say: what?! No, we're more concerned about taxes, or we're more concerned about other things. Thus it will take time for them to appreciate that there is a problem and what should be done. It also raises a question in my mind that, if there is a problem, can we focus other techniques or ideas and resources at less cost by increasing incentives or cooperative programs or education, etc. Is it desirable? With adequate funding available? Is that the right way to spend the money? Can we do more by restoration and/or rehabilitation? You know that a good bit of work that we're doing in the DNR is restoration. We're restoring those kinds of things that were problems created from activities and management years ago. Not necessarily only in forestry.

Consider the restoration of the metropolitan goose flock. I remember talking to Jim Cooper the day he thought that might be a good idea. Now Jim's trying to figure how to get rid of the other things. But that's really a resource success model. Take restoration of wetlands or lake rehabilitation as another example, but there is much left to do there. The real question I have is: what is the problem? Do we have a significant resource impact? I'll be candid with you—I think all of us would agree on this. When I go around the state, and I do get around and see it—from the air lately—I've watched management practice. Management practice is something I've been interested in for many years. Well, I'm enthused about what I see happening now. I don't see the kinds of techniques being applied that used to be done. I see far better management programs. I think the profession needs to take credit for that. I think we're implementing research and knowledge that has been produced by the research agencies and the university. We have better education programs, better extension programs, and I think we have a far better management approach now than as little as 15 to 20 years ago. Sure there are some things that could still be improved, but I see silvicultural practice that really looks very good to me. Yes, I see some places where it's not so good. But I see far less of that than I used to. I think there is some real optimism. That is a message that has to be sold or given to the general public who probably cannot distinguish good silvicultural practice and timber harvesting from bad silvicultural practice.
and harvesting. They probably lump it all together. I think there are some steps in education that can go a long way in sending that message.

I also want to bring up the idea of appropriate roles. The state, as the government certainly, is probably the primary place that would have a role here. We're also a large landowner and a large land manager. If we are to implement a regulatory program, it's almost surely going to happen through the state. The counties, as you know, have a very significant resource base and they certainly have a role. The federal government has a significant resource base and are part of the harvesting impacts. If we look at those large public landowners, it is imperative that we adopt best management practices as soon as possible if we haven't already done so. Let's do the job right. That certainly seems to be one of the first actions we could do. The university certainly has a role in providing the knowledge, information, and education. I think they're prepared to do that. There is a challenge here for the industry I believe. There have been very positive and progressive ideas coming from the industry. This suggests we have a bright future. I am sure the industry is prepared to cooperate. There is also a role for the Society of American Foresters. This begs the question, in my mind, of the role of the private landowners. The proposed legislation has a few things I should comment on. If enacted as drafted it would have the potential to dramatically change the organization and character of the DNR Division of Forestry, and its relationship with the public and other natural resources agencies. The tree police would be there and they would start to share the great positive image that our area hydrologists have at this point. That is one of the most challenging jobs in the Minnesota DNR, where you go out and tell the poor, innocent public that you shouldn't have run your bulldozer through that marsh and that it will cost you several hundred thousand dollars. That literally happens. Believe me there are some very difficult resource issues and it will happen with this. Relationships with customers are often very strained, services provided are often skeptical viewed, and many times you get involved with regulation and prevention of problems more than active management. You devote a large portion of the budget and staff to essentially trying to change people's behavior through regulation and administration of laws and rules and end up with a lot of lawsuits. One proposed provision that is troubling to me is the establishment of a forestry board. I don't know how the board concept originated—it is not necessary to explain that. I suspect it originated from how other states have approached the problem. The one thing I would say to you is that Minnesota is fairly unique in the organization of natural resources administration. We are one of two states that have a direct cabinet officer without a board. I think that system has worked reasonably well. I think any system will work if people want it to work. Thus a board is not necessarily a disadvantage. However, I don't believe that it is necessarily an advantage either. The executive approach in Minnesota's natural resources management has served us well. Some of our counterparts in other states find that decision making is not necessarily easy with a board nor is it necessarily accurate with a board. That doesn't mean that we don't or couldn't make mistakes. I just want to say that this would be a very major shift in administrative policy. Most of the models that you will look at have some kind of forestry board.

Let me tell you why I'm really concerned about establishing a forestry board. The current trend in our department, and I believe most places, is to move toward integrated resource management. We're making what I consider to be great progress on that. We're making great progress toward stronger teamwork, better utilization of all disciplinary staff, and, I think, generally sound and reasonable resource solutions. I was interviewed the other day by a noted journalist who said, "Rod, you are the least controversial DNR commissioner I have ever heard of." I said "Really?" He said, "Yes, what are you, sound asleep up there?" I said,"No, I'm trying to get out, trying to
be busy, I'm trying to make waves, but I'm not having a lot of success apparently. I was kind of enjoying the glow, like the moth flying around the flame. Not to hot, not to cold, just getting along fine." He did tell me that—and I think that it is true—we are enjoying a lack of controversy, but I don't think it's because we're not dealing with controversial issues, I think it's because the team that we have, the agency that we have is dealing with them better. We are dealing with them in a more integrated way. We're solving problems before they become real problems. I can't say enough about that. So if we do establish a board, I will definitely want to see it as a natural resources board or an integrated resource management board. I don't believe that it's the time and the place for a unique disciplinary board. I don't think that needs to be a barrier to establishing good forest policy. I don't think that has to be a problem. I think that times are moving ahead with integrated resource management. We are enjoying a record deer population and I hope we enjoy a record harvest this fall. A lot of that progress is the product of improved management skills and knowledge, certainly in the wildlife profession. But I think it's also very much a product of improved coordination, improved cooperation, improved understanding in resource management by all players and particularly by the forestry profession. I think our coordinating functions are far better. I think we have a much more beneficial approach to management practice and how it will influence other resources, particularly focusing on deer. You can talk to a lot of players in the federal service who have worked with our staff. A lot of you in the industrial side have worked with our staff. The divisions of forestry and wildlife have cooperative policies. I know Ray has worked hard at implementing those policies. The fruit of all that hard work is now with us. But more of that can and should be done. Thus an integrated resource management focus and some of these other goals such as biodiversity and ecosystem approach to management somewhat precludes a disciplinary approach to a board. If a board is established to only administer a regulations act, that would not be a problem. But as proposed to administer forest policy, that is far more than maybe I am suggesting here. Then we would have a concern. That can be dealt with. You can persuade me. That is not impossible. However, I do believe that an integrated approach to resource management is the future and I think there are also some other kinds of things that are going to show up. That will be a challenge not unlike some of the global issues—and we are certainly going to be dealing with global warming.

Concerning Minnesota Releaf, I have to ask Jerry Rose how that report is coming. The Minnesota Releaf report is part and parcel of something that has to be prepared by us based on energy consumption in the state of Minnesota. We are trying to deal with global warming and carbon cycling on a local scale. So now we've got a forest policy issue on our hands. I don't know if you guys thought about that, I'm sure you have. The scope of the issue is perhaps larger than originally anticipated and there are certainly some new goals that are closing on us.

The governor's perspective, I think, is also something I'd like to convey to you. I'm not sure that regulation is going to be his favorite approach to this. But I'm not sure he won't support it. I think he does have some concerns about the rights of landowners. He certainly was concerned about that in the case of wetlands. But he is also interested in protection of the environment and, if there is a logical way to deal with this, I'm sure we can count on his support. But honestly, I think it is fair to say he has not been adequately briefed and we don't have a clear statement from the governor's office as to what his opinion would be. In closing, if forest practices legislation is inevitable, which may be the case, and we have certainly had some inevitable things happen, then those involved need to focus on putting forth their best efforts and to make it an effective and workable product and the best that is possible. I have a lot of faith in the people and the

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government in Minnesota. So if something does come through, I'm convinced it will be a good product, a logical product, and one that we can work with. We need to recognize that regulation is only a policy tool for achieving public interests, thus private forestry practices and other options should also be explored.

In closing, I want to reiterate what those of us that are managing public lands need to remember—particularly those of us working for the state and the counties, and I think the same is true for the industry. If we manage our lands the best possible way, do we really need forest practices regulations? I submit that we shouldn't have to have it and if the public thinks we need to have it, it should be based on problems we are creating, that is something that we are doing that is wrong. I don't think we need to do things wrong, and I don't think we are. So, I suspect that you might get my drift that I think if it does happen, it would be reasonable to ask that it focus primarily on helping the nonindustrial private owner do the job right. The final word I leave you with is that we (the DNR) pledge our cooperation and interest in moving ahead with forest management. It's a vital part of Minnesota's resources and it's a vital part of Minnesota's future. We stand ready to help in any way. Please call on us if you need anything. I'm looking forward to a future that's lively to say the least. Thanks very much.
PANEL: MINNESOTA PERSPECTIVES ON FOREST PRACTICES REGULATION
A Department of Natural Resources Perspective

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I appreciate the opportunity to discuss my perspectives on forest practices at this meeting. As I mentioned last night, I think the meeting is excellent and has provided a good basis for the task force to work on background information and a position for the SAF. It is also somewhat unique for me to be batting leadoff. I usually end up batting cleanup. You know when you bat leadoff you are not expected to hit a home run. On the other hand you are not expected to strike out either. I will have to watch myself.

GENERAL VIEW OF FOREST PRACTICES
My general feeling about forest practices, as a matter of fact my general feeling for all the controversy throughout forestry, is that I wish it would go away. I suppose most of us have such a feeling being the kind of people that go into forestry. I think that that is not too abnormal. But I don’t think it is going to go away, and I will talk a little bit more about that in a minute. Back in about 1985, or thereabouts, there was discussion about forest practices acts and pressures to regulate forestry and so forth. Maybe not quite as much as we are experiencing here today, but the pressure was certainly quite strong. The Michigan Society of American Foresters, through a two-year process, ultimately ended up adopting voluntary forest management guidelines that have been published and widely circulated. I am sure that the guidelines would provide some good information for a forest practices act. By the way, they are developing a forest practices act in Michigan as well. It was interesting working on those voluntary forest management guidelines because right from the start there were members who were strongly in favor and other members who were strongly opposed. The members who were strongly in favor generally felt that it is better for the professional society to lay out what we feel as important in forest management guidelines. We called them guidelines because if you called them voluntary practices, it would have raised a red flag. In general, we tried to lay out what the profession felt was important in terms of forest management in the state. People who were against it were against it because of the fear that something voluntary today could easily be mandatory tomorrow. That was a very real possibility. But then as we discussed it and decided that if we are going to have something mandatory, it is better that we have something that we put together. The effort involved a two-year interactive process with several policy workshops, etc. to finally come up with the guidelines. I played a pretty strong role in the first three-quarters of that. I got tired towards the end and Joe Zyelinski, who was the supervisor on the Ottawa National Forest, picked up the ball and helped get it over the goal line.

MINNESOTA DEPARTMENT OF NATURAL RESOURCES POSITION
You heard a number of presentations from DNR leadership yesterday relative to forest practices. As part of the DNR team, my perspective is: in a certain stage of the game you are expected to use your best abilities and best judgement to help the team ultimately do its best. I think you know the DNR team hasn’t developed a formal position yet. Various team members are still expressing ideas and pulling together information. Ultimately we will have a team position and, as a team player, I want to assure you that I will be supporting the DNR’s position on it unless it is so contrary to my professional opinions that I can’t be a member of the team anymore. I
would feel professionally responsible to withdraw myself from the team if I cannot support what it comes up with as its approach to this or any other issue. I feel strongly about that.

DEVELOPING A GOOD FOREST PRACTICES ACT
Getting down to forest practices, here are some perspectives that I have: a forest practices act is coming and it had better be good. Just elaborating on that a little bit, my own feeling is that within five or six years we will have a forest practices act in Minnesota whether we want to have one or not. When you look at what is happening in other states, when you look at the concerns being expressed by the environmental community in this state—I am not saying they are bad concerns—you can see management being tightened up. When you look at the fact that the Upper Great Lakes region contains habitat for more birds than any other place in the whole North American continent, maybe even the world including the tropics, the number of species that exist in this region are just tremendous. That is being played to pretty strongly right now, and I think maybe it should be—it all points to the fact that we are going to have a forest practices act. One environmental organization has had a task force working on a draft forest practices act for the Lake States for a some time now. Within the last six weeks that was even made more visible to me. The Michigan Forest Products Industry Development Council, the governor's appointed council that existed up to about four weeks ago, met extinction along with a number of other boards and councils. They were working on a forest practices act. The council felt they ought to look at such an act and draft one rather than have one be imposed upon them. The council had a cross-section of membership on it including a member of one particular environmental organization. That person was also on the council and on the subcommittee that worked on the draft forest practices act legislation. As so often happens, when the subcommittee brought the report back to the full council, members started getting cold feet and wondered whether or not they should really be doing this. It is right in the minutes of the council meeting that the above mentioned environmental representative on the council said, "If you don't do it now, we (the environmental organization) have been working on a draft for a number of months and you are going to see a forest practices act before too long anyway." So a forest practices act is coming. It better be a good one and I think that is where the Society of American Foresters can play a key role. The group right here, and those that may not be here today, will be willing to work on task forces putting together a draft of regulations that meets all the criteria you heard about yesterday.

POLITICAL REALITY
I would like to talk a little bit about the political reality of developing and implementing forest practices rules. I don't think this will be a very easy task in light of the intense, emotional and sometimes well-intentioned, but often misinformed, parties involved. It would be difficult to put together rules without some kind of a formal structure to do that. The Generic Environmental Impact Statement (GEIS) information is going to help a lot in that regard, but it is not going to take away all of the emotionalism and the value kinds of things that ultimately will be part of how it ends up. The political reality of developing and implementing forest practices rules is going to be a hot potato. We are not afraid of handling hot potatoes, but it makes a lot of sense to try to set up a way of doing it that takes a little bit of the heat out of the process.

OPPORTUNITIES OF BOARDS
Another perspective is that boards offer opportunities, but they can also create challenges and problems. Boards can work. I worked for a board for 25 years and it is different. It really is. We used to say you spent half the month getting ready for the board meeting and after the board meeting you spent half a month taking care of what came out of the meeting. Then you start
getting ready for the next one again. So it is kind of like a treadmill for some members of the staff. That is one of the drawbacks of a board. A board can provide a broad base of support for programs and program funding. A board can also take some of the heat off individuals, whether they be executive branch appointees like the commissioner, or individual legislators. We could go on and list other positive and negative things about a board. I don't necessarily advocate a board, but I am not afraid of a board either. I think that if we end up with a board we can make it work to our advantage.

NOTIFICATION VERSUS PERMITTING

Those of you who are familiar with the draft of the legislation that is before us and that Wayne Brandt talked about yesterday know that this particular piece of legislation would not require permitting. In other words, you would not have to have a permit to harvest forest products. There are some major advantages in not having to have a permit. I suppose there are some disadvantages too. Usually if there is a permit, they require planning, etc. Well the proposed act requires just a notification of intent to harvest. A good set of rules and a notification process could be one of the most economical ways to handle a forest practices program. Once a set of rules was developed, the process could be simple. When you look at rules, the more specific and clear rules are the less controversy there is in administering them. The more vague and the less specific they are, the more likely they are to lead to controversy. The current proposal has a notification process, and if the rules are not being followed, there is an ultimate responsibility to close down the operation. That can also be appealed. If the rules are not direct and specific, the appeals process could be very, very time consuming. If the rules are clear it wouldn't be. In notification there are lots of ways to make that work. I don't imagine that there would be too many operations going on out there where rules were being violated that we wouldn't know or hear about quite quickly. It wouldn't necessarily mean that we would have to have a big umpire running around looking to see if the rules are being followed. There is enough interest in forestry that I think we would be notified of violations quite quickly. We might be able to organize things to expedite the notification process. I think that the notification process as outlined is not a bad process. It certainly is cost effective.

CONCLUSIONS

With that, I will conclude by saying that I am trying to keep an open mind relative to forest practices. I think we are going to have a forest practices act in the not too distant future. I think we ought to be involved in making it the best possible forest practices act to be able to conduct forestry in a professional manner. That means a manner that meets the needs of society and takes into consideration landowner education and technical assistance as well.
Perspectives from The Nature Conservancy

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It is truly a pleasure to speak to the Society of American Foresters group at a time when we are wrestling with some issues which are very real to you as foresters and to all of the citizens of Minnesota. I am going to be a little less specific about forest practices legislation per se and more specific about where I see the Nature Conservancy fitting into a philosophy of resource management. That philosophy expresses what I think we would like to engage in the future with foresters, ranchers, grazers, and farmers. Then I will finish up talking about where the environmental community, such as the Sierra Club, the Audubon Society, and others, is today. Specifically, I will offer some suggestions as to how we ought to work together to accomplish our common goals.

The Conservancy has a mission which is very broad, it is: to preserve natural diversity. This ranges from, as you all know, genetic diversity and species diversity, all the way up to community diversity including forests. We have carried out that mission in southern Minnesota by working with the Natural Areas Program of the DNR to identify areas of diversity that are remnants of the presettlement vegetation. We seek to find ways to protect those resources and provide stewardship or maintenance programs to cover them over the long haul. This is not an easy task. It is a task that is not always compatible with forest management or forest practices because disturbance, as all of you know, is a key component to the maintenance of diversity.

Disturbance is a natural part of a functioning ecosystem. Nationally or internationally the Conservancy has engaged in the protection of about 5.5 million acres in all fifty states, Canada, Latin America, the Caribbean, and now the Pacific Rim. In Minnesota we have been active for 30 years and have effectively protected 50,000 acres, and we retain about 25,000 acres of land. A very small component of that is forested land. Acquisition of those sites is generally prioritized by the Natural Areas Program. We then focus our acquisition efforts on those identified areas which include some old growth sites. Some of you are aware of the park expansions that occurred this last session particularly in northeastern state parks. One of the reasons for expanding the park resources was to provide long-term protection for an old growth oak forest which is an important feeding site for black bear in northeastern Minnesota.

We have been doing small site conservation for 30 years in Minnesota. Yet, now we are going through a corporate culture change. Thus, we are recognizing that small site conservation is not going to protect the diversity that we are interested in protecting over the long haul. For years the Conservancy has acquired 10-acre, 200-acre, 500-acre land tracts, and we have essentially ignored the neighboring populace, be they a public landowner or a private landowner, and any accompanying threats to our efforts to preserve. We are shifting that philosophy now and will continue to protect small islands of diversity, but we have got to do that in context with the rest of the ecological system. We have been guilty of not recognizing ecosystems. We now need to recognize that preservation of full-functioning ecosystems is key to species survival. I think this is the issue that a forest practices act and forest planning in Minnesota has got to address.
How does the forest ecosystem function and how can the benefits accrue to all of us, whether we are an observer of wildlife, a logger trying to eke out a living off the land, or a forest industry trying to derive products even for Nature Conservancy members? TNC is our acronym. I think some people think nonconsumers are what the environmental community represents. However, TNC members, like the rest of society, also consume paper and other forest products that come off the land. How does that fit into a forest system?

Part of what I do is what I consider to be an exciting project that TNC is undertaking in Rice County. It is a forestry project that involves not only working with foresters on forest land, but also working with the state park system on state park land, the county park system on county park lands, private landowners on their land, farmers on their land, etc. This is an exciting effort. The Natural Areas Program identified the largest viable remaining stand of maple-basswood forest in the state which exists in Rice County. For those of you who aren't familiar with it I will try and paint a picture here. Consider the Cannon River; the Rice County Wilderness Area which is a county park several thousand acres in size; and a few miles to the east, the Seven-mile Woods Area which is almost all privately owned woodland and in which homes are rapidly being developed in this predominantly maple-basswood forest cover. Those three areas comprise the largest remaining intact maple-basswood system in the state of Minnesota. Why is that important? Well, for one reason we have been looking at that area for years because of the dwarf trout lily, a plant that only lives and thrives in that ecosystem. It is very important for us to preserve the gene pool of that plant. Another reason that this area is important is that many bird species inhabit that area. And all of the conclusive studies show that the birds need a certain canopy cover and forest cover type in order to survive. If you get below a certain threshold, these bird species will no longer nest in those woods. So, we are attempting to put together a plan that involves the DNR in as many different respects as necessary to integrate resource management on a forest ecosystem level. The objective is to provide long-term protection for wildlife and for neotropical migrants which we all enjoy at least part of the year. We simply need to bring together all the players to do this.

A word about incentives. Voluntary programs are going to be a key part of meeting our goals. Core areas will be identified for logging practices, but these will quite likely not occur in the core of the Nierstrand State Park, for example; Rice County will probably not allow forest management or logging activities in their park. However, on the private woodlots there are tremendous opportunities for developing plans which will provide forest management that is consistent with biological diversity protection and also will include forest harvesting and hardwood production that is important to the local economy. The Forest Stewardship Program is going to be very important to this project as will be the Forest Legacy Program which should be funding projects in Minnesota. Reinvest in Minnesota (RIM) needs funding to put this project in order. TNC's philosophy is: we lobby now; we want to work with all parties and not overregulate parties; we want to get together, sit around a common table, and develop plans for natural resources management which will accomplish most of our goals. We feel that you can do that much better through discussions and informed dialogue using the scientific community, meaning foresters, forest ecologists, wetlands specialists, hydrologists, etc. We want to bring the team together and develop a resource plan that achieves the goal of sustaining long-term protection of the system and providing for the local economy. That is the way in which we want to approach forest management issues in this state.
Now as for developing a forest practices package, I agree with Jerry Rose that there will be a forest practices act and we ought to do that as a community amongst ourselves first before vaulting to the legislature, because there is nothing more dangerous than getting legislators involved in positions that are polarized. They can be your worst enemies at such times and you can end up with a product that is not going to be good for anybody if you play the game wrong. I was encouraged to hear from Rod Sando that there will be a forestry roundtable put together bringing in the key parties to discuss how best to approach developing a forest practices act in the state of Minnesota. Again the Audubon Society and the Sierra Club and others were a bit surprised to see a piece of legislation introduced which they had not even been invited to participate in drafting. And I don't know how the SAF was involved, if at all, in developing it or trying to develop a reaction to it. But bringing all parties in at the beginning is a key to success in the long run because through that kind of a process we share our own personal and professional views with others and finally end up with a compromise product. If we ask the legislators to do our compromising for us we may not end up with the best result, for either industry or the forest community or environmental health in general.

I'll wrap it up by emphasizing that it is critical to follow through with the committee you established this morning. I would encourage you to reach out to the environmental organizations, meet with those groups and pull the team together to determine how forest activities are going to be regulated or encouraged in the state of Minnesota.
One thing that I forgot to state yesterday when I began my remarks is my view of the legislation that has been introduced. What has been drafted is intended to help when we do move forward with forest practices legislation in the state. For myself and for industry, I want to make it clear that we haven't lost our minds. Looking out yesterday as I was speaking, I saw a lot of very quizzical looks on people's faces—now, does he have a death wish? Is he really authorized to say this? Is this really where they are coming from? Does he have a new job already picked out? Are we going to see a notice that he has resigned and gone off to the Far East or something? No, we have not lost our minds, I have not lost my mind. I am confident that since my paycheck was delivered just recently that I don't have a death wish. I want to assure you all of that.

I think one of the questions that everybody has in their minds relative to the topic of a forest practices act is the issue of need. Do we really need a forest practices act? And what are some of the things we should think about as we assess it in our minds as individuals and as participants in the groups, in our professional lives in an agency or company, or in other endeavors through the SAF and professional organizations? Do we really need this one?

I think there are a couple of key points that we need to keep in mind. One is the very real pattern of checkerboard regulation that does exist in our state and that has begun to proliferate. I won't bore you with some of my remarks from yesterday and Steve Masten's remarks on that, but we are seeing this checkerboard regulation and it is extending beyond the areas in and adjacent to waterways and to other areas.

The second consideration that we all need to look at is that everyone of us in our jobs and professional lives would like nothing better than to have everyone else leave us alone. Tell me what my job is and I'll go out and I'll do it and I'll do it to the best of my abilities. I feel that way every time I have a board of directors meeting. I have these visions of the board going through discussions and giving directions as to which way we are going proceed. I keep thinking: why don't they just leave me alone. Just lay it out and leave me alone. I think we all have that sense at times. Unfortunately, that is not the way the world works. It is not the way the world has worked for quite a long time. Society, in fact, is going the other direction. People want to have more personal involvement and investment in the activities that they're interested in, be they professional or personal interests. One thing that creation of a board would do toward formulating policies in a formal public process, is it would codify some of that participation. People would know where to go if they want to discuss and advance views on how the forest lands in the state are going to be managed. An example would be to increase the proportional representation of larger and older trees on forest lands and the management for them.

The next thing that I mentioned yesterday that may harp back to the "let me do my job" type of thought, is to make sure that we let resource managers be resource managers and not put them increasingly into the position of being dispute resolvers. I think this is a very real issue that must
be considered as people stake out positions on these various topics. I know we and a lot of other folks end up debating these issues very strenuously with people at different levels of government. That may not be the best use of either our time or that of the resource managers.

I think the next thing that a forest practices act would do is assure the long-term status of forestry. Forestry is just a little bit different from other types of land-use activities because the primary tools of forest management and harvesting are by their nature disruptive to the landscape. The way we manipulate vegetation involves human activity in the forest. We intervene in the forest in order to accomplish what we hope is the soundest and healthiest forest that we can have. Well, the tools that we have, be they harvest, be they different types of regeneration, or whatever, are disruptive to the landscape by their general nature. I think society is increasingly suspicious of resource managers—we as a society are increasingly suspicious of intervention onto the landscape. People are less comfortable now with those types of activities than they may have been in the past. I think that forest practices legislation provides a mechanism for reassuring society that we do in fact have an organized way of ensuring that human intervention in the landscape is going to be done in the best way possible regardless of property ownership. It says we are, in fact, going to manage all of the forests of the state to achieve the best management and best goals that we possibly can.

The current direction in resource management, particularly forest resources management, is toward a more holistic approach. That makes a lot of sense from all perspectives. I think we have to be careful that we don't let integrated resource management lead to fragmentation of management—where we end up with so many concerns for each different area of the landscape that we neglect moving forward with the management decisions that we truly need to make.

Finally we need, in particular the SAF needs, to keep a focus on improving the practice of forestry and improving the practice across all types of ownerships—not just public, but all levels of public and private. As we move forward, the state and all the interested players in the topic will do a lot of debating on the issues. No question about that. We have spent nearly two days now talking about it and these are probably the first of many days of meetings that are going to be spent looking at the issue. I think we need to keep focused on the substance of the issue. The substance of the issue in my mind is how best to manage the state's forest land. I think we need to keep that focus. Also, keep the focus on improving the practice of forestry and assuring good management here in the state of Minnesota. I think that is a goal that we can all share and all strive for.

I think that as individuals and collectively we are going to have to rise above some of the historical aversions that we have to the very notion of a forest practices act. It tends to send chills up and down people's spines. When we first started discussing a forest practices act internally in our organizations, it started some lively discussions on the topic. But I think we need to rise above that historical perspective and take a fresh look at the issue as a whole. I think we are going to have to be very, very careful that we not move forward in discussing it from the perspective of protecting our own individual turf—be it the industry wanting to have the gates locked on the road through the land, to private landowners, and all the way through to agencies fighting over their individual pieces of turf. I think we have to keep the focus on moving forward with the practice of forestry and not on protecting our own turf or our own empires. I think we are going to have to do so, probably the most difficult thing for someone like myself and Nelson and others, but I truly think we have to attempt to rise above our desires as interest groups to
attempt to gain relative advantage in every policy debate. I think we have to. This issue is a far too important to be viewed merely from a perspective of how can we gain a competitive advantage.
Your attention during this conference is evidence of very real concern and interest in forest practices regulation. As Legislation and Policy Committee chair for the Minnesota Section of the Society of American Foresters (SAF) and through service on the SAF's Forest Science and Technology Board, I know how much you want the SAF to take a position and to be influential on your behalf. Fortunately, the subject is not new and we do have a carefully thought-out national office policy statement to work from. My purpose today is to relate that policy statement to you and suggest key points for the intent of the regulation as it might take shape here.

Forest practices legislation, as described by Wayne Brandt, was introduced in the last legislative session. However, it did not move forward to passage. Subsequently, members have asked about the SAF taking a stand on the issue in general and/or on specific legislation. The policy described below is a basis for such a position.

The SAF policy on **Public Regulation of Private Forest Practices** was adopted by the Council originally in 1975 and amended in 1989. The statement begins by noting that a number of states and localities have adopted forest practices regulations in an effort to protect forest resources for the interests of society at large. To quote from that policy, "The SAF neither advocates or opposes the public regulation of private practices in general. If states or localities choose to regulate forest practices, the SAF advocates systematic regulation that will enhance rather than deplete forest resources and that reflect the cost of regulation in relation to the benefits achieved." Importantly, the policy statement presents criteria for assessing the effectiveness of alternative systems of forest practices regulation. As a preface to that, let me emphasize that the objectives of the SAF are to "advance the science, technology, and practice of professional forestry in America and to use that knowledge to benefit society."

The SAF policy statement presents 21 criteria in all for judging proposed regulations. These are grouped under the headings of representative governance, knowledgeable design, flexibility, predictable application and enforcement, clarity and simplicity, incentives, and authority consistent with governmental support. Examples of specific criteria are:

- Forest practices regulations should be authorized by bodies that represent the broad public interest and the full range of users.
- Regulations should embody the interests of all citizens they are likely to affect.
- Regulations should be based on the application of scientific knowledge, forest management principles, and their impacts on landowners' objectives. Since we seldom have perfect knowledge, regulations need to be flexible and adaptable to new information.
- Regulations should assure the productivity of forest lands and protect the environment.
• Regulations should recognize variations in forest conditions.

• The regulatory system should place rule-making responsibilities in representative bodies that have direct access to the information they require.

• Regulations should be clearly applied and enforced with respect to the lands and practices to which they apply, the governmental jurisdictions that exercise authority for them, and the processes through which this authority is exercised and appealed.

• The processes of rule making and appeal should be readily accessible, responsive, and equitable for all who may wish to use them.

• The regulatory system should produce incentives that have the greatest net beneficial effect on the forest resources it is intended to improve.

• The regulations should not exceed what a government can finance and staff.

• The system should provide clear information to the public about the legal and financial costs that regulation of private practices may entail.

The policy statement concludes by stating that, "Forest practices regulations are one means to sustain productivity and protect environmental quality. Although they may express a broad public intent to achieve this objective, they should not be assumed to do so by virtue of intent alone. The effectiveness of forest practices regulations depends on their impact. Their impact depends on landowners' responses to them, and rarely can these responses be expected to follow directly from the regulatory intent." In brief, the history of such regulation shows both good and bad examples.

The Legislation and Policy Committee of the Minnesota SAF will use this policy as the basis for comment and possible testimony on legislation as it may arise. We recommend that the membership study this policy.

Now I want to ad lib a bit and use this time to emphasize two points in the SAF statement and how we might use that to shape direction. Note that since I am party to the crew working on the Minnesota GEIS, I want to emphasize that these are not my opinions. Simply take them as ideas I have heard that seem to have merit.
I often attempt to motivate student thinking by listing threats to our forests, i.e., to the values from forests. Typical threats are:

- atmospheric change
- acid deposition
- population growth and urban development
- tax policy
- interstate highway system
- preservation policy
- agricultural policy
- global energy needs
- timber harvesting

Note that timber harvesting, though last, is often considered the threat to forests. I mention that and point out that harvesting changes the structure and composition of forests, but we do not lose much forest area from such activity. The other threats are far more important factors in loss of forest area.

I bring this up because I think many of us are missing a key opportunity and the most important problem in all of this—the loss of forest land. I have been tracking that in research back to the 1920s. In northern Minnesota we are losing 2 percent of our forest area per decade, in parts of southern and western Minnesota we lose 10 percent per decade. That is an ecological disaster! It is a significant loss of biological diversity, recreation values, water quality, and aesthetic character of the landscape. If we are truly serious about conservation and a land ethic, then this must be factored into the intent of forest practices. Much of what I’ve heard here so far does not address this acreage loss. You might call that an example of fiddling while Rome burns. We could easily develop forest practices regulation that actually exacerbates the loss of forest land among nonindustrial private forest properties. To bring this point home, as suggested earlier, our private forest management assistance programs are very successful among the landowners we reach, but that is only 15 percent of the NIPF landowners. Among the other 85 percent, some are selling out, plowing it under, or subdividing. If we continue to allow (and actually encourage) this to happen, the pressures on the northern forests will grow stronger and we will be worse off.

In the northern forest area, we need to recognize the primary opposition to harvesting comes from the aesthetics problems generated by clearcutting. Wildlife, biodiversity interests, water quality, etc., are important concerns, but they are often vehicles that serve to voice and legitimate public concern. In the last 50 years of forest management, we have managed to clearcut areas in close proximity to a large segment of the public. They don't like how it looks. We will simply have to move to more frequent use of softer forms of harvesting such as selection and shelterwood, refine slash management, road, etc. It is really that simple!

In summary, practices have improved, but they will have to continue to improve. Our question is the appropriate vehicle for that. The SAF policy statement is sound guidance in that choice. Finally, as you work through the maze of vehicles, don't forget the major environmental concerns we need to address. This doesn't mean the operational concerns of the logging industry are not important, they are. But environmental quality values should not be lost among the industry, agency, or special group interests. An additional reason I chose to emphasize the loss of forest
lands is that this is a vehicle we can all come together on. If legislation on the issue comes to pass, let's make sure it is complete with respect to the vision we have for Minnesota's forests for the coming decades.
A County Land Management Perspective

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After the last couple of days it is likely that anyone would have trouble finding something to say about forest practices that hasn't already been said. I will try to be brief but to say a few useful things, if that is possible.

During these last few days, I think I have heard some persons imply that the subject is really quite simple; and conversely I have heard it implied that it is very complicated, even to the degree that it is sort of like being asked to "describe time and give two examples." Or to "describe the universe and give two practical applications." But we shouldn't look at it in an oversimplified way nor should we look at it as being so complicated that we can't deal with it. What we need to do, and what has been suggested to you more than once, in fact many times, is that we need to be very clear about looking at need and purpose. Once we determine that there is a need and that there is a clear purpose, then we can proceed, but first we must be very thorough about those basics.

Before I go any further let me give you a little bit of a disclaimer. I am here to speak to you as a member of the County Land Commissioners Association. However, in doing so I have to be very cautious. We have 15 counties out there that can and must speak for themselves. We also have an Association of Land Commissioners designed to bring together the notions and ideas of those counties and look for consensus and then we attempt to bring that forward as some sort of a unified position. I will attempt to do that for you today. I can tell you now that there is no clear consensus at this point of time about Senate File 1574. I don't believe there is a clear consensus either on any kind of forest practices legislation among the land commissioners or among the officials of the county. Anything I say to you has to be taken in that context. Later on perhaps I will give you a few of my personal observations. What I will tell you, is that there could be consensus. It depends on what we are talking about. Are we talking about Senate File 1574 or are we talking about a forest practices act in a more general context? I think we need to be clear about that. I think there was a little confusion over the last couple days on whether or not we were speaking specifically to the present draft of the bill or whether we were talking in terms of general concepts. We need to be very careful when we describe these things and discuss them that we are doing one or the other, because they are not necessarily the same. That is to say, anything that finally happens in the way of forest practices may not at all look like what is in Senate file 1574.

Another thing that strikes me is that we need to be more careful about what we are talking about in terms of specific parts of a forest practices act. I think that there could be consensus among people at the local levels, certainly the county, if we were talking about the no net loss of commercial forest land or the concept of no net loss. I believe another thing that is a major concern among counties and county land commissioners will be whether or not we are talking about something that is broader than a strictly regulatory approach to the forest practices act. I don't think you will see a great deal of support for a regulatory approach. There may be some real significant opportunities if we were to examine this subject from a perspective of taking a
more positive view, a more progressive view in my opinion, something that would help the practice of forestry and allow for and sustain a good sound practice of forestry in the state rather than just a pure regulatory mindset that we seem to sometimes get ourselves into.

Let me suggest to you that however this develops or however these proposals proceed, the counties in Minnesota are likely to become very much involved. There are 441 elected county commissioners in the state of Minnesota. The majority of them are in rural Minnesota and many of them are very concerned about what is happening in rural Minnesota. That includes what is happening with our forest lands. Not just in silviculture either. They are very concerned about the economic base from which the counties must function. Local officials haven't been hiding in a closet the last year or two so as to not notice the shift in economic responsibilities from the federal government to the local level, or from the federal government to the state, or from the state to local units of government. Economic responsibilities at the county level are almost overwhelming elected county officials at this point of time and they are very, very aware that the economic base of forests functions in a way that will sustain needs for goods and services in their community. Most of the counties in Minnesota are in some sort of serious economic difficulty because of this and some officials are very sensitized to new sweeping legislation that can affect them directly or indirectly. My guess is there will also be auditors, assessors, and recorders who will get into the act because anything we do in terms of forest legislation is going to affect them in one way another.

Let me take just a few moments to give you some of my personal perceptions and some reactions to what I think I have heard in the last few days. First, I keep hearing the terms forest practices act and regulation as if they are one and the same thing. They need not be, and in my mind they are not one and the same thing, and should not be one and the same thing. If we proceed in a more positive way by looking at alternative solutions and looking at incentives and other such things, I think there may be some ways that we can find a common ground in terms of improving the forestry situation in the state. A second point is that I believe we need to take a stand now. There seems to be a general perception, and I would agree with it, that there is not going to be a bill passed this year—that we won't have an act in this session. It may not next year, it may not three years from now. But ultimately there probably will be. So there is a tendency to sit back and say, "Well, I won't have to worry about it this year, we'll work on it next year, or we will work on it when it becomes a crisis." We tend to put off some things until they become a crisis and we need the state to take a stand. We need to ask openly, "Do we need a forest practices act?" We need to ask, "Should we proceed at all? Should we proceed now? If so, how do we proceed?" We can't have it both ways. We need to begin now, and that means we must start participating in hearings—one is coming Monday night—and participate in all the other activities that are going to be associated with this over the next year or two. I can assure you, from my experience in working with legislation, and many of you are more experienced with that than I am, that as a bill proceeds over a period of two or three years it gets closer and closer to looking like its final form as it moves along. If we are going to wait until the tail end and try to amend it to get those things in or out of there that we find objectionable, it is too late. We need to do that now. Third, on several occasions I heard discussion where the terms forestry or forest practice were used as if we were only talking about silviculture or logging practices. We need to get that notion out of our heads and those kinds of terms out of our vocabulary. We need to get people thinking about forestry as something more than just silviculture and/or logging or harvesting. I think of forestry, as I was taught, that it is the manipulation of an entire forest community, not just logging practices, not just this species or that species or various aspects of
doing this or that. Forest management ranges from designing railroad grades for recreation trails to silviculture. It is all those things and any forest practices act or anything that comes out of the pursuit of a forest practices act must consider and address all of those things. If a board of forestry were to become a reality, and I don't know if it will or should, it must consider and include all those aspects of forestry.

Forestry in my opinion is more than just a few of those things. It improves biodiversity. I have heard some comments that would lead me to believe that biodiversity and forestry were not here in the same room. They are inseparable.

Another concern that I might have is the idea that we shouldn't have boards or commissions because we need to integrate other activities. That just doesn't ring true in my mind. Let's not confuse forest practices and a board of forestry with talk about a board of natural resources. A board of natural resources would have to address such things as lake management, river management, mining and mineral management, hunting and fishing management, prairie management, parks management, etc, etc. That is not what we are talking about here. We are talking about managing forest communities and forest practices. I don't manage wildlife, I can't; I don't have that authority. But let me tell you nobody else can manage wildlife very well on the forests that we manage unless we cooperate. We manage a whole lot of habitat and I take that very seriously, that is part of forestry, that is part of my job. That is forestry and all of those things are a part of forest management.

I am here to assure you that counties and rural Minnesota will be very much involved in this process of forest practices and we will be anxious to work with all of you in achieving a good outcome.
A Nonindustrial Private Landowner Viewpoint

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I have a task before me this morning to speak for 130,000 woodland owners in the state of Minnesota. Those woodland owners own 42 percent of the woodland acreage in the state of Minnesota. I am sure that if I went out to talk to each one of them I would come back with 130,000 different opinions. Each one of you has an opinion as to what should be regulated or if we should regulate. You have not proved to me that we need regulation. Therefore, I am going to back off that subject. I can't speak for 130,000 people this morning, I am going to speak as one individual small woodland owner with a myriad of questions. I don't have a great number of words of wisdom for you this morning, I simply have questions and don't expect answers right away. Batting last as I am I hope I can keep you awake.

As a small woodland owner, it is not I who stirred up the media to attack the state and federal forestry services and accuse them of flagrant mismanagement of public timber resources. As a small woodland owner it is not I who got the media into the belly of the ships going to Japan and said look here we are shipping our timber resource overseas. Then what have I done as a small woodland owner to warrant this type of regulation? Why should I bear the brunt of this act? We spent a lot of time yesterday reviewing various programs other states have on their woodland regulations. Minnesota is going to play follow the follower? Or is Minnesota going to take a little different approach. Probably the least expensive and the longest lasting approach to this entire problem would be education. You teach somebody something and he remembers it. My father taught me a lot of things, I managed to make it to ripe old age and I remember most of them. Why not be a leader in this field? Why not develop educational programs for the small landowner and the general public? Teach the small landowner what is a good management practice and what is a bad management practice. The iron mining industry did it a few years ago. There are some white heads out there that remember the iron mining minute that was on television in the metropolitan area. They managed to sell a whole tax act in the state of Minnesota. Why can't we, as the forest industry, get it together and plead our case to the general public?

The gentleman from Oregon stated yesterday that his program cost $10 million per year to administer. I tried to ask him a question so the majority of you could hear, however, I had to corner him at coffee break to get the balance of my question answered. I asked him how many acres did he manage or have to, as I used the word, police per year in Oregon. His statement to me was, "Don't quote me on it, but it is someplace around 125,000 acres." You don't have to be a mathematical genius to figure out that $10 million is a lot per acre. Wouldn't we be better off taking $10 million and using it as incentives?

How many small woodland owners am I speaking to here out there? How many of you in the audience are small woodland owners? Quite a number. Let me ask you another question. How many of you made sacrifices to purchase your land? How many of you drove old beatup pickup trucks for years? Never bought a new snowmobile, didn't get to go out with the spouse on Saturday nights just to make payments on your land, just so that you could have a piece of the American way of life. Along comes Joe Sixpack from Minneapolis. He is driving past your piece
of land, and you have cut firewood somewhere along the road. You may have cut wood for a
garden. He blows past your piece of land in a Suburban that is probably five years newer than
the pickup truck you have sitting in the driveway. Before his trailer carrying his two brand new
snowmobiles clears your property line his wife, who is seated next to him in the L.L. Bean latest,
says to her husband, "There ought to be a law against people cutting all those trees down." Now
I can say this because I lived 55 years in Minneapolis and I am a former member of the Audubon
Society. I am not speaking from left field here, I am a member of that group and I am also a
member of your group. I went without for a lot of years to make payments on a piece of
property.

I want to describe a scenario that came to my mind as I sat out here yesterday, that is: you
purchased land as an investment. You're an investor from Minneapolis and you purchased a piece
of timber property—not too expensive in many areas—and you cut the trees off and you take the
capital you derived from the sale of the trees and you build yourself some homes per code, per
permit, per condition of use permit, per whatever else you want to put on the property. You sell
the homes and you get that dirty word, you get profit. (I come from industry. I have heard profit
called a dirty word for a long time.) Isn't that the free enterprise system many of us have fought
for for years?

Another scenario. I inherit land. My father owned it and passed it on to me. Hasn't been
logged, it is in no timber programs. I inherit the land, but I want to grow strawberries. I want
to cut the trees down and grow strawberries. Timber practices acts, in most cases I heard
yesterday, require reseeding timber. Have you not as a landowner lost all your landowner rights?

The state structure in taxes is such that you cannot make enough money at $6 per cord to pay
your property taxes on a piece of property today. Gentlemen, this is not Oregon. This is not
Washington or California. We are cutting $6 per cord stumpage on this land. The state has a tree
growth tax, however, each county has the option of adopting that tax if they want. Mille Lacs
County where I live did not adopt it. Is that an incentive to grow trees? Forty-two percent of the
forested land in the state of Minnesota belongs to private parties, yet the skeletal proposal—which
I agree at this point is a skeleton proposal—suggests private landowners would have less than 10
percent voting representation on it—one seat on an 11 man board. Seems to me at one time we
went to war over something like that, that is the representation and taxation type of thing.

One problem we have is trying to describe a landowner. I have been out in our area and you go
up to a farmer and he will deny emphatically that he has anything to do with forestry even though
he has 40 acres out there that is timber. Heck, that is his summer pasture or a place for the cows
to shade. He is not in forestry. He does not even want to be associated with us. He is in
agriculture. If, however, we try to pass a law, that is bring a bill before the state legislature, that
is going regulate the farmer's activity on his agricultural acres and the extent of fertilizer,
herbicides, etc. he can use, the outcry would be deafening. We have heard in the past from the
agricultural industry as well as the chemical companies. Why then do they think we will not cry
out? The reason agriculture has such a voice is that they are organized. Can't this industry get
organized? I mean from the landowner to the wholesaler of wood products. Can we not get our
act together so that we do not need regulation, can't we do it on a voluntary basis? They haven't
proven that we need regulation yet, even though everybody says it is coming. Voluntary? Wisconsin
has a law, the Wisconsin Managed Forest Law—key words are managed forest.
Minnesota is considering a law—key words are violation and penalty. Which words are easier on your palate?

I understand the state timber resource is in trouble—it can be abused by short term gains by a few people. I think that everybody realizes that. But should the heavy hand of government step in? Heavy regulation does not work and if you don't believe me a fellow by the name of Gorbachev will give you a very good example of how heavy-handed government fails.
Panel Questions:

Q: What mechanism might be used to assure no net loss?
A: W. Brandt. I think there are two ways you assure no net loss policy: either prevent elimination or you provide for mitigation. I think that the wetlands bill that was passed takes both of those tactics in terms of preventing conversion and draining of wetlands as well as providing for mitigation. As far as forest lands go, I think that an outright ban on any type of clearing of land would probably be politically unpalatable in this state or any other. But I think that the goal that ought to be pursued and enforced is to provide for the maintenance of our forest resource base. I think Alan Ek was very eloquent in describing that as something that ought be one of our top priorities. I think we agree. I think you have to prevent wholesale conversions of forest lands to other uses or provide for afforestation activities.

A: J. Rose: I would say that the no net loss policy is a bit perplexing in that soon you need to specify what it is you do to ensure no net loss, and I haven't really seen effective mechanisms crop up yet for that. We are also in a peculiar situation in this state. We need to get technical a minute with respect to the inventory. The inventory is showing an increase in our commercial forest land. So no net loss does not look like an immediate problem. But that is largely a function of the numbers and the way the survey has been conducted at several points in time. If I were trying to push forest practices or push the no net loss policy in today's world, given the environmental concerns and the numbers, I would go with total forest land because we have better figures on total forest land than commercial forest land. The latter is perhaps more a function of definitions. I defer to Wayne Brandt, he did a better job on that part than I can.

A: J. Vogel. I would like to add the comment that no net loss may not be enough. Let me just use an example. Alan Ek talked about the loss of forest land in the southern part of the state and about the a current major concern over the Minnesota river valley and the pollution and so forth associated with the things that are happening there. Forest restoration may be part of the solution of the problems in the Minnesota river valley, so I think we need to be even broader in our thinking. Forest restoration for a number of reasons could be very important for us to consider, but it should never be allowed at the expense of existing forests. It is indeed a complicated subject.

Q: With respect to educational needs—what would be the best way for SAF or other resource-oriented folks to reach the 130,000 small woodland owners?
A: R. Knoll. I come from industry, and in manufacturing we have a term that I use quite frequently, "dog and pony show." You have to put a dog and pony show on the road. You have to go out and find these people. Get out and knock on doors, put your dog and pony show on and tell them what you want to do, how you want to do it. If the state is going to do this, use Channel 2 educational television programs, or other commercial television programs, and small radio stations throughout the state that are very receptive to these types of programs. I really am not an educator, but I do know how to reach people.

A: J. Vogel. There may be some means in addition to education which could help reach these people. I think our educational programs have in the past been very well designed in terms of reaching the target audience. The problem is the audience is much larger than even a major increase in resources could deal with. I would suggest that we look more carefully at the tax code. Almost all of the private landowners identify themselves about
once a year when they file certain forms and if we write the tax codes properly their
accountants will help them find the message designed to reach them. I think that may be
a way to reach them and it may be as effective a way to get some real impact and
recognition of forestry potentials for their lands.

A: R. Knoll. I think we have to go beyond educating old dogs. Old dogs like me, you can't
Teach old dogs new tricks. We have got to do a better job of getting in those school
systems. Let me give you a little example. Last year, I have a 12-year old son, an old
white-haired guy like me with a 12-year old kid, so I am off to the PTA and my little
boy's geography book is lying on the desk. I want to see what it says about forestry,
it says: forestry is the art of growing trees and parks and for more information contact
your nearest national park forest ranger. I almost had a hemorrhage. We have to be more
diligent about what those kids are being taught and we need to get involved just like how
are we licking the drug program in the schools? We are teaching the little kids to say no.
We need to teach those little kids about forestry. The drug programs, the thing that you
hear today next to civil rights and gay rights and women's rights, you hear the AIDS
epidemic. They claim they are going to resolve the AIDS epidemic by education. Tried
and true, education. It lasts longer than bureaucratic structures and you spend the same
amount of money for it.

Q: I am really surprised at this point in time to hear Jerry Rose say that the DNR has no
position. When is the DNR going to have a position on this legislation?

A: J. Rose. When we have to. You have heard positions on certain parts of forest practices
regulation, but I think that at this stage in the debate we need to keep it open. I don't
think even Wayne Brandt would expect to see the bill that Minnesota Forest Industries
introduced passed as it currently exists. There are likely to be some major changes if it
moves, when it moves. I think that at this stage there are some very key things that need
to be debated. One of the notes I had that I was going to talk about a little bit was
culture. There is a certain culture that exists in Minnesota relative to forestry and there
is a certain culture in the Department of Natural Resources relative to boards and those
kinds of things. That culture doesn't change easily. That doesn't mean it won't change,
it doesn't mean it will change. But I think when it comes down to the point where we
have a bill that it is moving, we will be together on it. We are in the pretty early stages
of this debate and discussion right now and like I said earlier, I will be part of the DNR
position if I am part of the DNR.

Q: This concerns the idea of a board. If you are going to involve the greater society and get
their inputs in the rule making process, what alternatives do you see to a commission or
a board?

A: J. Rose. Well that is a question in the back of my mind. I am not opposed to a board.
I think a board does provide opportunities to do that in probably a better fashion than
other models. You heard yesterday that in the state of Maine they didn't have a board
develop rules for the forest practices act there. However, you also heard that they only
addressed regeneration and clearcutting. I wouldn't envision any kind of a forest practices
act here in the state of Minnesota that only addressed regeneration and clearcutting. It
would be all of those things listed in Senate File 1574 plus probably biodiversity at least.
Those things would ultimately be in a bill here. I think it would be much more
complicated and a board would provide some opportunities that I would feel comfortable
with. But then you get into the culture where maybe others don't feel comfortable with a board and we just have to respect that.

A: J. Vogel. I think that if the monies that are going to be spent in a bill or an act, as it is presented today, were spent in expanding the private forest management program that presently exists, using private as well as state foresters, we would get more bang for our buck.

Q: How did it work in Michigan?

A: J. Rose. The commercial forest act that was and is in existence over there did require lands to be open to the public if it was listed under the act and got the special tax breaks. As a result of that, early on most of the land that went under the act was industrial forest land. In the last 8-10 years the number of private landowners that listed land increased tremendously, especially the larger nonindustrial private forest owners. There was concern that the 40, 80, and 160 acre tracts weren't being listed under the act. They were being subdivided and sold off because of taxes. There was a possibility that they could be retained in forest, keep some of the habitat considerations alive with a special exemption for smaller landowners to not have their land open to the public. Yet because that would have cost local government the taxing unit dollars, it was never enacted. It was promoted by the forestry association and it would have had some real merit, but it would have decreased the revenue to local units of government and consequently it wasn't enacted. I think that is something we would have to keep in mind here too.

A: R. Knoll. In fact I can remember that it was 1981 or 1982 that the Audubon Society put forward legislation in Minnesota to establish a woodlands act exemption and credit similar to what was on the books at the time, i.e., prairie tax exemption and wetlands tax exemption and credit programs. When the tax code was changed by the Perpich administration in 1987 the credits were eliminated, but the exemptions were retained. The woodland tax thing never made it very far in the legislature and I don't recall what the opposition was at that time. It probably was the reduction in the local tax base. I don't know if the SAF was involved in it or was pushing for that a decade ago. We have not seen any more movement on that. I am not clear what the effect has been on prairie and wetland protection under tax exemption and credit. I am not sure those really work. They are sort of an annual program and you could lose it in year five when the landowner decides that they have made enough by not paying taxes and will now do something else with the property.
Wrapup

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A driving goal of the Society of American Foresters is that our members develop professionally and possess the capability and knowledge to act as informed citizens in natural resources management debates. Our conference goal was to help you become informed citizen professionals in the forest practices regulation debate. This is a complex issue, but we hope this program has helped you see it more clearly.

You know now a great deal more about what regulations currently exist in this state, you know about some open windows for developing new rules, you know the array of regulatory options available and how they've been utilized in other states, and you've heard some Minnesota perspectives from parties with genuine interests in the issue in our state.

As SAF chair I close this conference by challenging you to think meaningfully and act carefully in the forest practices regulation debate. Here are four specific challenges to our membership.

1. Transcend the debate about regulatory options and consider the more basic question of how and why this debate commenced in Minnesota. Then consider the special needs for regulation that are unique to our Minnesota situation. What are the concerns underlying the various positions on forest practices regulation and what regulations truly attend to these concerns? Is the burner of public opinion hot enough to boil the political waters leading to exclusively coercive forestry practices regulation in the state of Minnesota? Is the traditional forestry community forcing a quick solution in this state in order to avert regulation that threatens the status quo? What are the real issues? What are effective and efficient solutions? These are questions that you as individual members need to consider.

2. Who should be involved in our discussions about forest practices regulation? This conference has focused on our own professional society members. We've heard a number of speakers who called for us to go outside of our borders. I think we can do that effectively. Your charge as members is not just to talk to foresters, but to folks from as many walks as possible. As you speak to the question of regulation, consider that this debate provides us with a larger opportunity for communicating about the role of our profession. Shift your thinking from one of defensive reactions to a direct and more positive attitude. Do you realize how often we lament that no one will listen to us when we have messages to tell about forestry, what we're doing new, our vision, what we've done to advance the practice and benefits of resource management? How many committees that we've worked on in SAF that have taken on the task of communicating with the public have reported back that no one is listening, or that we don't know how to compete with the messages in the media? Paradoxically, the scrutiny we are under now with the debate on forest practices regulation creates a huge opportunity for us in the form of a captive audience. We should think and act positively on this opportunity. With this
type of attitude and approach we will emerge from the debate a much healthier and more self-determined profession, more in charge of its own destiny. This will come about only if we seize the opportunity to provide information about where we're going and the new things that we are developing as professional resource managers. This means speaking frankly about stewardship of the land and about our attention to the societal vision that has forced the recent demand for a forest practices act.

We, as the Society of American Foresters, must begin to talk in new ways about what we do. How about something like "healthy people and communities from a healthy resource base?" The public is increasingly focused on values and a more philosophical basis for land management. What's missing in your explanations of road guidelines, slopes, and cutting practices is your values and feelings about the nature of the American forest. For some, science and fact are of no interest, but nature is a passion. Express your personal beliefs meaning about the forest and you'll be rewarded with a higher level of respect, responsibility, and authority for its management.

3. When you get down to discussions of regulatory strategies and tactics, it's important to remember that the term regulation refers to a variety of options for directing the practice of forestry. Regulatory options include: education of professionals, landowners, and policy makers; technical assistance; research; registration and certification programs; and incentive programs; and the ultimate regulation known as coercive requirements. As we focus our attention and activity on the various proposals put forward in the debate, we need to fully consider the value and appropriateness of all regulatory options.

4. Several presentations at this conference have reminded me of how Minnesotans love to boast of their uniqueness. Let me build on this home-grown pride by proposing a unique way for us to act as Minnesota foresters.

As institutional systems, our agencies and organizations impose our own thoughts and visions on landowners, the people who manage the private lands. We expect them to implement our visions when they have their own! What we need to do is get landowners associated with each other in communities, have them express to us their vision for the land, and then as professionals provide expertise to help them achieve their vision. That puts us at the table with them rather than being systems overlaid upon them.

I believe the public deserves strong leadership from the forestry profession. There is a leadership role for the Minnesota SAF in the forest practices regulation debate. To carry out our role, each of us must identify our own philosophical basis for land management, and communicate it clearly to the people who show interest in what we are doing: those who agree with us and those who do not. Anything less and we'll sacrifice our privilege to manage the forest resource.