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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

VIKRAM ANANTHA and)	Case No. 20CV02153
MICHA GROSS,)	
	)	PETITION FOR JUDICIAL REVIEW
Petitioners,)	
vs.	)	(Oregon Administrative Procedures Act,
	)	ORS 183.484)
ELLEN ROSENBLUM, Oregon Attorney)	
General,	)	and alternative
)	
Respondent.	)	PETITION FOR WRIT OF MANDAMUS
)	
	)	(ORS 34.130)
)	
	)	and alternative
)	
	)	COMPLAINT FOR DECLARATORY
	)	JUDGMENT AND INJUNCTIVE RELIEF
)	
	)	(ORS 28.010 <i>et seq</i>)
)	
	)	Filing fee: \$281 (ORS 21.135(1) & (2)(e))
)	
	)	(Not Subject to Mandatory Arbitration)
)	
	)	TIME-SENSITIVE ELECTION CASE –
	)	EXPEDITED DECISION REQUESTED

Petitioners Vikram Anantha and Micha Gross petition the court pursuant to ORS 183.484 for review of the Attorney General’s decision not to issue certified ballot titles for Initiative Petitions 2020-35, 2020-36, and 2020-37 (“the IPs”). In the alternative, petitioners seek a writ of mandamus or a declaratory judgment with injunctive relief. This is a time-sensitive election matter, and an expedited decision is requested.

/////

1 Petitioners allege as follows:
2

3 **OVERVIEW OF CASE**

4 1.

5 On January 7, 2020 the Attorney General issued a decision declining to issue certified ballot titles
6 for IPs 35, 36, and 37. *See* Exhibit 1. Because the issuance of certified ballot titles is a statutory and non-
7 discretionary duty, petitioners seek to compel the Attorney General to issue certified ballot titles for the
8 IPs.

9
10 **PARTIES**

11 2.

12 Vikram Anantha and Micha Gross are two of the chief petitioners for IPs 35, 36, and 37. Both are
13 Oregon electors. Mr. Anantha resides in Multnomah County and Ms. Gross resides in Coos County.

14 3.

15 Respondent Ellen Rosenblum is the Attorney General for the State of Oregon.
16

17 **STANDING, JURISDICTION, AND VENUE**

18 4.

19 Petitioners have standing to pursue these claims because they are the originators and proponents
20 of IPs 35, 36, and 37. Unless certified by the Attorney General, the ballot titles cannot be finalized by the
21 Supreme Court under ORS 250.085. Without final ballot titles, the initiative process cannot move
22 forward (*e.g.* the issuance of the cover and signature sheets, and gathering of voter signatures, is
23 dependent on the issuance of final ballot titles). Time is of the essence because the IPs are part of the
24 November 2020 election cycle.

25 /////

26 /////

1 5.

2 The court has jurisdiction under the Oregon APA (ORS 183.484) because the Attorney General’s
3 January 7th decision (Ex. 1) is a final order in an “other than contested case” that is reviewable under
4 ORS 183.484. Alternatively, the court has jurisdiction under ORS 183.480(3) because the Attorney
5 General is proceeding without probable cause, and petitioners will suffer substantial and irreparable
6 harm if interlocutory relief is not granted. Writ of mandamus jurisdiction exists because the duty to issue
7 certified ballot titles under ORS 250.067(2) is non-discretionary. Jurisdiction under the UDJA (ORS
8 28.010 *et seq*) exists because petitioners’ initiative rights are affected by the Attorney General’s decision
9 not to issue certified ballot titles under ORS 250.067(2).

10 6.

11 Venue is proper in Marion County Circuit Court because the Attorney General’s office is
12 maintained in Salem, and pursuant to ORS 183.484(1).

13
14 **THE INITIATIVE PROCESS**

15 7.

16 The Oregon legislature has enacted a series of statutes addressing the administration of the
17 initiative process, and associated administrative rules have been adopted. *See generally* ORS 250.005 –
18 250.149; OAR 165-014-0005 – 0285. The individuals who propose a statewide initiative are called the
19 “chief petitioners.” *See, e.g.*, ORS 250.045(2). To begin the initiative process, the chief petitioners file
20 with the Secretary of State a “prospective petition” which contains the text of the proposed measure
21 along with the signatures of at least 1,000 electors. ORS 250.045(1)(b)(A). After the Secretary of State
22 has received a prospective petition and verified the sponsorship signatures, the Secretary forwards it to
23 the Attorney General. ORS 250.065(2); OAR 165-014-0030(14) & (16). The Attorney General then has
24 five days to prepare a draft ballot title. ORS 250.065(3). The ballot title is a three-part description of the
25 proposed measure in the form of: (a) a caption of no more than 15 words; (b) a “yes” and “no” vote
26 result statement of no more than 25 words each explaining the consequences of a “yes” or “no” vote; and

1 (c) a summary of not more than 125 words. ORS 250.035(2). The Secretary of State then provides notice
2 of the public’s right to comment on the draft ballot title. ORS 250.067(1). After receiving any comments,
3 the Secretary forwards them to the Attorney General. *Id.*

4 8.

5 The Attorney General then considers the public comments and certifies either the original draft
6 ballot title or a revised ballot title. ORS 250.067(2)(a). The Attorney General “shall” issue the certified
7 ballot title within 10 days after receiving the public comments. *Id.*

8 9.

9 Any elector who previously commented on the draft ballot title who is dissatisfied with the ballot
10 title certified by the Attorney General may seek judicial review in the Oregon Supreme Court. ORS
11 250.085(2). The Supreme Court then considers the challenge and whether the title “substantially
12 complies” with the statutory requirements for a ballot title. ORS 250.085(5). The Supreme Court either
13 certifies the ballot title to the Attorney General or refers the ballot title to the Attorney General for
14 modification. ORS 250.085(8). The Supreme Court’s review must be conducted expeditiously to ensure
15 the orderly and timely circulation of the initiative petition. ORS 250.085(7).

16 10.

17 An initiative petition cannot be circulated for signature collection until the final ballot title has
18 been certified either by the Attorney General or the Oregon Supreme Court. ORS 250.052(3)(b) & (4).

19 11.

20 During the ballot title process, the Secretary of State reviews the prospective petition for
21 compliance with the procedural requirements of Article IV, section 1, including whether the proposed
22 measure “embraces one subject and matters properly connected therewith.” OAR 165-014-0028(1). The
23 Secretary solicits comments from the public on those issues at the same time the Attorney General is
24 drafting the ballot title. *Id.* at (2). Those comments are submitted at the same time comments on the
25 Attorney General’s draft ballot title are submitted. After reviewing the procedural compliance
26 comments, the Secretary notifies the chief petitioners of the results of her review. *Id.* at (4). If the

1 Secretary determines that a proposed measure does not satisfy the procedural constitutional
2 requirements, she may not approve the cover and signature sheets that enable the chief petitioners to
3 collect signatures in support of the proposed measure. *Id.* at (5). Any elector who is dissatisfied with the
4 Secretary’s determination regarding procedural constitutional compliance may seek judicial review
5 before the Marion County Circuit Court pursuant to ORS 246.910. *See also* OAR 165-014-0028(6).

6 12.

7 The result of the Secretary’s review for procedural constitutional compliance has no legal impact
8 on the Attorney General’s separate obligation to prepare and issue the certified ballot title.

9
10 **FACTUAL BACKGROUND**

11 13.

12 Petitioners filed IPs 35, 36, and 37 on July 9, 2019. If adopted by Oregon voters, each of the IPs
13 would update Oregon’s forestry-related statutes. *See* Exhibits 2-4, attached (text of initiatives).

14 14.

15 IP-35 has provisions that limit logging near rivers and streams, aerial pesticide application near
16 rivers and streams, and related forestry activity. *See* Ex. 2 at 2-10. IP-35 also contains provisions to limit
17 conflicts of interest for public officials who make decisions regarding the protection of Oregon’s forests
18 and the water that flows from them. *Id.* at 6-7.

19 15.

20 IP-36 adds protections for rivers and streams from logging and related activities. *See* Ex. 3. To
21 ensure these protections are maintained over time, IP-36 limits conflicts of interest for public officials
22 who make decisions regarding the protection of Oregon forests and forest waters. *Id.* at 2-3.

23 16.

24 IP-37 restricts aerial pesticide application near Oregon forest waters, dwellings, and schools. *See*
25 Ex. 4. To ensure these protections are maintained over time, IP-37 contains provisions to limit conflicts
26

1 of interest for public officials who make decisions regarding the protection of Oregon forests and forest
2 waters. *Id.* at 2-3.

3 17.

4 On August 15, 2019, the Secretary of State confirmed that IP-35 and IP-36 each had sufficient
5 sponsorship signatures to obtain a ballot title. On August 19, 2019, the Secretary of State confirmed that
6 IP-37 had sufficient sponsorship signatures to obtain a ballot title.

7 18.

8 On August 23, 2019, the Secretary of State received draft ballot titles from the Attorney General
9 for IP-35 and IP-36. On August 26, 2019, the Secretary of State received a draft ballot title from the
10 Attorney General for IP-37. The Secretary of State then issued public notices seeking comments both on
11 the draft ballot titles for the IPs and on whether the IPs comply with procedural constitutional
12 requirements.

13 19.

14 In response to the notices, the Secretary of State received public comments regarding the draft
15 ballot titles. She also received comments regarding the IPs' compliance with the procedural requirements
16 of the Oregon Constitution.

17 20.

18 On September 24, 2019, the Secretary of State notified petitioners that she was rejecting all three
19 of the initiatives on procedural grounds: namely, that they violated the requirement that measures have a
20 single subject. The Attorney General publicly denounced that decision as unlawful, saying, "There is no
21 question that, under current law, the legislature could pass a measure such as this one and it would be in
22 full compliance with the 'single subject' requirement." When petitioners filed an action in this court,
23 challenging the Secretary's rejection of the measures, the Attorney General declined to defend her. That
24 case is now pending in the Court of Appeals, and the Attorney General has filed an *amicus curiae* brief
25 *in support of* petitioners and against the Secretary.

26 // // // //

1 21.

2 When it became clear that the Attorney General agreed with petitioners that the Secretary’s
3 rejection of IPs 35, 36, and 37 was unlawful, they asked the Attorney General’s office, orally and in
4 writing, to issue the certified ballot titles for those measures. On January 7, 2020, citing “[t]his office’s
5 longstanding practice [] not to issue a certified ballot title after the Secretary of State withdraws the
6 request for a ballot title,” the Attorney General declined to do so. *See* Ex. 1. Petitioners now challenge
7 that “longstanding practice” as inconsistent with the statutory scheme.

8
9 **FIRST CLAIM FOR RELIEF**
10 **(APA Review under ORS 183.484 & 183.490)**

11 22.

12 Petitioners reallege and incorporate by reference paragraphs 1-21.

13 23.

14 The Attorney General’s decision not to issue certified ballot titles fir IPs 35, 36, and 37 is
15 inconsistent with ORS 250.067(2)(a). That statute says that the Attorney General “shall” issue a certified
16 ballot title for an initiative measure “not later than the 10th business day after receiving the [public]
17 comments from the Secretary.” The issuance of a certified ballot title is therefore non-discretionary.

18 24.

19 Petitioners seek remand of the Attorney General’s decision with instructions to issue certified
20 ballot titles for IPs 35, 36, and 37 immediately. This relief is authorized by ORS 183.490, which allows
21 the court to “compel an agency to act where it has unlawfully refused to act or make a decision or
22 unreasonably delayed taking action[.]”

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26 /////

SECOND CLAIM FOR RELIEF
(Petition for Writ of Mandamus – ORS 34.150)

25.

This claim is made in the alternative to the First Claim for Relief under the APA. If the court assumes jurisdiction under the APA in the First Claim for Relief, then resolution of the Second and Third Claims for Relief is unnecessary.

26.

Petitioners (“Relators” for purposes of this claim) reallege and incorporate by reference paragraphs 1-21.

27.

The Attorney General (“Defendant” for purposes of this claim) has a non-discretionary duty to issue certified ballot titles for the IPs under ORS 250.067(2)(a).

28.

Petitioners seek a preemptory writ of mandamus under ORS 34.150 requiring the Attorney General to immediately issue certified ballot titles for the IPs. In the alternative, petitioners request an alternative writ of mandamus pursuant to the same statute. Mandamus is appropriate because petitioners lack an adequate remedy at law.

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THIRD CLAIM FOR RELIEF
(UDJA – ORS 28.010 *et seq*)

29.

This claim is made in the alternative to the First Claim for Relief under the APA, and the Second Claim for Relief under ORS 34.150.

30.

Petitioners (“Plaintiffs” for purposes of this claim) reallege and incorporate by reference paragraphs 1-21.

31.

ORS 250.067(2)(a) requires the Attorney General (“Defendant” for purposes of this claim) to issue certified ballot titles for IPs 35, 36, and 37 immediately. Petitioners request a declaration to that effect and injunctive relief requiring the Attorney General to immediately issue certified ballot titles for IPs 35, 36, and 37.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, petitioners pray for judgment as follows:

- 3 1. Under the APA, remanding to the Attorney General with instructions to issue certified
- 4 ballot titles for IPs 35, 36, and 37 immediately;
- 5 2. In the alternative, and under ORS 34.105 *et seq*, issuing a peremptory or alternative writ
- 6 of mandamus compelling the Attorney General to issue certified ballot titles for IPs 35,
- 7 36, and 37 immediately;
- 8 3. In the alternative, and under ORS 28.010 *et seq*, declaring that ORS 250.067 requires the
- 9 Attorney General to issue certified ballot titles for IPs 35, 36, and 37 immediately, and
- 10 providing injunctive relief to that effect;
- 11 4. Regardless of whether relief is granted pursuant to the APA, via writ of mandamus, or via
- 12 the UDJA, directing the Attorney General to provide petitioners with copies of the issued
- 13 certified ballot titles; and
- 14 5. Granting such other relief as the court deems just and proper.

15 DATED this 9th day of January 2020.

16 s/ Jesse A. Buss
 17 Jesse A. Buss, OSB No. 122919
 18 WILLAMETTE LAW GROUP
 jesse@WLGpnw.com
 Trial Attorney

19 s/ Thomas M. Christ
 20 Thomas M. Christ, OSB No. 834064
 SUSSMAN SHANK LLP
 tchrist@sussmanshank.com

21 *Attorneys for Petitioners*

22 **PREPARED AND SUBMITTED BY:**

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 24 WILLAMETTE LAW GROUP
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 Oregon City OR 97045-2224
 ph: 503-656-4884
 25 fax: 503-608-4100
 jesse@WLGpnw.com

Exhibit 1
Attorney General's
January 7, 2020
decision letter



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

January 7, 2020

Via e-mail

Jesse A. Buss
411 Fifth Street
Oregon City, OR 97045

Re: Request for issuance of certified ballot titles for IPs 35, 36, and 37

Dear Mr. Buss,

In your letter of December 23, 2019, you requested that the Attorney General immediately issue certified ballot titles for IPs 35, 36, and 37. I write to inform you that the Attorney General does not intend to do so at this time.

This office's longstanding practice has been not to issue a certified ballot title after the Secretary of State withdraws the request for a ballot title. We reviewed that practice in view of the arguments made in your letter and concluded that we will continue with that practice. Because the Secretary of State withdrew the request for ballot titles for IPs 35, 36, and 37, we did not issue certified ballot titles for those measures. Unless the Secretary reinstates the request for ballot titles or a court orders otherwise, the Attorney General does not intend to act further on those ballot titles.

Sincerely,

Benjamin Gutman
Solicitor General

Exhibit 2
Text of IP-35

Oregon Forest Waters Protection Act

WHEREAS, a majority of Oregonians get their drinking water from waters originating in Oregon's forests, as more than 75 percent of Oregon's municipal water supplies are sourced from public and private forestlands; and

WHEREAS, Oregon has failed to keep pace with neighboring states and federal forest agencies in its protections of forest waters; and

WHEREAS, Oregon law allows more intensive logging closer to rivers, streams, lakes and wetlands than neighboring states, which erodes banks, muddies waters, removes shade, raises water temperatures and depletes water supplies; and

WHEREAS, Oregon law allows the aerial application of toxic pesticides across broader areas of forest watersheds than neighboring states and federal forest agencies, which affects forest waters and endangers the health of residents in front-line communities throughout rural Oregon; and

WHEREAS, Oregon law allows more intensive logging in landslide hazard locations than neighboring states, which increases sediment and debris in forest waters and the costly treatment of drinking water for Oregonians; and

WHEREAS, plantation-style, industrial management of forestlands, which results in dense rows of even-aged trees, has increased the risk of larger and hotter forest fires that damage fragile watersheds and reduce forest water storage; and

WHEREAS, better and more up-to-date forest management and harvest practices will help to reduce the risk of severe forest fires by increasing the expanse of fire-resistant older trees that act as natural fire breaks adjacent to forest waters; and

WHEREAS a special exemption in Oregon law allows conflicts of interest in setting and enforcing timber policies by the Board of Forestry and subsidiary committees that otherwise would be prohibited under state ethics laws; and

WHEREAS, a warming climate and more volatile weather patterns necessitate stronger practices to protect our drinking water supplies and maintain healthy forests across the state; and

WHEREAS, clean and protected forest waters are vital to our families and our communities for use in the home and for recreation, tourism and businesses in every sector of our economy;

THEREFORE, the people of Oregon, find it necessary to update and improve Oregon laws to better protect our health and safety and to promote our economic well-being by protecting and preserving Oregon's forest waters.

Be it enacted by the People of the State of Oregon:



POLICY AND PURPOSES

Section 1. (a) The purpose of this Act, and the policy of the State of Oregon, is to protect forest waters on state, private, and local government owned forestlands in Oregon.

(b) The provisions of this Act shall be interpreted consistently with the over-riding policy objective stated in this section and shall not be limited by any policy set forth in the Oregon Forest Practices Act that could conflict with or be interpreted to conflict with this over-riding policy.

(c) The people of Oregon find that Oregon's forest waters are threatened.

(d) The people of Oregon further find that significant and immediate threats to Oregon forest waters are caused by aerial spraying of pesticides, logging adjacent to forest waters and logging-associated forest operations on high landslide hazard locations.

UPDATE PROTECTIONS OF FOREST WATERS FROM ADJACENT LOGGING

Section 2. (a) Notwithstanding any other provision of Oregon law, clearcut logging and associated forest operations are prohibited:

(1) Within 100 feet of fishbearing streams, large and medium streams, significant wetlands, wetlands five acres or larger, and streams with domestic water use; and,

(2) Within 50 feet of all perennial streams, lakes, wetlands larger than one half an acre, and small non fishbearing streams subject to rapidly moving landslides as defined in ORS 195.250(3).

(b) The distances set forth in subsection (a) of this section shall be measured as horizontal distances from the forest waters and are intended to be implemented as exact minimum distances, not averages of variable distances over some unit of stream length within a harvest area.

(c) The minimum areas within which clearcut logging and associated forest operations are prohibited in subsection (a) of this section are subject to site-specific limited exceptions as specified in a written plan for operation approved by the State Forester for:

(1) maintenance of existing road crossings and unavoidable yarding corridors to the minimum size necessary provided an additional contiguous riparian area equal in size to that covered by the road crossing or yarding corridor remains unharvested and the impacted area is rehabilitated to the maximum extent practicable;

(2) thinning of small, under-canopy vegetation in a stand that best available information demonstrates is both necessary and effective to mitigate the risk of fire within the defensible space of dwellings, public buildings or critical built infrastructure, or to allow the safe use of

prescribed fire as a forest restoration tool on dry forest types such as those in Southwest and Eastern Oregon.

(3) thinning of small, under-canopy vegetation in a stand that best available information demonstrates will enhance the resilience of the riparian area to drought, fire or to restore properly functioning riparian conditions provided that these operations shall first be reviewed and approved by a state-employed specialist in aquatic and riparian functions.

(d) The Department of Forestry may increase the size of areas specified in subsection (a) of this section, or specify additional restrictions on forest operations within these areas, to protect the quality or quantity of any or all forest waters as necessary to comply with state water quality standards, the protection goals of the Oregon Forest Practices Act, or to avoid impacts to threatened and endangered fish and wildlife species and habitats identified pursuant to ORS 527.710(3)(a), based on the best available information, significant new information, or changing climatic conditions.

Section 3. (a) The Board of Forestry shall adopt new rules for clearcut logging adjacent to forest waters on small tract forestlands that shall apply only to small tract forestland ownerships with 20 percent or more total acreage subject to no-harvest water protection restrictions under section 2 of this Act. Upon final adoption of those rules, the prohibitions in Section 2 shall not apply to small tract forestland ownerships with 20 percent or more total acreage otherwise subject to no-harvest water protection restrictions under section 2 of this Act.

(b) In developing rules under this section, the Board shall balance the regulatory impact of sections 2 and 3 of this Act with the policy and purposes outlined in section 1 of this Act while minimizing the threat of harm to forest waters.

UPDATE FOREST WATERS PROTECTIONS FROM AERIAL SPRAYING

Section 4. (a) Aerial application of pesticides within 500 feet of all forest waters is prohibited. The distances shall be measured as the horizontal distance from the forest waters and are intended to be implemented as exact minimum distances, not averages or variable distances over some unit of stream length.

(b) The prohibitions established in this section are in addition to, and not in lieu of, any other prohibitions on pesticide application established by law.

Section 5. (a) The Department of Forestry shall maintain an electronic reporting and notification system for pesticide operators, timber owners or landowners proposing to conduct a forest operation involving an aerial application of pesticides to forestland outside the areas in which such application is prohibited pursuant to section 4 of this Act.

(b) A pesticide operator, timber owner, or landowner must file notice of a forest operation involving an aerial application of pesticides to forestland with the State Forester no later than 14 business days prior to the proposed date of the application and no earlier than 21 business days prior to the proposed date of the application. Such notice shall include, at a minimum:

- (1) the name and business address of the pesticide operator, timber owner, landowner, and aerial pesticide applicator;
 - (2) the pesticide product common name or brand name and the name of any carrier substance to be used for the pesticide product and any registration number issued for the pesticide product by the United States Environmental Protection Agency, the Oregon Department of Agriculture, or any other federal or state administrative agency;
 - (3) the total amount and concentration of the pesticide and any substance used to enhance the effectiveness of the pesticide product expected to be used;
 - (4) the proposed date for the aerial application of pesticides; and,
 - (5) a legal description and map for the proposed area for the application.
- (c) Upon receipt of a notice required by subsection (b) of this section, the Department shall send notice to any person who has requested notification of planned pesticide applications, submitted a valid e-mail address to the Department, and has provided a physical address that is within one mile of the proposed aerial application of pesticides.
- (d) Not later than January 1, 2022, the Oregon Occupational Safety and Health division of the Department of Consumer and Business Services shall update and adopt rules to ensure and protect the health and safety of persons who perform or have contact with pesticides used in any forestland application. When enacting these rules, the Oregon Occupational Safety and Health division shall consult with the Oregon Health Authority and the Department of Environmental Quality. The provisions of subsection 8(c) of this Act do not apply to the rules required by subsection (d) of this section.

Section 6. ORS 527.672 is amended as follows:

When a forest operation involves applying [*herbicides*] **pesticides** by aircraft near an inhabited dwelling or school, the operator [*is responsible for leaving an unsprayed strip of at least 60*] **shall not spray the area within 500 feet adjacent to the dwelling or school.** The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634 **or any provision of this Act.**

UPDATE PROTECTIONS OF FOREST WATERS IN HIGH RISK LANDSLIDE ZONES

Section 7. (a) State Forester approval of a written plan for operation is required prior to logging or other forest operations on, or which may affect, any site that has been identified by the State Forester as of November 3, 2020, as a high landslide hazard location.

(b) The State Forester shall not approve operations on a high landslide hazard location unless:

- (1) best available information supports a determination that the proposed forest operation will not increase the risk, frequency, magnitude or extent of a landslide or landslides that could deliver sediment or debris to forest waters; and,

(2) the State Forester's determination is consistent with the recommendation of a state-employed geotechnical expert.

(c) No later than January 1, 2022, and every two years thereafter, the Board of Forestry shall update and complete maps for state and private forestlands to identify all high landslide hazard locations that could deliver sediment or debris to forest waters and make those maps available to the public.

(d) In addition to the high landslide hazard locations identified in subsection (c) of this section, the State Forester may identify any other areas containing features that indicate inherent instability where forest operations should be excluded or limited to avoid exacerbating the risk of landslide initiation that could deliver sediment or debris to forest waters. For any such areas, the State Forester shall apply the requirements of subsection (b) of this section.

IMPLEMENTATION AND ENFORCEMENT OF ACT

Rulemaking Authority

Section 8. (a) The Board of Forestry shall enact rules to maintain consistency with the purposes and the findings of this Act related to all forest practices affecting the quantity and quality of forest waters. In all such rule making, the Board of Forestry shall base its decisions on the best available information, including but not limited to information related to climate change and the probable negative effects of climate change on the quality and quantity of forest waters and drinking water from forest water sources. The Board of Forestry's rulemaking authority under this Act shall not be limited by the provisions of ORS 527.714.

(b) When enacting rules related to logging adjacent to forest waters pursuant to sections 2 and 3 of this Act, the Board of Forestry shall consult with the Department of Environmental Quality and the Oregon Health Authority. Such rules may expand the areas and methods by which logging is restricted by this Act when necessary to protect the quality and quantity of forest waters flowing through forestlands.

(c) When enacting rules related to the application of pesticides on forestlands adjacent to forest waters pursuant to sections 4 to 6 of this Act, the Board of Forestry shall consult with the Department of Fish and Wildlife, the Department of Environmental Quality and the Oregon Health Authority. Such rules may expand the areas within which the aerial application of pesticides is prohibited when necessary to protect the quality of forest waters.

(d) When enacting rules related to landslide hazards affecting forest waters, pursuant to section 7 of this Act, the Board of Forestry shall consult with the Department of Geology and Mineral Industries. Such rules may expand the areas in which logging is restricted when necessary to protect the quality of forest waters.

Emergency Exceptions

Section 9. The provisions of this Act and any rules promulgated pursuant to this Act may be suspended temporarily by the State Forester for an emergency that poses hazards to public health, safety or property, including but not limited to firefighting. Any suspensions may not exceed 60 calendar days unless renewed with a subsequent finding of necessity by the State Forester. For each suspension and renewal of suspension pursuant to this section, the State Forester shall provide an after-incident report to the Board of Forestry, posted on the Department's website, detailing the reasons for and effectiveness of the suspension and the effect of the suspension on the affected forest waters.

Elimination of Conflicts of Interest

Section 10. ORS 526.009 is amended as follows:

(1) There is created a State Board of Forestry consisting of seven members appointed by the Governor. The members appointed to the board shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. The Governor shall designate one member of the board as chairperson to hold that position until that member's term expires or until relieved by the Governor as provided in subsection (6) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2) The term of office of a member of the board is four years. A member shall be eligible for reappointment, but no member shall serve more than two consecutive full terms. In case of a vacancy for any cause, the Governor shall make an appointment as provided in subsection (1) of this section.

(3) Appointments made by the Governor under subsection (1) of this section shall include appointment of at least one member from each of the forest regions established under ORS 527.640 and the rules adopted thereunder by January 1, 1987.

(4) No more than three members of the board may derive any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and 527.992.

(a) Any member of the board who derives any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and/or 527.992 shall be considered to have an actual conflict of interest regarding any action, decision, or recommendation as a member of the board regarding forest waters or any provision of this Act.

(b) Any member of the board with an actual conflict of interest as set forth in subsection (4)(a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such member may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

(5) Except as provided in subsection (4) of this section, no member of the board shall have any relationship or pecuniary interest that would interfere with the member representing the public interest.

(6) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria of appointment pursuant to this section.

Section 11. (a) Any action, decision or recommendation by any person acting in a capacity as a public official regarding forest waters or any provision of this Act which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business which the person or a relative of a person is associated, shall be considered an actual conflict of interest regardless of whether the private pecuniary benefit or detriment arises out of circumstances described in ORS 244.020(13)(a) or (c).

(b) Notwithstanding ORS 244.120(1)(c), any public official met with an actual conflict of interest as set forth in subsection (a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such public official may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

Redirection of Revenues to Fund Fire Resiliency and Forest Waters Protection

Section 12. ORS 321.017 is amended as follows:

(1) In addition to the taxes levied under ORS 321.015 (1) to (4), there hereby is levied a privilege tax upon taxpayers on the harvesting of all merchantable forest products harvested on forestlands in the amount provided in subsection (2) of this section.

(2) The rate of tax levied in subsection (1) of this section shall be established annually at the beginning of each calendar year by the board of directors of the Oregon Forest Resources Institute, at a rate not to exceed 75 cents per thousand feet, board measure, adjusted annually for inflation since 1991 based on the Consumer Price Index for All Urban Consumers, West Region (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor for the Portland, Oregon, area.

(3) The tax shall be measured by and be applicable to each per thousand feet, board measure, and such shall be subject to and determined by the procedures and provisions of ORS 321.015 (5) and (6).

(4) The tax levied by subsection (1) of this section shall be due and payable to the Department of Revenue in the manner and procedure, including penalties and interest, as set forth for the collection of the privilege tax in ORS 321.005 to 321.185.

(5) The revenue from the tax levied by subsection (1) of this section shall be remitted to the State Treasurer who shall deposit it in a suspense account established under ORS 321.145(1). After

payment of refunds, which shall be paid in the same manner as other forest products harvest tax refunds are paid in ORS 321.145(2)[,];

(a) one-third of the balance of the additional tax imposed under subsection (1) of this section shall be deposited in the Oregon Forest Resources Institute Fund[.];

(b) one-third of the balance of the additional tax imposed under subsection (1) of this section shall be allocated to the Department of Forestry for the purposes of enforcing and administering the provisions of this Act and for technical assistance;

(c) one-third of the balance of the additional tax imposed under subsection (1) of this section shall be allocated to the Department of Forestry for the purpose of protecting forest waters by supporting measures for reducing or eliminating hazards to critical built infrastructure as well as homes and public buildings that rely on forest waters as their drinking water source areas in wildfire hazard zones identified by the Department of Forestry. These measures may include the provision of information, technical assistance and financial assistance by the Department of Forestry for property owners and residents in wildfire hazard zones beyond what is otherwise required by the wildfire hazard mitigation provisions of the Oregon Building Codes Division of the Department of Consumer and Business Services.

(6) The revenues allocated pursuant to subsection (5)(b) and subsection (5)(c) of this section shall be in addition to, and not in lieu of, any other revenues allocated to the Department of Forestry pursuant to ORS 321.015(3) or any other provision of law.

Written Plans

Section 13. (a) The Department shall adopt rules setting forth the requirements and procedures for any written plan that may be submitted pursuant to section 2 or section 7 of this Act. Those rules, in the least, must provide that:

(1) any such written plan approved by the State Forester shall comply with the policy, purposes and provisions of this Act;

(2) no written plan may be approved until any member of the public and any interested person is provided an opportunity to comment on the plan. The comment period must be at least 14 days from when the public is provided notice of the written plan; and,

(3) before logging or associated forest operations may begin pursuant to any such written plan, the State Forester must make a final decision and approve the written plan, and the time period for filing a request for a hearing on the written plan must have expired.

(b) Any person who provided comments on the written plan may request a hearing within 30 days after issuance of the order approving the written plan.

(1) Upon any person requesting a hearing under subsection (b) of this section, logging or forest operations for which a written plan is required under section 2 or section 7 of this Act shall be

stayed until the hearing has concluded, a final order has issued, and all appeals have been exhausted.

(2) No undertaking may be required of the person requesting the hearing.

(3) No attorneys' fees may be awarded against any person who has requested a hearing under subsection (b) of this section, or in any appeal from any decision on any hearing, unless there was no objectively reasonable basis for requesting a hearing or pursuing an appeal.

(c) To the extent the provisions of this section conflict with ORS 527.670, ORS 527.700 or any other provision of Oregon law, the provisions of this section shall control.

(d) ORS 527.674 does not apply to the rules required to be adopted pursuant to this section.

Protection of Human Health and Safety

Section 14. Sections 1 to 8 and 13 of this Act, and any rules or regulations adopted or enacted pursuant to any provision of sections 1 to 8 and 13 of this Act, are for the protection of public health and safety for the purposes of ORS 195.305(3)(b). The provisions of sections 1 to 8 and 13 of this Act, and any rules or regulations enacted pursuant to sections 1 to 8 and 13 of this Act, shall not be considered one or more land use regulations that restrict the residential use of private real property or a farming or forest practice.

Scope of Act: Forest Waters and Forestlands Protected

Section 15. The provisions of this Act apply to all forestlands in Oregon including privately owned, state-owned and local government-owned forestlands, except as set forth in this Act. The provisions of this Act do not apply to federal or tribal forestlands exempt from regulation by this Act under federal law, or to Common School Forestlands.

Section 16. Nothing in this Act or this section 16 is intended to limit or otherwise restrict the State of Oregon's ability or authority to enforce water quality standards established by the Environmental Quality Commission or under any other provision of law on federal forestlands, tribal forestlands or Common School Forestlands, or on watersheds that provide drinking water for municipal and other local water systems, including, but not limited to:

- the Bull Run Watershed, which provides drinking water for the Portland metropolitan area;
- the McKenzie River watershed, which provides drinking water for the Eugene metropolitan area;
- the Ashland Creek watershed, which provides drinking water for the city of Ashland;

- the Twin Mountain and Marble Point roadless areas, which provide drinking water for the city of Baker City;
- the Tumalo Creek Watershed, which provides drinking water for the Bend metropolitan area; and
- the North Santiam Watershed, which provides drinking water for Salem and surrounding communities.

Audits and Review

Section 17. (a) At least once each biennium, the Oregon Secretary of State, Division of Audits shall conduct financial and performance audits, delivered at a minimum to the Oregon Board of Forestry and the Environmental Quality Commission, and issued publicly on behalf of the residents of Oregon through news media and posted on state websites, regarding the effectiveness of this Act in protecting forest waters. The audit shall include:

- (1) an analysis of the condition of forest waters based on the best available information, including trends in improvements or deterioration in the quantity and quality of forest waters. This analysis shall include consideration of the expected impacts on forest waters from climate change.
 - (2) an analysis of the collection of revenue allocated to the Department of Forestry pursuant to section 12 of this Act, and the outcomes of the distribution of that revenue.
 - (3) a survey of protections (through statute and rules) for any waters on forestland in Washington, California, and Idaho.
 - (4) a report on enforcement actions and rates of compliance with the provisions of this Act.
 - (5) a presentation of the best available information regarding reductions in water quality and quantity resulting from the cumulative impact of clearcut logging on forest waters and increases in fire severity and fire intensity in forestlands replanted following clearcut logging.
 - (6) recommendations for modifications and improvements of the provisions of this Act consistent with the policy and purposes of this Act, which may include the appropriation of additional funds if necessary for achieving the policies and purposes of this Act.
- (b) The audits set forth in subsection (a) of this section shall be conducted pursuant to the provisions of Oregon Revised Statutes chapter 297 (and any subsequent modifications or amendments to those statutes), except to the extent any provision of chapter 297 conflicts with any provision of this Act, in which case the provisions of this Act shall control.
- (c) The Audits Division shall monitor and report annually on agency progress in implementing recommendations made in the audits. The Audits Division shall follow up on recommendations as part of recurring audit work or as an activity separate from other audit activity. When

following up on recommendations, the Audits Division may request from the appropriate agency evidence of implementation.

(d) The first audits required by subsection (a) of this section shall be completed and published no later than December 31, 2022.

DEFINITIONS

Section 18. Definitions. (a) The words and phrases in this Act shall have the meaning provided in the Oregon Forest Practices Act, and in the version of OAR 629-600-0100 in effect as of January 1, 2020, unless specifically set forth and defined in subsection (b) of this section.

(b) As used in this Act:

(1) “Act” and “this Act” mean this 2020 initiative petition submitted to the electors of Oregon as a statewide ballot measure on the November 3, 2020 General Election ballot.

(2) “Actual conflict of interest” has the meaning provided in ORS 244.020(1).

(3) “Aerial application of pesticides” means the spraying or any other application of pesticide by aircraft.

(4) “Aerial pesticide applicator” means a person certified under ORS 634.128.

(5) “Clearcut logging” means any Harvest Type 1, Harvest Type 2 or Harvest Type 3 operation. This does not include firewood cutting or timber milling for personal use.

(6) “Common ownership” means direct ownership by one or more individuals or ownership by a corporation, partnership, association or other entity in which the one or more individuals, or an affiliated corporation, partnership, association, or other entity owns an interest.

(7) “Common School Forestlands” means forest parcels owned by the State Land Board granted to the state by the federal government when Oregon obtained statehood.

(8) “Emergency” means an actual or imminent threat of catastrophe, disaster or unforeseen condition or circumstance that causes or threatens to cause widespread loss of life, or injury to person or property.

(9) “Fishbearing stream” means any stream inhabited at any time of the year by anadromous or game fish species or fish that are identified on any lists that are adopted, by rule, by the State Fish and Wildlife Commission, or are federally listed under the Endangered Species Act of 1973, as amended, or which contains fish habitat that is currently accessible to such species. The existence of man-made barriers to fish passage shall not be a basis for classifying a stream as other than a fishbearing stream.

(10) “Forest operation” means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).

(11) “Forest waters” means any waters of the state on forestland.

(12) “Large stream” means a stream with an average annual flow of 10 cubic feet per second or greater.

(13) “Medium stream” means a stream with an average annual flow greater than 2 and less than 10 cubic feet per second.

(14) “Perennial streams” are flowing waters that do not go dry at any time during a year of normal rainfall and include any intermittently dry portions of the perennial channel below the uppermost point of perennial flow.

(15) “Pesticide” has the meaning provided in ORS 634.006(8).

(16) “Pesticide operator” has the meaning provided in ORS 634.006(13).

(17) “Public official” has the meaning provided in ORS 244.020(15).

(18) “Small tract forestland” means:

(A) forestland subject to assessment under ORS 321.700 to 321.754 and from which the harvesting of timber is subject to severance taxation under ORS 321.700 to 321.754;

(B) has an owner that owns or holds common ownership in at least 10 acres of Oregon forestland but less than 5,000 acres of Oregon forestland; and,

(C) constitutes all forestland within a single tax lot and all forestland within contiguous parcels owned or held in common ownership by the owner.

(19) “Stream” means a channel, such as a river or creek, which carries flowing surface water during some portion of the year.

(A) “Stream” includes:

(i) the water itself, including any vegetation, aquatic life, or habitats therein;

(ii) beds and banks below the high-water level which may contain water, whether or not water is actually present;

(iii) the area between the high-water level of connected side channels;

(iv) beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year;

(v) stream-associated wetlands; and,

(vi) the channel migration zone, which is the area adjacent to an unconfined stream channel where channel location is reasonably expected to shift position on its floodplain through lateral avulsion or erosion during the period of time required to grow mature forest trees from the surrounding area (180-500 years, depending on site conditions), except as modified by a permanent levee or dike.

(B) “Stream” does not include:

(i) ephemeral overland flow (such flow does not have a channel); or

(ii) road drainage systems or water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(20) “Written plan” has the meaning provided in ORS 527.620.



Exhibit 3
Text of IP-36



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Elections Division

Be it enacted by the People of the State of Oregon:

Section 1. (a) Notwithstanding any other provision of Oregon law, clearcut logging and associated forest operations are prohibited:

(1) Within 100 feet of fishbearing streams, large and medium streams, significant wetlands, wetlands five acres or larger, and streams with domestic water use; and,

(2) Within 50 feet of all perennial streams, lakes, wetlands larger than one half an acre, and small non fishbearing streams subject to rapidly moving landslides as defined in ORS 195.250(3).

(b) The distances set forth in subsection (a) of this section shall be measured as horizontal distances from the forest waters and are intended to be implemented as exact minimum distances, not averages of variable distances over some unit of stream length within a harvest area.

(c) The minimum areas within which clearcut logging and associated forest operations are prohibited in subsection (a) of this section are subject to site-specific limited exceptions as specified in a written plan for operation approved by the State Forester for:

(1) maintenance of existing road crossings and unavoidable yarding corridors to the minimum size necessary provided an additional contiguous riparian area equal in size to that covered by the road crossing or yarding corridor remains unharvested and the impacted area is rehabilitated to the maximum extent practicable;

(2) thinning of small, under-canopy vegetation in a stand that best available information demonstrates is both necessary and effective to mitigate the risk of fire within the defensible space of dwellings, public buildings or critical built infrastructure, or to allow the safe use of prescribed fire as a forest restoration tool on dry forest types such as those in Southwest and Eastern Oregon.

(3) thinning of small, under-canopy vegetation in a stand that best available information demonstrates will enhance the resilience of the riparian area to drought, fire or to restore properly functioning riparian conditions provided that these operations shall first be reviewed and approved by a state-employed specialist in aquatic and riparian functions.

(d) The Department of Forestry may increase the size of areas specified in subsection (a) of this section, or specify additional restrictions on forest operations within these areas, to protect the quality or quantity of any or all forest waters as necessary to comply with state water quality standards, the protection goals of the Oregon Forest Practices Act, or to avoid impacts to threatened and endangered fish, species, wildlife, and habitats identified pursuant to ORS 527.710(3)(a), based on the best available information, significant new information, or changing climatic conditions.

Section 2. (a) The Board of Forestry shall adopt new rules for clearcut logging adjacent to forest waters on small tract forestlands that shall apply only to small tract forestland ownerships with 20 percent or more total acreage subject to no-harvest water protection restrictions under

section 1 of this Act. Upon final adoption of those rules, the prohibitions in Section 1 shall not apply to small tract forestland ownerships with 20 percent or more total acreage otherwise subject to no-harvest water protection restrictions under section 1 of this Act.

(b) In developing rules under this section, the Board shall balance the regulatory impact of this Act while minimizing the threat of harm to forest waters.

Section 3. ORS 526.009 is amended as follows:

(1) There is created a State Board of Forestry consisting of seven members appointed by the Governor. The members appointed to the board shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. The Governor shall designate one member of the board as chairperson to hold that position until that member's term expires or until relieved by the Governor as provided in subsection (6) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2) The term of office of a member of the board is four years. A member shall be eligible for reappointment, but no member shall serve more than two consecutive full terms. In case of a vacancy for any cause, the Governor shall make an appointment as provided in subsection (1) of this section.

(3) Appointments made by the Governor under subsection (1) of this section shall include appointment of at least one member from each of the forest regions established under ORS 527.640 and the rules adopted thereunder by January 1, 1987.

(4) No more than three members of the board may derive any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and 527.992.

(a) Any member of the board who derives any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and/or 527.992 shall be considered to have an actual conflict of interest regarding any action, decision, or recommendation as a member of the board regarding forest waters or any provision of this Act.

(b) Any member of the board with an actual conflict of interest as set forth in subsection (4)(a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such member may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

(5) Except as provided in subsection (4) of this section, no member of the board shall have any relationship or pecuniary interest that would interfere with the member representing the public interest.

(6) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria of appointment pursuant to this section.

Section 4. (a) Any action, decision or recommendation by any person acting in a capacity as a public official regarding forest waters or any provision of this Act which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business which the person or a relative of a person is associated, shall be considered an actual conflict of interest regardless of whether the private pecuniary benefit or detriment arises out of circumstances described in ORS 244.020(13)(a) or (c).

(b) Notwithstanding ORS 244.120(1)(c), any public official met with an actual conflict of interest as set forth in subsection (a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such public official may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

Section 5. Emergency Exceptions. The provisions of this Act and any rules promulgated pursuant to this Act may be suspended temporarily by the State Forester for an emergency that poses hazards to public health, safety or property, including but not limited to firefighting. Any suspensions may not exceed 60 calendar days unless renewed with a subsequent finding of necessity by the State Forester. For each suspension and renewal of suspension pursuant to this section, the State Forester shall provide an after-incident report to the Board of Forestry, posted on the Department’s website, detailing the reasons for and effectiveness of the suspension and the effect of the suspension on the affected forest waters.

Section 6. Protection of Human Health and Safety. Sections 1 to 2 of this Act, and any rules or regulations adopted or enacted pursuant to any provision of sections 1 to 2 of this Act, are for the protection of public health and safety for the purposes of ORS 195.305(3)(b). The provisions of sections 1 to 2 of this Act, and any rules or regulations enacted pursuant to this sections 1 to 2 of this Act, shall not be considered one or more land use regulations that restrict the residential use of private real property or a farming or forest practice.

Section 7. Forest Waters and Forestlands Protected. The provisions of this Act apply to all forestlands in Oregon including privately owned, state-owned and local government-owned forestlands, except as set forth in this Act. The provisions of this Act do not apply to federal or tribal forestlands exempt from regulation by this Act under federal law, or to Common School Forestlands.

Section 8. Definitions. (a) The words and phrases in this Act shall have the meaning provided in the Oregon Forest Practices Act, and in the version of OAR 629-600-0100 in effect as of January 1, 2020, unless specifically set forth and defined in subsection (b) of this section.

(b) As used in this Act:

(1) “Act” and “this Act” mean this 2020 initiative petition submitted to the electors of Oregon as a statewide ballot measure on the November 3, 2020 General Election ballot.

(2) “Actual conflict of interest” has the meaning provided in ORS 244.020(1).

(3) “Clearcut logging” means any Harvest Type 1, Harvest Type 2, or Harvest Type 3 operation. This does not include firewood cutting or timber milling for personal use.

- (4) “Common ownership” means direct ownership by one or more individuals or ownership by a corporation, partnership, association or other entity in which the one or more individuals, or an affiliated corporation, partnership, association, or other entity owns an interest.
- (5) “Common School Forestlands” means forest parcels owned by the State Land Board granted to the state by the federal government when Oregon obtained statehood.
- (6) “Emergency” means an actual or imminent threat of catastrophe, disaster, or unforeseen condition or circumstance that causes or threatens to cause widespread loss of life, or injury to person or property.
- (7) “Fishbearing stream” means any stream inhabited at any time of the year by anadromous or game fish species or fish that are identified on any lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973, as amended, or which contains fish habitat that is currently accessible to such species. The existence of man-made barriers to fish passage shall not be a basis for classifying a stream as other than a fishbearing stream.
- (8) “Forest operation” means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).
- (9) “Forest waters” means any waters of the state on forestland.
- (10) “Large stream” means a stream with an average annual flow of 10 cubic feet per second or greater.
- (11) “Medium stream” means a stream with an average annual flow greater than 2 and less than 10 cubic feet per second.
- (12) “Perennial streams” are flowing waters that do not go dry at any time during a year of normal rainfall and include any intermittently dry portions of the perennial channel below the uppermost point of perennial flow.
- (13) “Public official” has the meaning provided in ORS 244.020(15).
- (14) “Small tract forestland” means:
- (A) forestland subject to assessment under ORS 321.700 to 321.754 and from which the harvesting of timber is subject to severance taxation under ORS 321.700 to 321.754;
 - (B) has an owner that owns or holds common ownership in at least 10 acres of Oregon forestland but less than 5,000 acres of Oregon forestland; and,
 - (C) constitutes all forestland within a single tax lot and all forestland within contiguous parcels owned or held in common ownership by the owner.
- (15) “Stream” means a channel, such as a river or creek, which carries flowing surface water during some portion of the year.

(A) “Stream” includes:

- (i) the water itself, including any vegetation, aquatic life, or habitats therein;
- (ii) beds and banks below the high-water level which may contain water, whether or not water is actually present;
- (iii) the area between the high-water level of connected side channels;
- (iv) beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year;
- (v) stream-associated wetlands; and,
- (vi) the channel migration zone, which is the area adjacent to an unconfined stream channel where channel location is reasonably expected to shift position on its floodplain through lateral avulsion or erosion during the period of time required to grow mature forest trees from the surrounding area (180-500 years, depending on site conditions), except as modified by a permanent levee or dike.

(B) “Stream” does not include:

- (i) ephemeral overland flow (such flow does not have a channel); or
- (ii) road drainage systems or water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(16) “Written plan” has the meaning provided in ORS 527.620.



Exhibit 4
Text of IP-37



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Elections Division

Be it enacted by the People of the State of Oregon:

Section 1. (a) Aerial application of pesticides within 500 feet of all forest waters is prohibited. The distances shall be measured as the horizontal distance from the forest waters and are intended to be implemented as exact minimum distances, not averages or variable distances over some unit of stream length.

(b) The prohibitions established in this section are in addition to, and not in lieu of, any other prohibitions on pesticide application established by law.

Section 2. (a) The Department of Forestry shall maintain an electronic reporting and notification system for pesticide operators, timber owners, or landowners proposing to conduct a forest operation involving an aerial application of pesticides to forestland outside the areas in which such application is prohibited pursuant to section 1 of this Act.

(b) A pesticide operator, timber owner, or landowner must file notice of a forest operation involving an aerial application of pesticides to forestland with the State Forester no later than 14 business days prior to the proposed date of the application and no earlier than 21 business days prior to the proposed date of the application. Such notice shall include, at a minimum:

(1) the name and business address of the pesticide operator, timber owner, landowner, and aerial pesticide applicator;

(2) the pesticide product common name or brand name and the name of any carrier substance to be used for the pesticide product and any registration number issued for the pesticide product by the United States Environmental Protection Agency, the Oregon Department of Agriculture, or any other federal or state administrative agency;

(3) the total amount and concentration of the pesticide and any substance used to enhance the effectiveness of the pesticide product expected to be used;

(4) the proposed date for the aerial application of pesticides; and,

(5) a legal description and map for the proposed area for the application.

(c) Upon receipt of a notice required by subsection (b) of this section, the Department shall send notice to any person who has requested notification of planned pesticide applications, submitted a valid e-mail address to the Department, and has provided a physical address that is within one mile of the proposed aerial application of pesticides.

(d) Not later than January 1, 2022, the Oregon Occupational Safety and Health division of the Department of Consumer and Business Services shall update and adopt rules to ensure and protect the health and safety of persons who perform or have contact with pesticides used in any forestland application. When enacting these rules, the Oregon Occupational Safety and Health division shall consult with the Oregon Health Authority and the Department of Environmental Quality.

Section 3. ORS 527.672 is amended as follows:

When a forest operation involves applying [*herbicides*] **pesticides** by aircraft near an inhabited dwelling or school, the operator [*is responsible for leaving an unsprayed strip of at least 60*] **shall not spray the area within 500** feet adjacent to the dwelling or school. The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634 **or any provision of this Act.**

Section 4. Sections 1 to 3 of this Act, and any rules or regulations adopted or enacted pursuant to any provision of sections 1 to 3 of this Act, are for the protection of public health and safety for the purposes of ORS 195.305(3)(b). The provisions of sections 1 to 3 of this Act, and any rules or regulations enacted pursuant to sections 1 to 3 of this Act, shall not be considered one or more land use regulations that restrict the residential use of private real property or a farming or forest practice.

Section 5. ORS 526.009 is amended as follows:

(1) There is created a State Board of Forestry consisting of seven members appointed by the Governor. The members appointed to the board shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. The Governor shall designate one member of the board as chairperson to hold that position until that member's term expires or until relieved by the Governor as provided in subsection (6) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2) The term of office of a member of the board is four years. A member shall be eligible for reappointment, but no member shall serve more than two consecutive full terms. In case of a vacancy for any cause, the Governor shall make an appointment as provided in subsection (1) of this section.

(3) Appointments made by the Governor under subsection (1) of this section shall include appointment of at least one member from each of the forest regions established under ORS 527.640 and the rules adopted thereunder by January 1, 1987.

(4) No more than three members of the board may derive any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and 527.992.

(a) Any member of the board who derives any significant portion of their income directly from persons or organizations that are subject to regulation under ORS 527.610 to 527.770, 527.990(1) and/or 527.992 shall be considered to have an actual conflict of interest regarding any action, decision, or recommendation as a member of the board regarding forest waters or any provision of this Act.

(b) Any member of the board with an actual conflict of interest as set forth in subsection (4)(a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such member may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

(5) Except as provided in subsection (4) of this section, no member of the board shall have any relationship or pecuniary interest that would interfere with the member representing the public interest.

(6) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria of appointment pursuant to this section.

Section 6. (a) Any action, decision or recommendation by any person acting in a capacity as a public official regarding forest waters or any provision of this Act which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business which the person or a relative of a person is associated, shall be considered an actual conflict of interest regardless of whether the private pecuniary benefit or detriment arises out of circumstances described in ORS 244.020(13)(a) or (c).

(b) Notwithstanding ORS 244.120(1)(c), any public official met with an actual conflict of interest as set forth in subsection (a) of this section must announce publicly the nature of the conflict. After announcing the nature of the conflict, any such public official may participate as a public official in any discussion or debate on the issue out of which the actual conflict arises but may not vote on the issue.

Section 7. The provisions of this Act apply to all forestlands in Oregon including privately owned, state-owned and local government-owned forestlands, except as set forth in this Act. The provisions of this Act do not apply to federal or tribal forestlands exempt from regulation by this Act under federal law, or to Common School Forestlands.

Section 8. (a) The words and phrases in this Act shall have the meaning provided in the Oregon Forest Practices Act, and in the version of OAR 629-600-0100 in effect as of January 1, 2020, unless specifically set forth and defined in subsection (b) of this section.

(b) As used in this Act:

(1) "Act" and "this Act" mean this 2020 initiative petition submitted to the electors of Oregon as a statewide ballot measure on the November 3, 2020 General Election ballot.

(2) "Actual conflict of interest" has the meaning provided in ORS 244.020(1).

(3) "Aerial application of pesticides" means the spraying or any other application of pesticide by aircraft.

(4) "Aerial pesticide applicator" means a person certified under ORS 634.128.

(5) "Common School Forestlands" means forest parcels owned by the State Land Board granted to the state by the federal government when Oregon obtained statehood.

(6) "Forest operation" means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).

- (7) "Forest waters" means any waters of the state on forestland.
- (8) "Pesticide" has the meaning provided in ORS 634.006(8).
- (9) "Pesticide operator" has the meaning provided in ORS 634.006(13).
- (10) "Public official" has the meaning provided in ORS 244.020(15).

