

Washington Law Review

Volume 56 | Number 4

11-1-1981

The Obligation to Reforest Private Land Under the Washington Forest Practices Act

Catherine Phillips Plummer

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Digital Part of the [Natural Resources Law Commons](#)
Commons

Network Recommended Citation

Catherine P. Plummer, Comment, *The Obligation to Reforest Private Land Under the Washington Forest Practices Act*, 56 Wash. L. Rev. 717 (1981).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol56/iss4/13>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

THE OBLIGATION TO REFOREST PRIVATE LAND UNDER THE WASHINGTON FOREST PRACTICES ACT

Private landowners in Washington have been required to reforest land after logging since 1945. The Washington Forest Practices Act of 1974¹ and its predecessor² have primarily affected the state's timber industry, which has long been familiar with the reforestation requirement. Many nonindustrial forest landowners,³ however, are unaware of the requirements of the 1974 Act. The 1974 Act requires that any owner of forest land⁴ who removes the trees for any reason, whether to log one hundred acres for income or to clear one acre for a homesite, must satisfy the reforestation requirements of the Act.

Part I of this comment explains the requirements for satisfactory reforestation, the exceptions to those requirements, and how the obligation to reforest is enforced. Part II discusses a case recently before the Forest Practices Appeals Board⁵ to illustrate a current issue in enforcing the law and to illustrate a problem created by the effects of that enforcement. The enforcement issue is whether persons who acquire land that needs to be reforested are obligated to reforest the land. This comment concludes that they are obligated to reforest. The resulting problem is that persons who acquire land that needs to be reforested may be unaware of that requirement, and thus unable to allocate fairly the costs of reforestation in their transaction to acquire the land. One solution to the problem is amending the Act to improve the notice of the obligation to reforest that purchasers of land receive. Part III suggests criteria for evaluating legislative proposals requiring improved notice to subsequent landowners and concludes that sellers of forest land should be required to give purchasers actual notice of the obligation to reforest.⁶

1. WASH. REV. CODE ch. 76.09 (1979).

2. Act of Mar. 15, 1945, ch. 193, 1945 Wash. Laws 556 (repealed 1974).

3. Nonindustrial forest landowners are defined as persons owning forested land who are not directly affiliated with a processing plant. W. KOSS & B. SCOTT, A PROFILE OF WESTERN WASHINGTON'S NONINDUSTRIAL FOREST LANDOWNERS 3 (Dep't of Natural Resources Report No. 37, 1978).

4. Forest land is defined as "all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing." WASH. REV. CODE § 76.09.020(6) (1979); WASH. ADMIN. CODE § 222-16-010(17) (1980).

5. Department of Natural Resources v. Petra. No. 79-1 (Wash. Forest Practices App. Bd., Dec. 16, 1980).

6. A discussion of all of a purchaser's potential actions and remedies against a vendor of land is beyond the scope of this comment.

I. THE REQUIREMENT OF REFORESTATION

A. *The Scope of the Act*

1. *Who Is Affected and What Is Required*

Forest practices⁷ on all nonfederal land in Washington are regulated under the Forest Practices Act of 1974 (the Act). Requiring reforestation of forest land following logging is one of two primary purposes of the Act.⁸ The second major purpose of the Act is to regulate forest practices to protect both forest soils and public resources.⁹ Unlike the regulation of forest practices, reforestation has been required since Washington's first forest practices act was enacted in 1945 (the 1945 Act).¹⁰

7. "Forest practice" shall mean any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

WASH. REV. CODE § 76.09.020(8) (1979); WASH. ADMIN. CODE § 222-16-010(19) (1980).

8. WASH. REV. CODE § 76.09.010(2) (1979) provides:

The legislature further finds and declares it to be in the public interest of this state to create and maintain . . . a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest . . .

9. WASH. REV. CODE § 76.09.010(2)(b) (1979). Public resources are defined as "water, fish and wildlife, and . . . capital improvements of the state or its political subdivision." *Id.* § 76.09.020(13); WASH. ADMIN. CODE § 222-16-010(35) (1980).

Other purposes of the Act are to recognize the public and private interest in the profitable growing and harvesting of timber; to promote efficiency through maximum operating freedom; to avoid duplication of regulation; to provide for interagency input and coordination; and to consider land use planning goals and zoning. WASH. REV. CODE § 76.09.010(2)(c)-(f), (h) (1979). Another purpose is to achieve compliance with federal and state water pollution control laws respecting nonpoint sources. *Id.* § 76.09.010(2)(g). Washington's Act is one of several state forest practices acts which were enacted partly in response to the 1972 amendments to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (1978). Cabbage & Ellefson, *State Forest Practice Laws: A Major Policy Force Unique to the Natural Resources Community*, 13 NAT. RESOURCES LAW. 421, 421 (1980); Pardo, *Forestry Law and Policy*, 7 U. TOL. L. REV. 999, 1022 (1976). See generally Miskovsky & Van Hook, *Regulation of Forestry Related Nonpoint Source Pollution Under the Federal Water Pollution Control Amendments of 1972*, 9 NAT. RESOURCES LAW. 645 (1976).

For a general discussion of the Washington Forest Practices Act, see Comment, *Protection of Recreation and Scenic Beauty Under the Washington Forest Practices Act*, 53 WASH. L. REV. 443 (1978).

10. The 1945 Act was one of the "seed tree" laws that were passed in a number of states. Act of Mar. 15, 1945, ch. 193, § 4, 1945 Wash. Laws 556 (repealed 1974). It required reforestation, but

Reforestation Private Land

The 1945 Act had only a minor effect on owners of nonindustrial forest land. Landowners under the 1945 Act satisfied their statutory obligation to reforest in one of two ways. First, the obligation to reforest was satisfied by leaving a small number of seed trees.¹¹ Although natural regeneration from seed trees often failed to produce anything but brush and non-commercial tree species,¹² the landowner was not required to do any additional reforestation work. The landowner was merely required to leave a seed source, not to guarantee reseeding or to agree to grow trees.¹³ Alternatively, the obligation to reforest was satisfied by forfeiting a bond.¹⁴ The supervisor of forestry would then use the money to reforest the land. The bond often failed to cover the costs of artificial reforestation.¹⁵

The 1974 Forest Practices Act repealed the 1945 Act.¹⁶ The new act

regulated forest practices only to the extent that logging activities threatened seed trees. State of Washington, Op. Att'y Gen. 53-55-84 (July 1953).

For an excellent discussion of modern forest practice laws and older seed tree laws, see Cabbage & Ellefson, *supra* note 9. Other discussions of the history of forest conservation are found in: Ayer, *Public Regulation of Private Forestry: A Survey and a Proposal*, 10 HARV. J. LEGIS. 407, 408-20 (1973); Quinney, *Small Private Forest Landownership in the United States—Individual and Social Perception*, 3 NAT. RESOURCES J. 379, 380-81 (1964); and Comment, *Regulation of Private Logging in California*, 5 ECOLOGY L.Q. 139, 140-42 (1975).

11. The 1945 Act required a landowner or an operator to get a cutting permit from the supervisor of forestry. The permit was obtained in one of two ways. First, the applicant could promise to leave a certain number of trees standing after harvest to serve as a seed source for natural regeneration of the logged area. Act of Mar. 15, 1945, ch. 193, §§ 3-4, 1945 Wash. Laws 556 (repealed 1974). Alternatively, the applicant could submit a plan to reforest, either by planting seedlings or by some other silvicultural means. *Id.*

In western Washington, an operator satisfied the minimum requirements for seed trees by leaving five per cent of the area uncut. In eastern Washington, the requirements were satisfied by leaving four seed trees per acre in Ponderosa Pine stands, and by leaving two acres out of every forty uncut in other stands. Landowners were encouraged to satisfy the seed tree requirements by leaving strips of timber that were marginally economical to log. *Id.* §§ 5-6. The supervisor of forestry's policy was not to require reforestation on land considered likely to become agricultural or residential.

12. Timber companies and the state and federal governments developed effective reforestation programs that increasingly did not rely on natural regeneration in western Washington. See *State v. Dexter*, 32 Wn. 2d 551, 556, 202 P.2d 906, 908, *aff'd mem.*, 338 U.S. 863 (1949). Natural regeneration became economically impractical for several reasons: valuable trees had to be left behind as seed trees; seed trees often were blown down or destroyed by fire; seed production was unreliable; rodents ate the seeds; and seedlings did not compete well with brush. Artificial reforestation by growing and planting seedlings was underway as early as the 1930s, when the state's Webster Forest Nursery was established near Olympia. Currently, industrial forest landowners in western Washington rely almost entirely on planted seedlings for reforestation.

13. *State v. Dexter*, 32 Wn. 2d 551, 561, 202 P.2d 906, 911, *aff'd mem.*, 338 U.S. 863 (1949).

14. If the operator cut the seed trees or failed to comply with the optional plan, then the supervisor of forestry could require a cash deposit or performance bond of up to \$24.00 per acre. If the area was not reforested after five years, then the bond was forfeited. Act of Mar. 3, 1953, ch. 44, § 3, 1953 Wash. Laws 59 (repealed 1974).

15. See note 111 *infra* (discussion of the costs of reforestation).

16. WASH. REV. CODE § 76.09.915 (1979).

abandoned the seed tree method of reforestation. Rather than require a particular method, the Act requires a particular result. Satisfactory reforestation generally must be accomplished within three years after completion of harvest. If, however, a natural regeneration plan has been approved by the Department of Natural Resources (the Department),¹⁷ then reforestation need not be completed until up to five years after harvest.¹⁸

The Washington Forest Practices Board is responsible for implementing the policies and the provisions contained in the Act. The Board is authorized to define satisfactory reforestation and to promulgate regulations necessary to accomplish the Act's purposes.¹⁹ In 1976 the Board adopted the Washington Forest Practices Rules and Regulations which contain detailed requirements for reforestation as well as extensive regulations concerning other forest practices.²⁰

According to the regulations, reforestation is not required as long as a minimum number of vigorous, undamaged seedlings, saplings, or merchantable trees per acre remain standing after logging. The minimum acceptable number of trees differs for lands lying east and west of the Cascade mountains. West of the Cascades, reforestation is required whenever

17. The Department of Natural Resources is responsible for administering and enforcing the Act. *Id.* § 76.09.040 (1).

18. *Id.* § 76.09.070. If seed or seedlings are not available, then a period longer than three years may be authorized.

Although the Act gives landowners three years to complete reforestation, slash disposal activities that are necessary for reforestation must be done at the time of harvest. Harvesting must leave the land in a condition "conducive to future timber production." WASH. ADMIN. CODE § 222-30-020(5) (1980). W.A.C. § 222-30-090 provides:

[Unless the landowner agrees to assume responsibility for post-harvest site preparation.] the operator shall leave the site in a condition suitable for reforestation

(1) **The Following** site preparation is required when necessary to establish a condition suitable for reforestation.

(a) Cutting or slashing of all noncommercial tree species or nonmerchantable size trees commonly known as "whips"

(b) Pile or windrow slash, or

(c) Mechanically scatter slash, or

(d) Leave the cutover area in a condition for controlled broadcast burning, and subsequently burn.

WASH. ADMIN. CODE § 222-30-090 (1980).

In addition, slash disposal is required "where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation." *Id.* § 222-30-100(3). *See also id.* § 222-30-080(3)(a) (slash clean-up on otherwise plantable landings); WASH. ADMIN. CODE §§ 222-24-060(5)(c), (6)(b) (1980) (reforestation of gravel pits and spoil disposal sites).

19. WASH. REV. CODE § 76.09.040(1) (1979).

20. WASH. ADMIN. CODE tit. 222 (1980). Rule changes proposed in 1981 alter the form but not the substance of the reforestation requirements.

Reforestation Private Land

fewer than three hundred trees per acre remain standing.²¹ East of the Cascades, one hundred trees per acre must remain standing to avoid the obligation to reforest.²²

If reforestation is required, then the regulations prescribe minimum standards.²³ Satisfactory reforestation must be completed within three years after logging, or within five years if a natural regeneration plan is approved by the Department.²⁴ In western Washington, at the end of that period, the land must be stocked with three hundred well-distributed, vigorous seedlings per acre of commercial species.²⁵ In eastern Washington, the minimum acceptable stocking is one hundred and fifty seedlings per acre.²⁶ The trees must survive at least one growing season.²⁷ In addition to requiring a minimum number of seedlings, the regulations require reforestation with the same tree species that were harvested.²⁸

A landowner who reforests by planting or by seeding must file a report with the Department.²⁹ Within one year after receiving a reforestation report, or within the three to five year period allowed for reforestation based

21. If 50% or more of the timber volume is removed, then reforestation is required, either for clearcutting or for partial cutting. WASH. ADMIN. CODE § 222-34-010(1)(a) (1980). Reforestation is not required, however, as long as at least three hundred trees per acre remain standing. The trees must be well-distributed on the area harvested. *Id.* § 222-34-010(1)(b)(iv).

22. *Id.* § 222-34-020(1)(b)(iv).

23. *Id.* §§ 222-34-010(5) to (8), -020(5) to (8). There are standards for seedlings, natural regeneration, partial cuts, and for any alternative reforestation plan.

24. WASH. REV. CODE § 76.09.070 (1979); WASH. ADMIN. CODE §§ 222-34-010(2), -020(2) (1980).

25. WASH. ADMIN. CODE § 222-34-010(4) (1980). The Department can waive this requirement if it determines that fewer than three hundred trees will fully use the timber growing capacity of the site.

The regulation for reforestation of clearcuts is the only one which specifically refers to the acceptable level of three hundred trees per acre. *Id.* § 222-34-010(2). This standard, however, applies to partial cuts and seed tree methods of reforestation as well. WASH. REV. CODE § 76.09.070 (1979) ("satisfactory reforestation as defined by the rules and regulations . . . shall be completed within three years . . ."); WASH. ADMIN. CODE § 222-34-030(4)(b) (1980) (acceptable stocking levels must be achieved by inspection date).

26. WASH. ADMIN. CODE § 222-34-020(4) (1980).

27. *Id.* § 222-34-010(4), -020(4).

28. *Id.* § 222-34-010(3). The Department may approve a different species for reforestation if the reforestation plan shows that the new species is preferable for any of three reasons: 1) it will be more physically productive on the site, or 2) it will produce greater economic return, or 3) it will help control forest insects or diseases.

This provision has important consequences. A common occurrence under the 1945 Act—the harvesting of valuable conifers, and then the natural reseeding of alder, maple, and other hardwoods—is not acceptable under the 1974 Act.

29. The landowner must file a reforestation report with the Department either after completing planting or at the end of the normal planting season. When artificial seeding is used, the report must be filed two growing seasons after seeding. WASH. REV. CODE § 76.09.070 (1979); WASH. ADMIN. CODE § 222-34-030(2), (4) (1980). The information which must be included in a reforestation report is described in the regulations. WASH. ADMIN. CODE § 222-34-030(3) (1980).

on an approved natural regeneration plan, the Department must inspect the area. The Department must notify the landowner if reforestation has failed, or if further inspections are needed.³⁰ If there are fewer than the minimum number of trees per acre that have survived one year or if the area is reforested with a different species than that harvested, then the Department must require supplemental plantings and must require control of competing vegetation.³¹ The Department will not ordinarily notify the landowner that reforestation is satisfactory. If the landowner requests notification, however, the Department will confirm in writing that no further reforestation obligation remains.³²

The Forest Practices Act of 1974 rejected a scheme tolerating reforestation failures and replaced it with a scheme requiring successful reforestation. Although the landowner is not required to manage actively the new stand of trees, the landowner is required either to leave behind, or to establish, a stand of a minimum number of a particular species of trees.

2. *Exception for Land Converted to Another Use*

Land converted to another use is exempt from the Act's reforestation requirements. An applicant must disclose to the Department on a forest practice application³³ whether any land described in the application will

30. WASH. REV. CODE § 76.09.070 (1979); WASH. ADMIN. CODE § 222-34-030(4)(b) (1980). If the Department fails to inspect or fails to give notice of unsatisfactory reforestation within the required time, then reforestation is deemed satisfactory and the Department cannot require additional work. WASH. ADMIN. CODE § 222-34-030(4)(c) (1980).

31. WASH. ADMIN. CODE § 222-34-030(4)(b) (1980). The Department may require more than two supplemental plantings only if stocking improvement is feasible and if it is necessary to protect public resources.

32. *Id.* § 222-34-030(4)(c).

33. A forest practice begins with an application or notification to the Department on a prescribed form. WASH. REV. CODE § 76.09.060 (1979); WASH. ADMIN. CODE § 222-20-010 (1980). The application includes among other things: the names and addresses of the forest landowner, the timber owner, and the operator; a description of the proposed forest practice; topographic maps; a description of the silvicultural or harvesting method to be used; and a proposed plan for reforestation if the land is not intended to be converted to another use. WASH. REV. CODE § 76.09.060(1), (3) (1979).

Forest practices are divided into four classes, based on the operation's potential impact on the environment. Class I forest practices do not require a notification or an application to the Department to proceed, but must comply with all the other provisions of the Act, including the reforestation requirements. Class II forest practices require notification to the Department and a delay of five days before the operation can begin, to give the Department time for inspection and approval. Class III and IV forest practices require an application to the Department and fourteen and thirty days, respectively, before the operation may begin. WASH. REV. CODE § 76.09.050 (1979); WASH. ADMIN. CODE §§ 222-12-030, -20-020 (1980).

The Department either approves or disapproves the application within the allotted time, normally after a field inspection of the site. WASH. REV. CODE §§ 76.09.050 (1), (5), .150 (1979). The approved application is effective for one year, and may be renewed only by a new application. *Id.* § 76.09.060 (6); WASH. ADMIN. CODE § 222-20-080 (1980).

Reforestation Private Land

be converted to a use other than commercial timber production within three years after harvesting is completed.³⁴ The Department must receive and approve the application before any forest practice may begin.³⁵ The Department has thirty days either to approve or to deny a proposed conversion to another use.³⁶ If the Department approves the application, and if the conversion to another use is *in fact* initiated within three years, then the reforestation requirements of the Act do not apply.³⁷ If the conversion to another use is not initiated in time, then the reforestation requirements apply, and reforestation must be accomplished within one additional year.³⁸

Landowners who intend to subdivide and to sell land for development generally are required to reforest if the land will not actually be converted to another use within three years after logging. The Department does not recognize division of the land and sale, with or without platting, as an actual conversion to a nonforest use. Subdivided land must be reforested unless a house, a pasture, or some other use that is incompatible with timber growing is actually initiated within three years after logging.³⁹ The purpose of the requirement of an actual conversion is to prevent landowners from evading the reforestation requirements by “converting,” through subdivision and sale, land that is never actually used for non-

34. WASH. REV. CODE § 76.09.060(3) (1979). Conversion to a use other than timber operation is defined as a “bona fide conversion to an active use which is incompatible with timber growing” *Id.* § 76.09.020(4); WASH. ADMIN. CODE § 222-16-010(9) (1980).

The forest practice application must be signed by the landowner, or include a statement signed by the landowner, indicating the intention to convert the land to another use. WASH. REV. CODE § 76.09.060(3)(c) (1979); WASH. ADMIN. CODE § 222-20-010(5) (1980).

35. WASH. ADMIN. CODE § 222-20-010(1) (1980). *See* note 33 *supra*.

36. Forest practices on land being converted to another use are Class IV forest practices. WASH. REV. CODE § 76.09.050(1) (1979); WASH. ADMIN. CODE § 222-16-050(2)(a) (1980).

37. WASH. REV. CODE § 76.09.060(3)(a)(i) (1979); WASH. ADMIN. CODE §§ 222-20-050, -34-010(1)(a), -020(1)(a), -050(1) (1980).

In addition to land actually converted to another use, the Department may exempt from reforestation land that is likely to be converted to urban development within ten years. WASH. REV. CODE § 76.09.070 (1979); WASH. ADMIN. CODE § 222-34-050(2) (1980). The anticipated conversion must be consistent with local or regional land use plans or ordinances, and the land must not be designated for tax purposes as reforestation land under R.C.W. ch. 84.28, as forest land under R.C.W. ch. 84.33, or as timber land under R.C.W. ch. 84.34.

Two other exemptions from reforestation exist. They are for utility rights-of-way, WASH. ADMIN. CODE § 222-34-050(3) (1980), and for land owned or being acquired by a public agency for a specific project inconsistent with commercial timber production. *Id.* § 222-34-050(4).

When a forest practice on land being converted to another use is completed, then the land loses its tax status as forest land or reforestation land, unless the conversion is to a purpose permitted under a current use tax agreement. WASH. REV. CODE § 76.09.060(3)(a)(ii) (1979).

38. WASH. ADMIN. CODE § 222-20-050 (1980).

39. Other examples of initiating an active use include constructing subdivision roads to county standards and installing sewer or water systems.

forest purposes or land that is only converted to nonforest uses after a long delay.⁴⁰

Subdividing land into small tracts—five acres or less—usually will not constitute conversion of the land to a nonforest use. If the parcel of land can support a merchantable stand of timber, then reforestation is required.⁴¹ The Department decides on a case-by-case basis whether a particular parcel is capable of supporting a merchantable stand of timber. The only relevant factors under the Act are the productivity of the land, the difficulty of logging, and the distance to a market for the timber.⁴² Thus, on small residential or urban lots reforestation would not be required because the lots would not support a sufficiently large stand of timber to pay the costs of logging. On larger rural lots, however, the Department's discretion to require reforestation is limited by the criteria in the Act. Reforestation on small acreage may be required, although the land's value for other purposes may far exceed its value as commercial timber land.⁴³

Forest practices on land being converted to another use may be subject to county, city, or other local governmental authority.⁴⁴ The Department

40. The Department does not have authority to postpone reforestation if a conversion to another use is not initiated within three years. *See* WASH. ADMIN. CODE § 222-20-050 (1980). Delays in reforestation are only authorized if seedlings are unavailable or if weather delays planting. *Id.* § 222-34-010(2).

41. *See* note 4 *supra* (forest land is defined as land capable of supporting a merchantable stand of timber).

42. A merchantable stand of timber is defined as "a stand of trees that will yield logs and/or fibre: (a) Suitable in size and quality for the production of lumber, plywood, pulp or other forest products. (b) Of sufficient value at least to cover all the costs of harvest and transportation to available markets." WASH. ADMIN. CODE § 222-16-010(27) (1980).

This definition excludes many variables that normally affect a landowner's decision whether or not to invest in timber growing on a particular piece of ground. Examples are the costs of reforestation, the risk of loss to fire, insects, or disease, and the availability of insurance. Another variable excluded from the definition is the effect of taxes. Land that is subdivided into less than 20-acre parcels no longer qualifies for classification or designation as forest land for tax purposes. WASH. REV. CODE § 84.33.100(1) (1979). The owner has to pay taxes based on the highest and best use. A landowner may, however, pay taxes based on the current use on parcels down to five acres in size if classified as timber land under the open space tax law. *Id.* § 84.33.020(1).

43. The Department requires reforestation of five-acre lots. *E.g.*, Forest Practice Order No. FP-04-00997 (excluding 1½ acres planned for a homesite). The legislature recognized that the reforestation requirements of the 1974 Act would have an impact on owners of small acreage. 1975 WASH. HOUSE JOURNAL 1024 (remarks of Rep. Kalich).

The Forest Practices Appeals Board recently discussed the definition of forest land and its relationship to reforestation requirements. *Department of Natural Resources v. Petra*, No. 79-1, slip op. at 11-12 (Wash. Forest Practices App. Bd., Dec. 16, 1980). It found the definition unsuitable since it did not take into consideration all of the costs of growing timber. *See* note 42 *supra*. The Board recommended that the Forest Practices Board promulgate new regulations applicable to small landowners.

44. WASH. REV. CODE § 76.09.060(3)(a)(iii) (1979). Local or regional governments have authority to exercise land use planning or zoning authority over forest practices on land being converted to

Reforestation Private Land

forwards a copy of forest practice applications to the county in which the practice will take place, as well as to the Washington Departments of Ecology, Game, and Fisheries for comments.⁴⁵ If the Department receives a timely objection from the county on grounds specified in the Act, then it must disapprove the objectionable portions of the application.⁴⁶ The Department may appeal the county objections to the Forest Practices Appeals Board.⁴⁷ The applicant also may appeal the disapproval of the application to the Appeals Board as “a person aggrieved” by the disapproval.⁴⁸

A landowner who intends to convert land to another use may be tempted to falsify the forest practice application by not revealing this intention. The landowner may falsify the application for two reasons. The first is to avoid delay. Processing a forest practice application that indicates a conversion to another use takes thirty days, when other types of forest practice applications take fourteen days or less to process.⁴⁹ If a landowner has contracted with a logger who is ready to go to work, this delay can be costly.

The second reason to falsify the application is to avoid the exercise of

another use or on land platted after January 1, 1960. Those governments cannot, however, institute a local permit system solely for forest practices, and cannot require additional or more stringent regulation of forest practices. *Id.* § 76.09.240(1). Otherwise, local or regional authorities cannot regulate forest practices except to exercise taxing powers, public health and related powers, or authority under the Shoreline Management Act of 1971, R.C.W. ch. 90.58. WASH. REV. CODE § 76.09.240(2)–(4) (1979). See Comment, *Protection of Recreation and Scenic Beauty Under the Washington Forest Practices Act*, 53 WASH. L. REV. 443, 465–66 (1978).

The Washington Supreme Court held void amendments made in 1975 to § 240(4) of the Forest Practices Act which limited the scope of local authority under the Shoreline Management Act. *Weyerhaeuser v. King County*, 91 Wn. 2d 721, 592 P.2d 1109 (1979) (failure to comply procedurally with WASH. CONST. art. 2, § 37). The 1981 legislature passed bills which legislatively overruled *Weyerhaeuser* and restored the 1975 amendments to the Forest Practices Act, but Governor Spellman vetoed the bills on May 19, 1981. State of Washington, Sub. S.B. 3728, 47th Sess. (1981); State of Washington, H.B. 371, 47th Sess. (1981).

45. WASH. REV. CODE § 76.09.050(5) (1979).

46. *Id.* § 76.09.050(5)–(7); WASH. ADMIN. CODE § 222–20–020(2), (6)(a) (1980). If the county’s objections relate either to land platted after January 1, 1960, or land being converted to another use, then the Department must disapprove the application objected to.

Although the Department is not required to disapprove an application objected to by a county outside of its limited authority or by the Departments of Ecology, Game, or Fisheries, anyone aggrieved by an approval or disapproval of an application can appeal to the Forest Practices Appeals Board. WASH. REV. CODE § 76.09.220(8)(a) (1979).

47. WASH. REV. CODE § 76.09.050(7) (1979). The Act created the three-member Forest Practices Appeals Board, which has exclusive jurisdiction to hear appeals arising from an action or determination by the Department. *Id.* §§ 76.09.210, .220(7).

48. WASH. REV. CODE § 76.09.220(8)(a) (1979).

49. See notes 33 & 36 *supra*.

local authority over forest practices.⁵⁰ Local governments can only exercise their planning or zoning authority over forest practices if the application indicates an intent to convert the land to another use.⁵¹ By falsifying the application, the landowner postpones the time when local governments may exercise their authority until the landowner either files a plat or applies for a necessary permit.⁵²

Local officials may suspect that an applicant failed to disclose an intent to convert to another use.⁵³ If they wish to exercise authority over the land before it is logged, then they must notify both the Department and the applicant that the application should indicate an intent to convert to another use. Once a local government has made a timely objection, the Department must reject the application until it is accurate and complete.⁵⁴ When the application correctly reflects the intention to convert the land to another use, the local governments may exercise their authority over the forest practice.⁵⁵

50. See note 44 *supra*.

On a Class IV forest practice, if the local or regional government is taking some action concerning the land, then that government can require a detailed environmental impact statement under the State Environmental Policy Act of 1971 (SEPA), R.C.W. ch. 43.21C. WASH. REV. CODE § 76.09.050(1) (1979). See Comment, *Protection of Recreation and Scenic Beauty Under the Washington Forest Practices Act*, 53 WASH. L. REV. 443, 465 n.109 (1978). The local or regional government is responsible for preparing the statement. State Environmental Policy Amendments of 1981, ch. 290, § 1, 1981 Wash. Laws 1240.

The Department's authority to require compliance with SEPA is limited to "Class IV Special" forest practices as they are defined by the Forest Practices Board in WASH. ADMIN. CODE § 222-16-050(1) (1980). Classes I, II, and III forest practices are exempt from the SEPA requirement of a detailed statement. WASH. REV. CODE § 76.09.050(1) (1979); WASH. ADMIN. CODE § 332-40-170(19)(a) (1980); State Environmental Policy Amendments of 1981, ch. 290, § 1, 1981 Wash. Laws 1240. A superior court found the Board's definition of Class IV Special forest practices to be too narrow compared to the statutory definition of forest practices which have a potential for substantial impact on the environment. *Noel v. Cole*, No. 9806, slip op. at 10 (Island County Super. Ct. Jan. 3, 1979). The Board is presently holding hearings to expand the list of Class IV Special forest practices.

51. WASH. REV. CODE § 76.09.240(1) (1979). See note 44 *supra*.

52. If the landowner removes the trees before local governments can exercise their authority over a project, then one source of potential dispute with the local governments has been eliminated. The landowner can also make expensive improvements on the land during logging, particularly by constructing roads, that can later be presented to local authorities as a *fait accompli*.

53. Local officials may have access to information that the Department does not have. A plat may have been submitted to a county office, or the land may have been otherwise proposed for conversion to another use.

54. WASH. REV. CODE § 76.09.050(6)-(7) (1979); WASH. ADMIN. CODE § 222-20-040(1)(a) (1980).

55. Some county authorities have expressed concern that the Department's refusal to recognize platting as a conversion for reforestation purposes prevents the county governments from using platting as a conversion for local authority purposes. The two positions, however, are not inconsistent. The Department refuses to recognize platting as an *initiation* of another use within three years after logging. This does not prevent it from recognizing platting as an *indication of intent* to convert to another use at the application stage.

Reforestation Private Land

The Act provides sanctions that may be applied against a landowner who does not disclose the intent to convert the land to another use. The purpose of these sanctions is to discourage conversion of the land after it has been logged. First, the local government may deny any permit applications⁵⁶ for nonforestry uses of the land for six years.⁵⁷ Second, failure to reforest removes the land from favorable property tax designations.⁵⁸ Third, unauthorized conversion may violate local ordinances governing conversion of land to nonforest uses.⁵⁹

B. Enforcing the Act

The Forest Practices Act provides alternative means of enforcing the obligation to reforest. If a landowner fails to reforest, then the first enforcement effort usually is an order from the Department to the operator⁶⁰ or to the landowner to comply with the Act.⁶¹ The order must indicate the steps to be taken to comply with the Act. For example, if the required number of trees per acre of the proper species failed to survive after three years, then the Department may order the landowner to do supplemental planting.⁶² The operator must undertake the required course of action immediately, unless the landowner, timber owner,⁶³ or operator requests a hearing before the Department. If, after a hearing, the Department issues an order adverse to the petitioners, then the petitioners may appeal to the Forest Practices Appeals Board.⁶⁴

56. Permits that could be denied would include zoning variances, building permits, and subdivision approvals.

57. WASH. REV. CODE § 76.09.060(3)(b)(i) (1979).

58. *Id.* § 76.09.060(3)(b)(ii). When land is removed from classification or designation as forest land, compensating taxes may become due. For example, under the timber and forest land tax law the compensating tax is equal to the difference between the tax levied on the forest land and the new assessed valuation multiplied by the dollar rate of the last levy, multiplied by the number of years the land, was designated as forest land, up to 10 years. WASH. REV. CODE § 84.33.140(3) (1979). *See also* WASH. REV. CODE §§ 84.28.065 (removal from classification as reforestation land), .34.080 (1979) (change in use under open space designation).

59. WASH. REV. CODE § 76.09.060(3)(b)(iii) (1979).

60. An operator is defined as “any person engaging in forest practices except an employee with wages as his sole compensation.” *Id.* § 76.09.020(11); WASH. ADMIN. CODE § 222-16-010(29) (1980).

61. *See* WASH. REV. CODE § 76.09.090 (1979); WASH. ADMIN. CODE § 222-46-030 (1980). The Department can issue a notice to the operator or to the landowner, and must mail a copy to each of them, as well as to the timber owner.

62. *See* text accompanying note 31 *supra*.

63. A timber owner is defined as “any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, ‘timber owner’ shall mean the contract purchaser.” WASH. REV. CODE § 76.09.020(15) (1979). The operator, timber owner, and landowner on a forest practice application may be one person.

64. *Id.* § 76.09.090; WASH. ADMIN. CODE §§ 222-12-080, -46-030 (1980).

Alternatively, the Department may issue a stop work order.⁶⁵ If the operator violates the Act or deviates from the approved application, and if forest practice operations are currently taking place, then this order may be issued to stop the operations. A stop work order might issue, for example, if an operator were cutting down seed trees that the approved reforestation plan indicated would be left standing. Again, the order must set forth a specific course of conduct that the operator must undertake to correct the problem.⁶⁶ The operator may appeal a stop work order directly to the Forest Practices Appeals Board.⁶⁷

Both the notice to comply with the Act and the stop work order are final orders. The Department may, through the attorney general, take any necessary action to enforce a final order of the Department, a final decision of the Forest Practices Appeals Board, or the order of any court. It may seek both civil and criminal fines.⁶⁸

The Act also permits the Department to undertake and to complete a required course of action.⁶⁹ If an operator fails to comply with a final order or decision, then the Department may determine the costs of doing the required work. The Department must give written notice of the costs to the operator, the timber owner, and the forest landowner.⁷⁰ If all fail to undertake the work within thirty days, then the Department may either do the work or have it done. The operator, timber owner, and forest landowner are then jointly and severally liable for the direct costs of reforestation. The Department must notify the forest landowner in writing of the amount due. If these costs are not paid within sixty days after notice, then the amount becomes a lien on the forest land.⁷¹

65. WASH. REV. CODE § 76.09.080 (1979); WASH. ADMIN. CODE §§ 222-12-050(2), -46-040 (1980).

66. WASH. REV. CODE § 76.09.080(2)(c) (1979); WASH. ADMIN. CODE § 222-46-040(2)(c) (1980).

67. WASH. REV. CODE § 76.09.080(2)(d) (1979); WASH. ADMIN. CODE §§ 222-12-080, -46-040(2)(d) (1980). *See* WASH. REV. CODE § 76.09.230 (1979).

68. WASH. REV. CODE §§ 76.09.140, .170, .190 (1979); WASH. ADMIN. CODE §§ 222-46-060, -070, -080 (1980). In addition, the Department may, through the attorney general, take action to enjoin forest practices for one year by any person who fails to comply with a final order. WASH. REV. CODE § 76.09.140 (1979).

69. WASH. REV. CODE § 76.09.120 (1979); WASH. ADMIN. CODE § 222-46-050 (1980).

70. WASH. REV. CODE § 76.09.120 (1979). The costs billed may not exceed the costs in the notice.

71. *Id.* The Department may collect the amount in the same manner as provided in R.C.W. ch. 60.04 for mechanic's liens.

II. SUBSEQUENT LANDOWNERS ARE REQUIRED TO REFOREST

Landowners may log their land and then sell it before it is reforested. The Department requires the new landowner, as the one in actual control of the land, to reforest.⁷² The facts of a case recently before the Forest Practices Appeals Board illustrate the impact of the Act's requirements on purchasers of forest land. The issue in *Department of Natural Resources v. Petra*⁷³ was whether Petra, a purchaser of land that had been logged by the previous landowner, could be required to reforest under the Act despite his lack of knowledge of the requirement. The Appeals Board held that Petra was responsible for reforesting the land he owned at the time of appeal.⁷⁴

In *Petra*, one hundred and sixty acres of land in rural Lewis County were clearcut by the landowner. The landowner had obtained an approved forest practice application indicating that reforestation would be accomplished by hand planting of seedlings, but the land was not reforested. Within six months after logging, the land was sold to Petra. Petra knew it had been logged, but did not know of the forest practice application or of the obligation to reforest. There was no indication of the obligation on his deed, title records, or title insurance. After Petra subdivided the land into five-acre tracts, and sold fifteen tracts to third parties, the Department issued Petra a notice requiring reforestation on the land that he owned. Petra appealed the order to the Department, then to the Appeals Board, which held that he was required to reforest.

Petra was required to reforest the land that he owned because he was the person in actual control of the land at the time reforestation was required. It follows that the persons who purchased the five-acre tracts from

72. See notes 78-80 and accompanying text *infra*.

73. No. 79-1 (Wash. Forest Practices App. Bd., Dec. 16, 1980). The ruling of the Appeals Board in *Petra* may have no precedential effect. The decision was signed by only two members of the three-member Board, which would normally be enough for a quorum. WASH. REV. CODE § 76.09.-220(3)-(4) (1979). One of the signing members, however, was never confirmed by the state senate, and when the new Governor took office in 1981, he replaced that member. See WASH. REV. CODE § 76.09.210(3) (1979). This comment uses the facts of *Petra* for illustration, and does not rely on the holding or the reasoning of the Appeals Board.

74. The Board reasoned that the subsequent landowner would benefit from reforestation because of the increased value of the land. Since the Forest Practices Act was concerned about the value of forest land, the Board felt that the Act meant to place the burden on the one who would realize the value from it. *Department of Natural Resources v. Petra*, No. 79-1, slip op. at 5-7 (Wash. Forest Practices App. Bd., Dec. 16, 1980). The Board rejected Petra's argument that he was not responsible for reforestation because the requirement was not recorded on his title. The Board said the requirement was imposed by law, and an analogy to the private land law principle of a bona fide purchaser was "inapposite." The Board said that even if Petra did not know the land had been recently logged, he would still have to reforest. *Id.* at 7.

Petra were also responsible for reforesting the land they owned at the time reforestation was required.⁷⁵

The issue raised in *Petra*—whether subsequent landowners are required to reforest—will next be examined. Part III discusses the problem created by the effect of the law on subsequent landowners who are unaware of the requirement of reforestation at the time they purchase the land and discusses possible reforms.

A. *Interpreting the Act*

The Forest Practices Act does not designate explicitly who must reforest.⁷⁶ The enforcement provisions, however, require that the landowner, the timber owner, and the operator comply with all of the provisions of the Act.⁷⁷ The issue is whether the landowner who submitted the application to log, or the successor landowner who owns the land at the time enforcement action is taken, is the landowner who must reforest.

Authority for the position that the obligation to reforest runs with the land to successor landowners is found in the Act's definition of a forest landowner. A forest landowner is defined as any person in actual control of forest land.⁷⁸ Once the land is sold, the landowner who signed the application cannot have actual control over the land. Only the successor landowner, with legal or equitable title at the time enforcement action is taken,⁷⁹ has actual control over the land. Consequently, under the Act, the successor landowner is responsible for reforestation.⁸⁰

75. For a discussion of the Act's application to small landowners, see notes 39–43 and accompanying text *supra*.

76. R.C.W. § 76.09.070 and W.A.C. § 222–34–010 to –020 provide that reforestation must be done, but do not say by whom. *Cf.* Oregon Forest Practices Act, OR. REV. RULES §§ 629–24–402, –502, –602 (1981) (amended in 1980 to identify the landowner as the party responsible for reforestation). *But see* WASH. ADMIN. CODE §§ 222–34–030(2), (4)(i) (landowner to submit reforestation report and do supplemental planting), 222–34–030(4)(c) (1980) (landowner may obtain a release for satisfactory reforestation).

77. *See* text accompanying notes 60–71 *supra*. A proposed 1981 amendment to the Act would have designated the landowner as the person responsible for reforestation. State of Washington, Sub. H.B. 419, 47th Sess. (1981).

78. “Forest land owner” shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, that any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of “forest land owner” unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. WASH. REV. CODE § 76.09.020(7) (1979); WASH. ADMIN. CODE § 222–16–010(18) (1980). An owner of land that has been logged is still a forest landowner. *See* note 4 *supra*.

79. WASH. REV. CODE § 76.09.020(7) (1979); WASH. ADMIN. CODE § 222–16–010(18) (1980).

80. The Washington Act's definition of a forest landowner as one in actual control of land is unique. *Cf.* CAL. PUB. RES. CODE § 4527.5 (West Supp. 1981) (“timber owner” is any person who

Reforestation Private Land

The Washington Supreme Court has held that successor landowners are liable for an obligation analogous to reforestation. The issue in *State v. Loertscher*⁸¹ was whether a landowner was liable for forest fire fighting costs under the “slash statute,”⁸² which required abatement of a fire hazard created by slash left after logging. The court held that the landowner was liable for the costs because he was required to abate the fire hazard, even though he was not the landowner at the time the hazard was created.⁸³

In *Loertscher*, the court first identified the purpose of the slash statute: to abate fire hazards. The statute placed the burden of abatement on the logger and on the landowner. The court placed the burden of abatement on subsequent landowners. The court concluded that this construction was necessary to accomplish the purposes of the statute.⁸⁴ As long as the condition created by the slash persisted, every subsequent owner acquired the land encumbered with the obligation to abate the condition and with the potential liability for costs resulting from the failure to do so.⁸⁵

The requirement of slash abatement in *Loertscher* is analogous to the requirement of reforestation in the Forest Practices Act. The reasoning of the *Loertscher* court can be applied to the issue whether subsequent landowners acquire forest land encumbered with the obligation to reforest. The sections below follow the *Loertscher* reasoning.

1. *The Purpose of the Act*

The purpose of the Forest Practices Act is to protect the forest re-

owns timber land); IDAHO CODE § 38-1303(6) (Supp. 1980) and OR. REV. STAT. § 527.620(6) (1979) (landowner is one who holds an ownership interest in forest land).

81. 64 Wn. 2d 340, 391 P.2d 520 (1964).

82. Act of Mar. 19, 1951, ch. 235, § 1, 1951 Wash. Laws 742 (current version at WASH. REV. CODE § 76.04.370 (1979)). Obligations under the slash statute and enforcement provisions were similar to those of the Forest Practices Act. The Department could clean up the slash and bill those responsible for the costs. If they did not pay, then the Department could file a lien against the land. *State v. Loertscher*, 64 Wn. 2d 340, 341, 391 P.2d 520, 521 (1964).

83. In *Loertscher*, the landowner logged 40 acres of land, left the land covered with slash, and then conveyed the land to Loertscher. A year and a half later a fire broke out and spread through the unburned slash onto adjoining land. The Department of Natural Resources put out the fire and billed Loertscher for the costs under the authority of the slash statute. *Id.* at 342, 391 P.2d at 521 (1964).

84. *Id.* at 345–46, 391 P.2d at 523–24. The court found that the means employed to abate the fire hazard were not arbitrary or unreasonable since those held liable either created the hazard or “suffer[ed] it to remain upon their property. . . .” *Id.* at 346, 391 P.2d at 524.

85. In 1971 the entire statutory scheme for treating fire hazards due to slash was changed to require abatement of “extreme hazards” only. WASH. REV. CODE § 76.04.370 (1979). Forest landowners now pay assessments to fund fire control operations, rather than bear absolute liability, for all but extreme hazards. *Id.* §§ 76.04.360, .515.

sources of the state for both economic and environmental reasons.⁸⁶ Reforestation is required to protect, promote, foster, and encourage commercial timber growth on forest land.⁸⁷

Public policy in Washington favors reforestation. This policy was reflected in the state's early enactment of a strong forest practice law.⁸⁸ Washington Supreme Court decisions interpreting the 1945 Act emphasized the importance of protecting the timber resources of the state. In *State v. Dexter*,⁸⁹ the court recognized the problem of reforestation of vast areas of the state and the need for planting trees in denuded areas.⁹⁰ In *West Norman Timber, Inc. v. State*,⁹¹ the court said that the preserva-

86. WASH. REV. CODE § 76.09.010(1) (1979) provides:

The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

See also notes 8 & 9 *supra*.

87. WASH. REV. CODE § 76.09.010(2)(a) (1979). For the text of the statute, see note 8 *supra*.

88. Act of Mar. 15, 1945, ch. 193, 1945 Wash. Laws 556 (repealed 1974). See text accompanying notes 10–15 *supra*; Cabbage & Ellefson, *State Forest Practice Laws: A Major Force Unique to the Natural Resources Community*, 13 NAT. RESOURCES LAW. 421, 427 (1980).

The legislature stated the policy in the 1945 Act:

Keeping the forest land of this state continuously and fully productive is one of the most important steps toward perpetuation and conservation of its forest resources. One of the most important means of effectuating such public policy is to keep timber lands productive by seeking to maintain continuous growth of timber on all lands suitable for such purposes, and in order to accomplish this end it is necessary, and in the public interest, to prescribe certain rules of forest practices to be observed in the harvesting of timber.

Act of Mar. 15, 1945, ch. 193, § 1, 1945 Wash. Laws 556 (repealed 1974). A state policy in favor of reforestation had been expressed earlier than 1945. See *State ex rel. Mason County Logging Co. v. Wiley*, 177 Wash. 65, 71, 31 P.2d 539, 542 (1934) (favorable tax treatment for land being reforested).

89. 32 Wn. 2d 551, 202 P.2d 906, *aff'd*, 338 U.S. 863 (1949). The court held that the requirement of reforestation in the 1945 Act was a proper exercise of the state's police power. See note 109 *infra*.

90. 32 Wn. 2d at 555–56, 202 P.2d at 908. Judge Hill went on to say:

Edmund Burke once said that a great unwritten compact exists between the dead, the living, and the unborn. We leave to the unborn a colossal financial debt, perhaps inescapable, but incurred, none the less, in our time and for our immediate benefit. Such an unwritten compact requires that we leave to the unborn something more than debts and depleted natural resources. Surely, where natural resources can be utilized and at the same time perpetuated for future generations, what has been called "constitutional morality" requires that we do so. In that way, we can, in the words of Chief Justice Hughes, use "reasonable means to safeguard the economic structure upon which the good of all depends."

Id. at 556–57, 202 P.2d at 908 (quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 442 (1933)).

91. 37 Wn. 2d 467, 479, 224 P.2d 635, 641–42 (1950). The court held that the provisions of the Forest Practices Act applied to operations on state as well as on private lands.

tion and the perpetuation of the vast timber resources of the state was important to the state and to the public.

The 1974 Act strengthens and extends the obligation to reforest by requiring successful regeneration of a new stand of trees.⁹² In passing the 1974 Act, the legislature rejected the often unsuccessful methods of reforestation allowed by the 1945 Act.⁹³ The provisions of the 1974 Act and the history of reforestation in the state emphasize that a primary purpose of the Forest Practices Act is reforestation of land after logging.

2. *Accomplishing the Purpose*

Subsequent landowners must be required to reforest to accomplish the purposes of the Act. While logging is actually occurring, compliance or-

92. The more stringent requirements of the 1974 Act parallel the growing concern in the forestry profession that timber supply will not keep up with anticipated increases in demand. Foresters generally anticipate that: 1) future demand for timber will exceed supply, and prices will consequently rise; and 2) nonindustrial private forest landowners, who own 59% of the country's commercial forest land, are managing their land poorly and will produce much less timber than they are capable of producing. LeMaster, *Timber Supply, Nonindustrial Private Forest Land, and the Conventional View*, 1978 J. FORESTRY 365. In western Washington, nonindustrial private landowners own 23% of all commercial timber land. Although 92% of all commercial timber land is best suited to growing conifers, only 60% is currently stocked with them. The rest is either not stocked with trees at all, or is stocked with hardwoods. W. KOSS & B. SCOTT, *A PROFILE OF WESTERN WASHINGTON'S NONINDUSTRIAL FOREST LANDOWNERS* 3-5 (Dep't of Natural Resources Report No. 37, 1978).

The most recent assessment of the timber situation in the United States found that demands for most timber products are likely to continue to rise rapidly in the future. Although the domestic timber resource has improved substantially, the study projected that increases in the prices of stumpage and timber products will have a significant adverse effect on the timber industry, employment, consumers, and the environment. It found, however, that there is a large potential for increases in timber growth and supply, especially from regeneration of nonstocked acres, harvesting and regeneration of mature stands, and conversion of existing stands to more desired species. Most of the anticipated economic opportunities were on nonindustrial private forest lands. Hair, *Timber Situation in the United States 1952-2030*, 1980 J. FORESTRY 683.

Forest economist Marion Clawson disagrees with projections of a "timber famine," calling those projections "one of the hoariest folk tales of American forestry." He found that total volume of all growing stock in the United States has increased substantially from 1952 to 1970; that there have been significant increases in annual growth; and that the total sawtimber inventory remained the same. He claimed that there is little or no evidence that the volume of standing stock has declined at all since the turn of the century. He doubts that future trends in prices will be any steeper than those in the past. Clawson, *Will There Be Enough Timber?*, 1978 J. FORESTRY 274. See generally Ayer, *Public Regulation of Private Forestry: A Survey and a Proposal*, 10 HARV. J. LEGIS. 407, 422 (1973); Pardo, *Forestry Law and Policy*, 7 U. TOL. L. REV. 999, 1002-04, 1019-21 (1976); Quinney, *Small Private Forest Landownership in the United States—Individual and Social Perception*, 3 NAT. RESOURCES J. 379 (1964); Comment, *Protection of Recreation and Scenic Beauty Under the Washington Forest Practices Act*, 53 WASH. L. REV. 443, 450 n.34 (1978).

Reforestation is important for environmental reasons as well as for future timber supply. It helps prevent erosion and protects water quality. Regrowth of forest cover provides wildlife habitat and greatly mitigates the adverse aesthetic effects of logging. See Comment, *Regulation of Private Logging in California*, 5 ECOLOGY L.Q. 139, 167 (1978).

93. See notes 10-15 and accompanying text *supra*.

ders are directed primarily against the operator.⁹⁴ Once logging is completed, however, enforcement against the operator or the timber owner becomes difficult and may be ineffective. In the three to five years that the Act allows for reforestation, transfers of property interests by sale, bankruptcy, death, or forfeiture are possible.⁹⁵ Years after a logging operation is completed, the Department may not be able to locate any of the original parties who signed the forest practice application. If they can be located, they may be insolvent. The Forest Practices Act recognizes these problems, yet requires that reforestation occur.

The purpose of the enforcement provisions of the Act is to accomplish reforestation. The provisions for civil and criminal penalties are available to spur violators into remedial action. Fines, however, are not a substitute for results. There is no provision for collecting a fine from the landowner, the operator, or the timber owner who signed the application but who did not comply with the Act, and then using the money to reforest the land.⁹⁶ The Department's ultimate remedy is foreclosing the lien on the land, which affects the person who then owns the land.⁹⁷

The successor landowner who is in control of the forest land is the only one in a position to reforest. To interpret the Act as binding the previous landowner would produce an anomalous result. There is no authority under the Act for the Department to order an ex-landowner to enter on land now owned by a subsequent landowner to reforest it. Reforestation could involve using heavy equipment, burning slash, or applying chemicals. The Act grants the Department the power to enter private land to

94. The operator is available at the site to do remedial work. Usually stop work orders and civil and criminal penalties are sufficient to obtain compliance from the operator, and it is not necessary to direct enforcement against the landowner.

95. WASH. ADMIN. CODE § 222-20-010(6) (1980) permits transfer of an approved application to other parties. Active logging operations can extend over several seasons, and it is not unusual for timber buyers to sell their contractual rights to the timber or to use different loggers to harvest it. This regulation permits these transfers without requiring a new forest practice application.

Transfer requires written notice by the original applicant to the Department. If a landowner sells land, but fails to notify the Department, then the landowner could be liable for a fine. It should not affect a subsequent landowner's obligation to reforest, however, because an application is not required to do most reforestation work. An approved application for logging is only effective for one year. Reforestation is a Class I forest practice, *id.* § 222-16-050(3)(j), which does not require an application or notification to the Department. Therefore, the transfer provision would not normally apply to reforestation.

96. See WASH. REV. CODE § 76.09.180 (1979) (any money from penalties is deposited in the state's general fund).

97. See WASH. REV. CODE § 60.04.020 (1979). Compare CAL. PUB. RES. CODE § 4605 (West Supp. 1981) (like Washington's Act, authorizes a lien on the property on which the action was taken) with OR. REV. STAT. § 527.690(4) (1979) (authorizes a lien on both the real and personal property of the operator, timber owner, and landowner) and with NEV. REV. STAT. §§ 528.043(3), .046 (1979) (requires a performance bond by the applicant, to be released once reforestation is accomplished).

reforest,⁹⁸ but grants no corresponding power to private parties. Thus, an order requiring an ex-landowner to reforest would be outside the Department's authority, and if obeyed, might subject the ex-landowner to liability for trespass.

The reasoning of the Washington Supreme Court in *State v. Lortscher*⁹⁹ leads, by analogy, to the conclusion that subsequent owners of forest land are responsible for reforestation even though they did not own the land when it was logged. Only if the burden of reforestation is placed on every subsequent owner of unreforested land will the purpose of the Act—actual reforestation—be accomplished.

III. EVALUATING POSSIBLE REFORMS

A. *The Need for Reform*

The legislature, the Forest Practices Appeals Board, and the Department have proposed both legislative and administrative reforms of the Act to improve notice of the reforestation requirements to purchasers of forest land.¹⁰⁰ The result in *Department of Natural Resources v. Petra*¹⁰¹ illustrates the need for reform. Petra was responsible for reforestation despite his lack of knowledge of the requirement. Petra argued that he should not be required to reforest because he was protected by the recording statute and the requirement to reforest was not recorded on his title to the land. The Forest Practices Appeals Board rejected his argument.¹⁰²

Washington's recording act¹⁰³ provides constructive notice¹⁰⁴ of prior conveyances of property and of private contracts and covenants that bind the land.¹⁰⁵ The recording act does not apply to obligations imposed by

98. WASH. REV. CODE § 76.09.150 (1979).

99. 64 Wn. 2d 340, 391 P.2d 520 (1964).

100. See State of Washington, Sub. H.B. 419, 47th Sess. (1981); Department of Natural Resources v. Petra, No. 79-1 (Wash. Forest Practices App. Bd., Dec. 16, 1980); and note 108 *infra*.

101. No. 79-1 (Wash. Forest Practices App. Bd., Dec. 16, 1980).

102. See note 74 *supra*.

103. WASH. REV. CODE § 65.08.070 (1979). Washington's recording statute protects a bona fide purchaser whose deed is recorded against any outstanding unrecorded conveyances of the same property. Biles-Coleman Lumber Co. v. Lesamiz, 49 Wn. 2d 436, 438-39, 302 P.2d 198, 199-200 (1956).

104. Constructive notice is notice that a person is deemed to have by operation of law. Sands v. United States, 198 F. Supp. 880, 884 (W.D. Wash. 1960), *aff'd sub nom.* First Fed. Sav. & Loan Ass'n of Bremerton v. United States, 295 F.2d 481 (9th Cir. 1961). It contrasts with actual notice as one would normally understand it: actual notice of the facts involved.

105. See WASH. REV. CODE §§ 65.08.060(3), .070 (1979); *Rodruck v. Sand Point Maintenance Comm.*, 48 Wn. 2d 565, 295 P.2d 319 (1956); *Pioneer Sand & Gravel Co. v. Seattle Constr. & Dry Dock Co.*, 102 Wash. 608, 173 P. 508 (1918).

regulatory laws.¹⁰⁶ There are many state statutes and regulations that impose affirmative duties on landowners.¹⁰⁷ These laws require permits, licenses, or variances that are not required to be recorded either by the recording act or by the particular enabling act.¹⁰⁸ Regulatory laws may impose obligations that affect the value of the land, but they do not transfer any interest to the state or cloud the owner's title to the land.¹⁰⁹ Purchasers of land cannot rely on record title to reveal the state laws that will affect them as landowners.¹¹⁰

106. An obligation imposed by law is not a conveyance. A conveyance is broadly defined as a written instrument that creates or transfers any estate or interest in real property, or that affects the title to any real property. WASH. REV. CODE § 65.08.060(3) (1979). Conveyances that must be recorded to give constructive notice include: deeds, WASH. REV. CODE § 65.04.030(1) (1979); real estate contracts, WASH. REV. CODE § 65.08.080 (1979); mortgages, WASH. REV. CODE § 65.04.-030(1) (1979), including mortgages on timber, *Enterprise Timber, Inc. v. Washington Title Ins. Co.*, 76 Wn. 2d 479, 457 P.2d 600 (1969); liens, WASH. REV. CODE §§ 60.04.060, 65.04.060 (1979); easements, *City of Spokane v. Catholic Bishop*, 33 Wn. 2d 496, 206 P.2d 277 (1979); leases. WASH. REV. CODE § 65.04.030(1) (1979); and options, *Strong v. Clark*, 56 Wn. 2d 230, 352 P.2d 183 (1960). These are all traditional property encumbrances which convey an estate or interest in land to another. They are unlike obligations imposed by regulatory laws, which do not convey an estate or real property interest to the state. Obligations imposed by law are also not private contracts or covenants that bind the land.

107. They include the State Environmental Policy Act of 1971, WASH. REV. CODE ch. 43.21C (1979), the Shoreline Management Act of 1971, WASH. REV. CODE ch. 90.58 (1979), the Surface Mined Land Reclamation Act of 1974, WASH. REV. CODE ch. 78.04 (1979), the Noxious Weed Act, WASH. REV. CODE ch. 17.10, the Forest Insect and Disease Control Act, WASH. REV. CODE ch. 76.06 (1979), as well as local land use planning and zoning ordinances.

108. The Forest Practices Act does not require recording of applications. *Cf.* CAL. PUB. RES. CODE § 4608 (West Supp. 1981) (may record notice of violations). If the Department files a lien against the land for reforestation work done under the Act, then it must record the lien within ninety days to be effective. The recorded lien provides constructive notice to all subsequent purchasers. WASH. REV. CODE § 60.04.060 (1979).

Forest practice applications could be recorded on titles. County auditors are authorized to record anything offered for that purpose. WASH. REV. CODE § 65.04.030 (1979). Officials in the Department have started to record applications when they anticipate reforestation problems. They have not recorded them in great numbers, however. The Department received almost 10,000 applications in 1980. 23 TOTEM 5 (Jan. 1981). There is presently no application fee, which would be needed to cover even a modest recording fee for all applications.

109. The argument that required reforestation is a taking without just compensation is foreclosed by an important Washington case. The issue in *State v. Dexter*, 32 Wn. 2d 551, 202 P.2d 906, *aff'd*, 338 U.S. 863 (1949), was whether the state, under its police power, could require reforestation under the 1945 Forest Practices Act. The court held that the requirement of reforestation was a proper and reasonable exercise of the state's police power, although the requirement restricted land use and might impose hardship in individual cases. The 1974 Act, although more stringent than the 1945 Act, is also a reasonable and proper exercise of the state's police power and does not constitute a taking. *See Cabbage & Ellefson, State Forest Practice Laws: A Major Policy Force Unique to the Natural Resources Community*, 13 NAT. RESOURCES LAW. 421, 424-25 (1980); Stacer, *The Oregon Forest Conservation Act*, 2 WILLAMETTE L.J. 268, 282-84 (1962).

110. Record title cannot protect the purchaser of land against some private interests in land either. *See Mugaas v. Smith*, 33 Wn. 2d 429, 206 P.2d 332 (1949) (recording statute does not apply to transfer of title by adverse possession).

Purchasers of land have constructive notice of the obligation to reforest because it is required by

Reforesting Private Land

Petra's argument that he was protected by the recording act was unsuccessful, but it reveals a problem created by the effect of the Act on subsequent landowners. They may have had nothing to do with the logging operation, may have received no money from the sale of the timber, may have had no knowledge of the Act, yet must pay the unanticipated costs of reforestation.¹¹¹ In order to allocate fairly the burden of reforestation in either the timber sale or the land sale, both parties must actually know of the obligation to reforest and must anticipate the costs.

The requirement of reforestation, therefore, has significant implications for persons involved in forest practices. Landowners, timber owners, and operators should be aware of the requirement when bargaining for the sale of timber or for a logging contract. They can then shift the burden to the party who can accomplish it most efficiently.¹¹² The requirement that subsequent landowners reforest has similar implications for parties to a sale of logged land. Purchasers who are aware of the requirement can protect themselves in the transaction.¹¹³ The price paid for the land should reflect whether the land has been reforested or not.¹¹⁴

law: persons are held to constructive notice of statutes and regulations that are properly enacted and published. *Lambert v. California*, 355 U.S. 225, 228, *reh. denied*, 355 U.S. 937 (1958); *State v. Everitt*, 127 Wash. 265, 269, 220 P. 797, 799 (1923). *See State v. Northwest Magnesite Co.*, 28 Wn. 2d 1, 24, 182 P.2d 643, 655 (1947). In addition to constructive notice of the obligation to reforest, the Act provides for additional notice and an opportunity for a hearing at each step of enforcement. Thus, before the Department seeks penalties or enters on land to reforest, the landowner receives notice of the action being taken and has an opportunity to appeal the action either to the Department or to the Forest Practices Appeals Board. *See part I. B. supra.*

111. The estimated costs of reforestation in *Department of Natural Resources v. Petra* were \$307.50 per acre. Costs of reforestation in western Washington increase dramatically as time passes after logging. Immediately following clearcutting, the land may be bare enough to permit hand planting of seedlings without further site preparation for under \$150.00 per acre. As time passes, brush and undesirable tree species take over the site and planting may be impossible without treating the competing vegetation. Necessary site preparation may include broadcast burning, scarification with heavy equipment, and the use of herbicides. Costs can rise to well over \$400.00 per acre.

112. For example, forest landowners who wish to sell their land to urban buyers for recreational property may not want the burden on the land to discourage buyers. The landowner can require either the timber purchaser or the operator to reforest, and can expect to receive a lower price for the timber to compensate for the additional work. If landowners expect to sell their land to a timber company, however, they may wish to leave the reforestation work to the purchaser, who may have better access to seedlings, equipment, and expertise.

113. Sellers of land should also be careful to protect themselves against inadvertently succeeding to an obligation to reforest. One way to shift the burden of reforestation to a successor landowner is to purchase the land under a real estate contract, log it, and then default on the contract. The contract holder becomes responsible for reforestation. This scheme should be profitable as long as profits on the timber sale exceed the forfeited payments on the land and the contract does not provide remedies to the contract holder. This may be a fairly common practice. *See McGough v. Timber Movers*, No. 43308 (Cowlitz County Super. Ct. Nov. 8, 1978).

114. Besides negotiating the price, there are other ways a purchaser of land can protect against the obligation to reforest. Purchasers of forest land may seek a guarantee from the seller that the land is free of any obligation that arises under the Act. They may require indemnification from the seller

Under the present law, subsequent landowners who are required to reforest have only limited remedies. First, they may have grounds for recovery against the previous landowner, depending on the nature of their transaction and any applicable warranties or covenants in their real estate contract or deed.¹¹⁵ For example, a purchaser may have grounds for rescission for misrepresentation or fraud if the seller actively misrepresented to the buyer that reforestation would not be required.¹¹⁶ Similarly, a purchaser may have grounds for rescission based on mutual mistake if both parties were clearly mistaken about the reforestation requirement.¹¹⁷ To rescind under either theory, however, the purchaser must prove that the obligation to reforest was a material fact. A material fact is one that would have prevented the purchaser from buying the land if the purchaser had known of the omitted or concealed information.¹¹⁸ This proof may be difficult to establish.

Second, subsequent landowners may have grounds for recovery against the operator or the timber owner. If the Department reforests, and if the landowner reimburses the Department, then the landowner has a right to contribution from the timber owner and the operator for their share of the costs.¹¹⁹ The Act designates all three as jointly and severally liable for the costs incurred by the Department.¹²⁰

These remedies are unlikely to be available. Few land sales involve fraud or mutual mistake, and the Department, rather than the landowner,

against future expenses. For example, if natural regeneration fails, the costs of planting might be allocated to the seller. Purchasers may require a release from further reforestation work from the Department. Or they may want to have the obligation recorded on the title and include it in their title insurance.

115. See *Goldfarb v. Dietz*, 8 Wn. App. 464, 506 P.2d 1322 (1973).

116. See *Floyd v. Myers*, 53 Wn. 2d 351, 333 P.2d 654 (1959); *Kaas v. Privette*, 12 Wn. App. 142, 529 P.2d 23 (1974). Although a vendor may have a duty to disclose a material fact, *Obde v. Schlemeyer*, 56 Wn. 2d 449, 353 P.2d 672 (1960), this duty is distinguishable from a duty to disclose a rule of law, such as the Forest Practices Act. A purchaser is charged with knowledge of a rule of law. See *Goldfarb v. Dietz*, 8 Wn. App. 464, 469, 506 P.2d 1322, 1326 (1973).

117. See *Vermette v. Andersen*, 16 Wn. App. 466, 558 P.2d 258 (1976).

118. See *Jensen v. Leggett*, 15 Wn. App. 552, 555-56, 550 P.2d 1175, 1178 (1976); *Kaas v. Privette*, 12 Wn. App. 142, 149, 529 P.2d 23, 28 (1974).

119. See *Proff v. Maley*, 14 Wn. 2d 287, 128 P.2d 330 (1942); *Karnatz v. Murphy. Pac. Corp.*, 8 Wn. App. 76, 503 P.2d 1145 (1972).

120. WASH. REV. CODE § 76.09.120 (1979). See text accompanying note 71 *supra*. A person has a right to contribution from a third party if the third party is liable to them according to the substantive law. *Brown v. Spokane County Fire Protection Dist. No. 1*, 21 Wn. App. 886, 893, 586 P.2d 1207, 1212 (1978). The substantive law requiring contribution can be provided by statute. See *Hughes v. Hughes*, 11 Wn. App. 454, 458, 524 P.2d 472, 475-76 (1974). Here the substantive law, the Forest Practices Act, creates joint and several liability. Therefore the landowner has a right to contribution from the timber owner and the operator if the reforestation work is ultimately done by the Department.

An amendment like that proposed in 1981 designating the landowner as the sole party responsible for reforestation would take away this right to contribution. See note 77 *supra*.

Reforestation Private Land

will reforest only in rare instances. Purchasers of forest land are likely to find that they have no satisfactory remedies for unanticipated costs of reforestation.¹²¹ They are unable to protect themselves against these costs unless they know that the land they are buying needs to be reforested. The Act needs to be reformed to give improved notice of the obligation to reforest to purchasers of forest land.

B. Criteria for Reform

There are four criteria that any proposal to provide notice of the reforestation requirement should meet. First, the proposal must hold the landowner in control of the land at the time reforestation is required responsible for reforestation. This is necessary to the successful administration of the Act. Only by holding the subsequent landowners responsible, and by allowing the Department to reforest if the landowner fails to, will actual reforestation occur.¹²²

Second, the proposal should be fair. Fairness is best accomplished by requiring actual notice to the parties to a transaction of the obligation to reforest. The parties can then place the burden where they wish and adjust the selling price accordingly.

Third, the proposal should provide an incentive to the landowner to reforest the land as soon as possible after logging. This is necessary silviculturally, since successful reforestation becomes less likely as time passes.¹²³ Also, reforestation costs more as time passes. Consequently the landowner who contracts to have the land logged is in the best position to minimize the costs of reforestation.

121. A landowner may be eligible for state and federal programs that provide both information and money to assist in reforestation. The state has a farm forestry program, which permits the Department to provide foresters to advise landowners on how to reforest and manage their land. In addition, the Cooperative Forest Management Services Act, R.C.W. ch. 76.52, permits the Department to extend forest management services to lands nearby, to contract with private landowners to use Department equipment, materials, and personnel, and to encourage intensive management of private land that otherwise would not be economically feasible. The federal forestry incentives program, 16 U.S.C. § 2103 (Supp. 1979), provides funds to pay part of the costs of reforestation, site preparation, and other management practices on private forest land.

122. See text accompanying notes 94–99 *supra*.

123. See note 111 *supra*. The Department also has opportunities to mitigate the effects of the reforestation requirements on subsequent landowners through its enforcing the Act. The Department can enforce certain provisions long before the three to five years allowed for reforestation are up. Examples are the rules covering slash disposal and site preparation. See note 18 *supra*. Early enforcement is more likely to have an impact on the operator, the timber owner, and the landowner who signed the application. They would then leave the land prepared for planting, which would also encourage natural regeneration. If reforestation was still necessary at the end of three to five years, the costs would at least be lower.

Fourth, the proposal should provide a workable and an effective sanction to insure compliance with its provisions.

The present law holds the subsequent landowner liable for reforestation. It does not, however, require actual notice to purchasers of forest land, and it does not provide an incentive to reforest early. The present law actually provides a disincentive to reforest to persons intending to sell land within three years after logging. By sale, they may avoid the costs of reforestation altogether.¹²⁴

C. *Proposals for Reform*

There are two different reform proposals to improve the notice of the reforestation requirement given to purchasers of land. The first proposal is to have either the Department or the landowner who obtains the forest practice application record the reforestation requirement on the title to the land.¹²⁵ The second proposal is to require sellers of forest land either to give buyers actual notice of the need to reforest, or to become liable to the buyer for any costs incurred in reforesting.

The recording proposal satisfies the first criterion: responsibility for reforestation continues to rest with the subsequent landowner. The recording proposal, however, only provides constructive notice, and does not require actual notice of the obligation to reforest. The recording proposal does provide some incentive for early reforestation. Sellers will be motivated to clear land of outstanding obligations in order to improve the marketability of the land. Finally, the fourth criterion is not satisfied, since there is no sanction for failing to record. A purchaser still must reforest despite the lack of constructive notice from the recording act, because the Forest Practices Act provides additional constructive notice.¹²⁶ Thus, recording represents some improvement over the present law, but does not satisfy all of the criteria.

The second proposal was included in a House amendment to the Forest Practices Act proposed during the 1981 legislative session.¹²⁷ The amendment would have required the seller of forest land to notify the buyer of the existence and nature of any reforestation obligations prior to

124. The sellers probably receive less for the bare land than they would if the land were cleaned up and reforested. Nevertheless, unless the difference is greater than the costs of reforestation—at least \$150.00 per acre—there is no incentive to reforest before sale.

125. See note 108 *supra*. The obligation to reforest could also be listed on the real estate tax affidavit form, which must be filed with the county as a prerequisite to recording the title. Substitute House Bill No. 419 would have amended R.C.W. § 28A.45.020 to require this.

126. See note 110 *supra*.

127. State of Washington, Sub. H.B. 419, 47th Sess. (1981). The bill passed the House and the Senate Natural Resources Committee, but failed to be read for a second time in the Senate.

Reforesting Private Land

the transfer of land. The buyer would be required to sign a form, and the seller would be required to send it to the Department at the time of sale. If the required notice was not signed or sent to the Department, then the seller would be liable to the buyer for any costs incurred by the buyer for reforestation.¹²⁸

This proposal satisfies the first criterion. The Department still proceeds against the subsequent landowner. Rather than shift the responsibility for reforestation, the proposal gives the purchaser a cause of action against the seller if the seller fails to give the purchaser actual notice. Actual notice is therefore required. The proposal provides some incentive for early reforestation, since early reforestation makes land more marketable. The proposal provides additional incentives to reforest early, because a landowner who successfully reforests discharges the obligation to reforest, and therefore need not give notice either to the purchaser or to the Department.

The proposal provides an effective sanction if landowners fail to give notice to purchasers: they are liable for the costs of reforestation.¹²⁹

Both the recording proposal and the actual notice proposal are improvements over the present law. Because it satisfies all of the criteria, the proposal requiring actual notice of the obligation to reforest is the better proposal.

IV. CONCLUSION

The Washington Forest Practices Act requires successful reforestation of land after logging. The Act places the obligation to reforest on the landowner who is in actual control of the forest land. Subsequent land-

128. In addition to liability for costs, the bill provided that the seller who failed to give the required notice would be guilty of a misdemeanor. Since the Act already provides criminal penalties for violations, *see* note 68 and accompanying text *supra*, this provision is superfluous.

129. An alternative sanction would be to permit rescission of the land sale at the purchaser's option if the seller failed to give the required notice. This is the sanction provided in Washington's Land Development Act of 1973, which requires full disclosure of information in the sale of undeveloped land that is subdivided into more than ten lots. WASH. REV. CODE § 58.19.010 (1979). The public offering statement required by this law should include the requirements of the Forest Practices Act as a "regulation affecting the development." *Id.* § 58.19.070(3). *See* Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701-20 (Supp. 1979).

Another proposal, by the Forest Practices Appeals Board, *Department of Natural Resources v. Petra*, No. 79-1 (Wash. Forest Practices App. Bd., Dec. 16, 1980), is to require the landowner to post a compliance bond when outstanding obligations exist. *Id.* at 8. A bond would fail to meet the first criterion, because it would limit the Department to using the bond to cover the costs of reforestation, rather than proceeding against the landowner. Bonds often fail to keep up with the costs of reforestation, and the landowner may find it easier to forfeit the bond rather than to reforest, which was precisely the problem that existed under the 1945 Act. *See* note 15 *supra*.

owners acquire forest land burdened with that obligation, and are required to reforest even if they have no actual notice of the requirement. Purchasers of land who are aware of the reforestation requirement can allocate it fairly in their transaction with the previous landowner. Purchasers of land who are not aware of the requirement, and who later must reforest, currently have only limited remedies against the previous landowner, the operator, and the timber owner for the unanticipated costs.

The Act should be reformed to improve the notice given to purchasers of land of the obligation to reforest. A reform proposal should hold subsequent landowners responsible for reforestation, should require actual notice to purchasers of that responsibility, should encourage early reforestation after logging, and should provide an effective sanction. An amendment to the Act requiring that the seller give actual notice to the purchaser to reforest, or else be responsible for the costs, is needed.

Until reform takes place, those involved in the ownership and use of forest land should become familiar with the Forest Practices Act. They can then equitably distribute the costs of complying with the reforestation requirement among the parties to a timber sale or to a land sale. This will help insure that the purposes of the Act are accomplished in an efficient and equitable manner.

Catherine Phillips Plummer