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ATTORNEY WORK PRODUCT
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August 5, 2021

To: WGC Board of Directors
Fr: Roger Worthington, President
Dt: August 5, 2021
Re: Operation Lorax – Speaking for the Forests

Revised with a focus on remedies against corporate industrial foresters who clear cut timber on private steep mountains in sensitive Oregon watersheds. The quest: put corporate foresters at risk via litigation. Explore all legal remedies, including tort theories and private nuisance, interview law firms with experience and interest, canvass experienced non-profits about loopholes in current regulatory scheme, amass class of potential plaintiffs who have standing, and find examples of most egregious corporate foresters who inflict the most damage, targeting Lane County.



Private industrial plantation adjacent to Willamette National Forest near Cougar Reservoir /Aufderheide highway. "Scar Mountain" is owned by Campbell Global which was acquired by JP Morgan Asset Management. Notice the thin stands of trees between clear cut scars. Run off drains into the McKenzie River and the South Fork of the McKenzie.

I. The Problem

Pacific Northwest Forests are under accelerating pressure from budworms, pine beetles, drought, and wildfires, all of which are exacerbating by accelerating global warming. Forests provide clean air, filter clean water and their root systems hold soils together. Forests absorb CO₂, a major greenhouse gas that is rapidly increasing in our atmosphere. Older trees sequester substantially more carbon in their biomass and below ground root systems than younger trees. Oregon's western forests have the potential to store more carbon per acre than any other forest in the world. (See Appendix 1, below).

Forests provide habitat for a diverse array of animal, insect and plant species. The acreage of healthy forests is dwindling every year, both globally and in the US. The clear-cutting timber harvesting method is contributing to global warming, destroying watersheds, stripping steep slopes of healthy soils, damaging water quality and perversely simplifying forests. Industrial small tree plantations, with their harvest of smaller and younger trees (the average tree age is 25 years for trees that average 200 years in pre-industrial stands), and related carbon losses due to harvesting methods, wood product use, decay, emissions from fertilizers, and wood combustion by wildfire, create a substantial carbon deficit of stored carbon compared to native forests.

In western Oregon it is estimated there are 4.4 million acres of privately owned industrial forest land. Most of the private forests are owned by Timber Investment Management Organizations (TIMO) and Real Estate Investment Trusts (REITS). The largest holder, Weyerhaeuser owns 1,755,069 acres, or 40% of the total privately owned industrial forests. The top ten industrial forest firms own 82% of the 4.4 million acres. (See Appendix 3, below). Federal and state tax laws exempt timberland owning firms and investors from ordinary corporate income tax.

According to the Center of Sustainable Economy, the timber industry is the largest industrial emitter of carbon in Oregon, at 33 million metric tons of carbon annually. Poor forest practices, which favor short rotation timber plantations, lower the carbon absorption capacity of baseline natural forests. Clear-cut "dead zones" on industrial timber plantations in many cases emit more carbon than they absorb, when you factor in emissions from higher-risk steep slope cutting, hauling, milling, decay, baking unshaded soil, slag burning, and distribution.

The US in 2019 introduced a resolution declaring a climate emergency, which was endorsed by 14 independent organizations. In 2019, over 15,364 scientists worldwide agreed with the assessment by Ripple et al (OSU) that the world is in a climate emergency and called on governments to "restore and protect ecosystems such as forests... to allow these ecosystems to reach their ecological potential for sequestering atmospheric carbon dioxide...." The European Union has declared a global climate emergency along with 1,783 national and regional governments worldwide.

Global warming today is responsible for more frequent and more intense droughts, wildfires, heat domes, glacier melting, human displacement, ocean acidification and sea rise, all of which have resulted in the loss of billions of dollars, human lives, and multiple fish and wildlife die-offs. This summer, a record-shattering heatwave in the Puget Sound in two days boiled alive millions of mussels, clams, oysters, sand dollars and sea stars.

The Earth has warmed at least 1.1C in the past 100 years and is currently on track to heat up another two to three degrees by century's end unless emissions are rapidly and drastically reduced. In 1960, the global atmospheric CO₂ levels were 317 ppm. In 2020, the level is 414 ppm. Many scientists opine that with respect to permafrost loss, the melting of the Antarctic

ice sheet, the decimation of the Amazon rainforest, the stagnation of the Gulf Stream system and the destruction of the coral reefs, the Earth is already at a tipping point. Even if we stopped emitting CO₂ today, the levels of greenhouse gases would not drop for several decades.

Only ___% of old growth forests in Oregon remain. Even so, 3% of the oldest and biggest trees in Oregon store 42% of the carbon.

The government does not require an Environmental Impact Study when Timber Industrialists choose to clear cut their forests in watersheds.

The SCE estimates that taxpayers subsidize industrial foresters on private and public lands to the tune of \$750 million per year. [Industrial Forestry in Oregon is a multi-billion industry that today is recording record profits].

The Oregon Forest Practices Act of 1971 establishes rules for the use of private and state forests. The Act addresses a wide range of practices that negatively impact the environment, such as setting spacing and size requirements for clear cuts, requiring buffers around streams to prevent pesticide and herbicide runoff, replanting, erosion and landslide mitigation, protecting stream quality for fish and more.

Are the rules strong enough? Are they being enforced? What are monitoring requirements? Are compliance data reliable? Does the state require a post cut survey of the damages? Does the state have authority to enter private property for wildlife surveys and enforcement? What are the penalties? Does the Act allow citizen enforcement? What are the loopholes? What are the proposals to strengthen the Act? Is industry represented on the seven-member citizen board appointed by the Governor and approved by the Senate? What if private timberlot owners choose not to provide pre and post clear-cut data on impacts? What if they refuse to allow state inspectors onto their land? What forest protection safeguards are discretionary, and which are mandatory? Is the Oregon Department of Forestry complicit with big timber in permitting a weak regulatory scheme that results in measurable damage?

II. Legal Issues

During a climate emergency in which healthy forests play a substantial role in mitigating global warming-related harms, does a government entity have greater authority to take private land, the private use of which is contributing to the emergency?

Does a government entity have the power to restrict owners of industrial tree plantation owners in sensitive watersheds from clear cutting on their land during a climate emergency?

Does an industrial tree plantation owner owe a duty to the public to maintain a baseline level of the pre-existing natural forest's carbon absorption capacity?

Is there a statutory framework that allows a citizen group to advocate on behalf of forests, fish, and wildlife in court seeking damages and/or equitable relief against industrial tree plantation owners if the federal, state, or local governments choose not to?

How can a forest advocacy group obtain standing against industrial tree plantation owners whose use of their land damages the environment (in particular the clear cutting of trees) and imposes unnegotiated external costs onto present and future generations of the public?

Does an industrial tree plantation owner have the right to take migratory bird, insect and animal wildlife that enters onto their property?

Does an industrial tree plantation owner in Oregon during a climate emergency have a duty to maintain a baseline level of plant, animal, tree, insect, and fungi biodiversity on their land that helps mitigate global warming?

Does an industrial tree plantation owner of land in a sensitive watershed in Oregon during a climate emergency have a duty to prevent the runoff of pesticides, herbicides and fertilizers that enters public lands and waterways? What damages can be pursued, by whom, and how are they calculated?

Does an industrial tree plantation owner of land in a sensitive watershed in Oregon during a climate emergency have a duty to prevent the runoff of topsoil during and after a clear cut that enters public lands and pollutes waterways?

What is the external cost borne by the public from clear cutting on industrial tree plantations in Oregon on a per acre basis for reduced atmospheric carbon absorption, using a native forest carbon sink as a baseline? What is the cost on a per acre basis for emitting extra carbon from clear cut private property?

What are the total external costs shifted to the public caused by clear cutting on privately owned native forests in Oregon? How does an economist measure loss of wildlife, loss of fish populations, heating of the planet, heating of streams, loss of biodiversity and loss of habitat?

What is the external loss of ecological, geological, educational, scenic, aesthetic, religious and or historical/cultural value (measured in dollars) resulting from clear cutting native forests vs tree plantations on private lands in sensitive watershed areas in Oregon on a per acre basis? How are these measured?

If the science shows that with continued clear cutting, wood product use and wildfires are reducing the atmospheric carbon absorption by Oregon forests by an average of 21% annually, so that overall atmospheric CO₂ levels spike dramatically, do industrial tree plantation owners have a duty to mitigate climate impacts by reducing their harvest, implementing longer crop rotations, and hauling, milling and distributing wood products sustainably?

Are industrial tree plantation owners who clear cut on land in Oregon in sensitive watersheds allowed to take carbon absorbing forests out of production without just compensation?

Are industrial tree plantation owners who clear cut on land in Oregon in sensitive watersheds allowed to convert native forests into dead zones with the consequential loss of wildlife and bio- diversity without just compensation?

Can we quantify the impacts (in dollars on a per acre basis) that the clear cutting of native forests or tree plantations in sensitive Oregon watersheds impose on a) wildlife, bird and insect populations, b) plant, tree and fungi populations, c) air and water quality, which includes fish and aquatic populations, d) increased risk of wildfire, e) loss of recreational opportunities, f) economic loss from reduced productivity of forests, and g) the quality and duration of human life?

Does statutory or common law confer standing on behalf of humans to represent the interests of forests (from the roots and fungal networks all the way up to the crowns with every living creature in between) against humans who use the land in a manner contrary to the former's survival? To frame the question in the parlance of the main character in Dr. Seuss' 1971 fable "The Lorax", who speaks for the trees?



During a climate emergency is it an unconstitutional taking without just compensation for a government entity to require a private industrial forester to allow planted trees to grow longer so they can help mitigate climate catastrophe? Can the government require the planting of certain types of tree combinations that best mitigate climate catastrophe that also have commercial value?

Scar Mountain above Cougar Reservoir. Spotted owls and other wildlife do not respect arbitrary property boundaries.



III. The Objective:

Fifty years ago, the Oregon Legislature passed the Oregon Forest Practices Act (“FPA”) making Oregon the first state to enact comprehensive laws governing forest practices and protecting forest resources. Unfortunately, Oregon has long-since relinquished it position as the leader in protecting forest resources. At present, Oregon’s laws are considered to be the weakest in the region. Neighboring states Washington and California have developed far stronger logging laws to safeguard water supplies, protect fish and wildlife, and reduce the risks of landslides.

Effectiveness of the FPA is further hampered by the Oregon Department of Forestry's primary reliance on voluntary compliance with existing laws and rules. As reported by Oregon Public Broadcasting in June 2019, lack of enforcement prompted one member of the Board of Forestry to question whether rules related to harvest and replanting requirements are being honored by forestland owners. (See: <https://www.opb.org/news/article/oregon-forests-logging-rules-compliance-controversy/>) This controversy in part led to the resignation of State Forester Peter Daugherty, the Department of Forestry official charged with enforcement of the FPA, earlier this year. (See: <https://www.opb.org/article/2021/05/27/nancy-hirsch-oregon-state-forester/>)

While updating the FPA to, at minimum, keep pace with laws in place in neighboring states remains a priority, history has shown that this is a slow and uncertain process. For decades, Oregon has been targeted by powerful timber interest seeking weak standards to benefit their bottom line. Today, Oregon lawmakers receive more corporate donations from the timber industry than any other state in the country (in sheer dollars and per capita).

Industrial logging practices are impacting the health and safety of increasing numbers of Oregonians at an alarming rate. The sad reality is that we do not have the luxury of waiting for a legislative solution that may never come.

It is for this reason that I recommend expanding the fight for responsible logging practices to a second front—litigation. The litigation strategy will need to be determined after thorough research on various legal strategies, ranging from a test case against one or two egregious offenders to a class action suit to a citizen attorneys general action (if the state is unwilling to protect the commons). The damages to water quality, fish and wildlife, soil and forest regeneration, forest beauty and clean air (with reduced atmospheric fossil fuel-based CO₂), as well as contributions to global warming, can likely be quantified. It is less clear at this time who the plaintiffs are and whether they have standing. We will also need to identify private timberlot owners whose verifiably notorious and egregious clear cutting practices have violated the OFPA, among other statutes, as well as common law tort doctrines.

The litigation strategy could also entail the following:

1. Obtain standing in state or federal court in Oregon as “guardian ad litem” to represent common resources, such as clean air and water, as well as fish and wildlife, and humans impacted by climate change, to prosecute tort and equitable actions in a test case against a private industrial timber harvester who clear cuts trees on steep slopes in watershed areas.
2. Establish a damage model that quantifies the external costs of clear-cutting forests on steep slopes (eg, increased greenhouse gases with elimination of Co₂ sinks, loss of native plant and wildlife, and damage to watershed hydrology, soil stability and stream habitat).
3. Research available tort remedies, regulatory actions, and equitable actions to restrict harmful practices and or compensate the public for the damages. The goal would be to charge private timber industrialists for the full cost of clear-cutting forests. Quantifying the full cost would also help the government's bargaining power if they chose to “take” or offer to purchase the land.
4. File a claim for damages against the most egregious industrial forest abuser with quantifiable damages (preferably in a forest not subsequently impacted by wildfires) in a favorable federal or state court venue. In *Juliana vs US* (2015), the federal district

judge gave standing to 21 minors to bring an action against the federal government for not having a plan to combat fossil fuel related climate change and failing to protect atmospheric resources held in trust by the public. Judge Aiken set the case for trial in 2016 but the 9th Circuit Court of Appeals reversed, with two justices contending the matter should be resolved by politicians and voters. A motion by the Climate Kids to amend their petition is pending.

5. Establish a model for holding timber extractors liable for the full cost of their destruction.



The Funding:

I am willing to donate \$1M to the prosecution of a lawsuit against an egregious, Wall Street financed abuser of private industrial forest in Oregon for damages to the atmospheric natural trust, as well as damages to fish, bird, plant, and wildlife populations, among other damages to be determined.

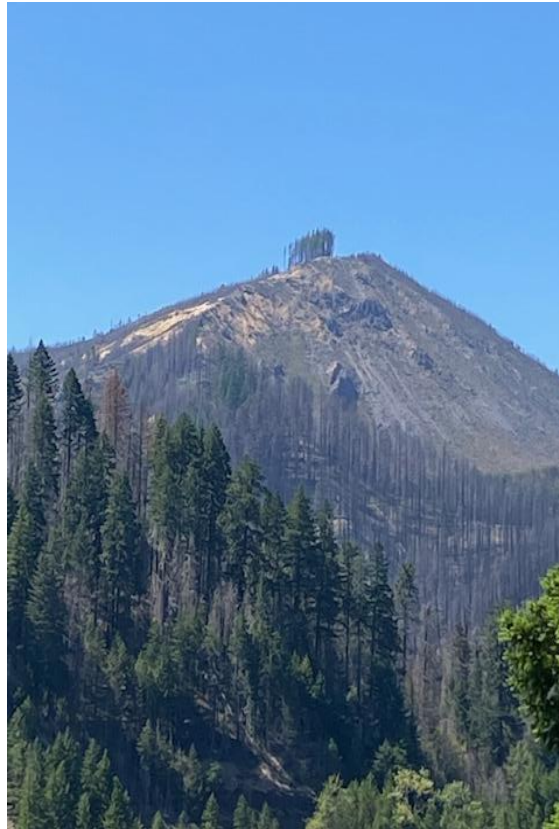
The donation would be used to build a legal team to research all available tort, regulatory and equitable remedies and pursue the best ones in federal or state court in the best venue in Oregon. We would hire the best experts from OSU, the U of Oregon and beyond. We would work closely with a partnership of existing non-profits who have experience advocating against clear cutting. We would send out an RFP to Oregon based non-profits and interview applicants for the work.

My interest is not another mission paper, article, or book. My interest is in swiftly changing a draconian and unsustainable practice that is scarring the lungs of our planet and accelerating climate catastrophe.

The Inspiration:

1) Suzanne Simard's "Finding the Mother Tree: Discovering the Wisdom of the Forest." The evidence is in: Clear cuts damage the Earth and our long-term survival. The time is now to act.

2) I donated \$1M to fund Operation Appleseed, Worthy's mission to plant 1 million trees in badly burned and clear-cut forests in Oregon. (See the planting sites to date at <https://www.operationappleseed.com/our-projects>). There are hundreds of thousands of burned acres. The inventory of saplings for reforestation is dangerously low and will require rationing among burn zones.



Notoriously visible from any perch along the Cougar Reservoir are once gloriously lush forest mountain peaks that have been converted by timber extractors into lifeless deserts, like the one above. The Earth is facing a double whammy of savage clear cuts on top of intense wildfires.

Here are some photos of the hideous patchwork of clear cuts on private industrial timberland west of the Willamette National Forest:



3) As a career asbestos injury lawyer, I view the forests the same way I view the human lungs. Yes, we can survive with one lung. We are blessed with “excess” lung capacity if the goal is simply existence. Forest managers have long viewed forests the same way. We clear cut with the arrogance that Mother Nature will be resilient, and her garden will always return. To me, allowing clear cuts under the guise of “forest management” is like giving the asbestos companies free reign to scar patches of the billions of tiny alveoli in our lungs that transfer oxygen to our body, on the premise we have more alveoli than we “need.” A doctor who would manage his patient that way, allowing scar tissue to build up, would be locked up.

To Do:

First, we need to understand what the current regulatory framework for clear cutting is on private lands in Oregon under the 1971 Oregon Forest Practices Act. What restrictions are there? Are they working? Do they go far enough? Are they being enforced? What is the history of success of enforcement actions? Have damages or penalties been assessed? Which nonprofits are experts on these questions?

Examine the capacity and resources of those charged with enforcement of current regulations. If insufficient, examine how to bolster.

What percentage of private clear-cut acreage was replanted with a diverse array of native tree species? What percentage of clear-cut acreage on private land is so badly damaged the planted trees are not returning? If the rules require “reforestation” of tree plantations with a single mono crop like Douglas Fir, as opposed to a diverse array of conifer and deciduous tree species, is the word “reforestation” honest?

Second, research all available legal remedies to abolish or restrict clear cutting. What actions are available by statutory law? What remedies are available under common law tort theories? Can we act as private attorney generals under various public nuisance doctrines? How do we obtain standing?

Third, collect data on specific forests in watershed areas of Oregon that have been badly damaged by clear cuts, preferably before the onslaught of wildfires. The mountain above is a jarring example. Notice the steepness of the slope. With rain, the topsoil, along with microbes and fungi, will simply run off, choking the streams and rivers with sediment. Find a test case of a horrible offender who has not complied with applicable regulations. See Appendix 4, below, for a map of the Cascades and Coastal Range in Oregon that shows public vs private ownership of timberland.

Fourth, assemble a legal team and experts (such as Bill Ripple, PHD, the OSU ecologist who authored “World Scientists’ Warning to Humanity: A Second Notice,” (2017)). Contact Suzanne Simard to testify. Assemble a team of Oregon based expert hydrologists, foresters, climatologists, biologists, mycologists, and soil scientists who will agree to provide an expert report and testify. Focus on local damages to the soil, rivers and wildlife below the boundary of the private clear cuts. Come up with a damage model.

See attached memo on lawyers on the West Coast with experience in environmental litigation.

Research the filings, briefing, transcripts, and rulings in the *Juliana vs US* “Climate Kids” action in the US District Court in Eugene. This case should be a treasure trove of law and legal principles regarding public natural resource trusts, constitutional rights, standing, subject matter jurisdiction, the political question doctrine, admissible evidence, causation,

redressability, due process, judicial courage, as well as judicial notice on the extent of the climate catastrophe.

These are my thoughts within a few days of returning from Aufderheide, where the good news is most of the saplings we planted between Cougar Crossing and French Pete campgrounds on April 18, 2021 appear to be growing well. I only inspected ten or so that I personally planted and most looked strong, but a few had red rusty needles indicating dieback from prolonged drought.

Clearly, this is the germ of an idea that I would like your help in converting into a legal action.

See the attached memo regarding:

1. Environmental law firms to interview

2. Appendix to Operation Lorax:

- a) Oregon Forest Practices Act (FPA)
- b) Articles addressing FPA compliance
- c) Clear Cutting Damages
- d) Damages to clean water
- e) Sierra Club legal actions
- f) *Julianna v US* – Climate Kids Action (standing for kids to bring action against US for failing to have plan to protect commons during a climate emergency)
- g) Oregon Stream Protection Coalition

3. Potential Plaintiffs

- Oregon environmental nonprofits
- Oregon Angler, Deer, Elk, Bird Groups
- Oregon quasi gov entities (Soil and water conservation districts, municipal water districts, trade groups, etc)
- List of pro plaintiff experts, advocacy groups, academics, health advocates, law professors, business entities, etc who file amicus curiae briefs in the *Julianna* climate kids action.

Appendix 1

Forest Carbon Priority Rank



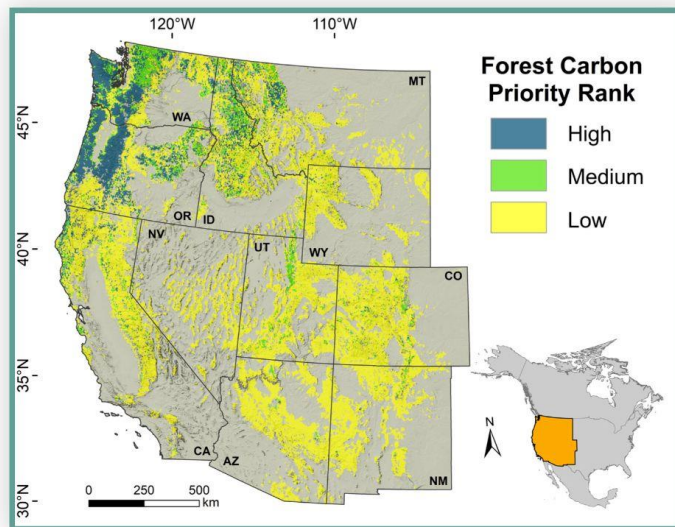
CLIMATE & OREGON'S INDUSTRIAL FOREST
A GREEN NEW DEAL PROPOSAL

I. The Climate Crisis and Pacific Northwest Forests

The hour is late, and the climate emergency is upon us. Carbon storage through land-based sequestration is required globally, nationally, and regionally. Fortunately, Oregon's vast industrial forest estate can, and must, be employed as a critical solution in an Oregon climate emergency response. The relevance of Pacific Northwest forests to the climate emergency is not fully appreciated by political leaders or the general public. It is time to change that perception.

All forests are important for carbon storage, however studies out of Oregon State University and other research centers demonstrate that Western Oregon's forests have the potential to store more carbon per acre than any other forests in the world (Buotte 2020, Keith 2009, Law 2018). The Buotte et al. study demonstrates Pacific Northwest forests are the highest priority for carbon storage and sequestration in the western United States.

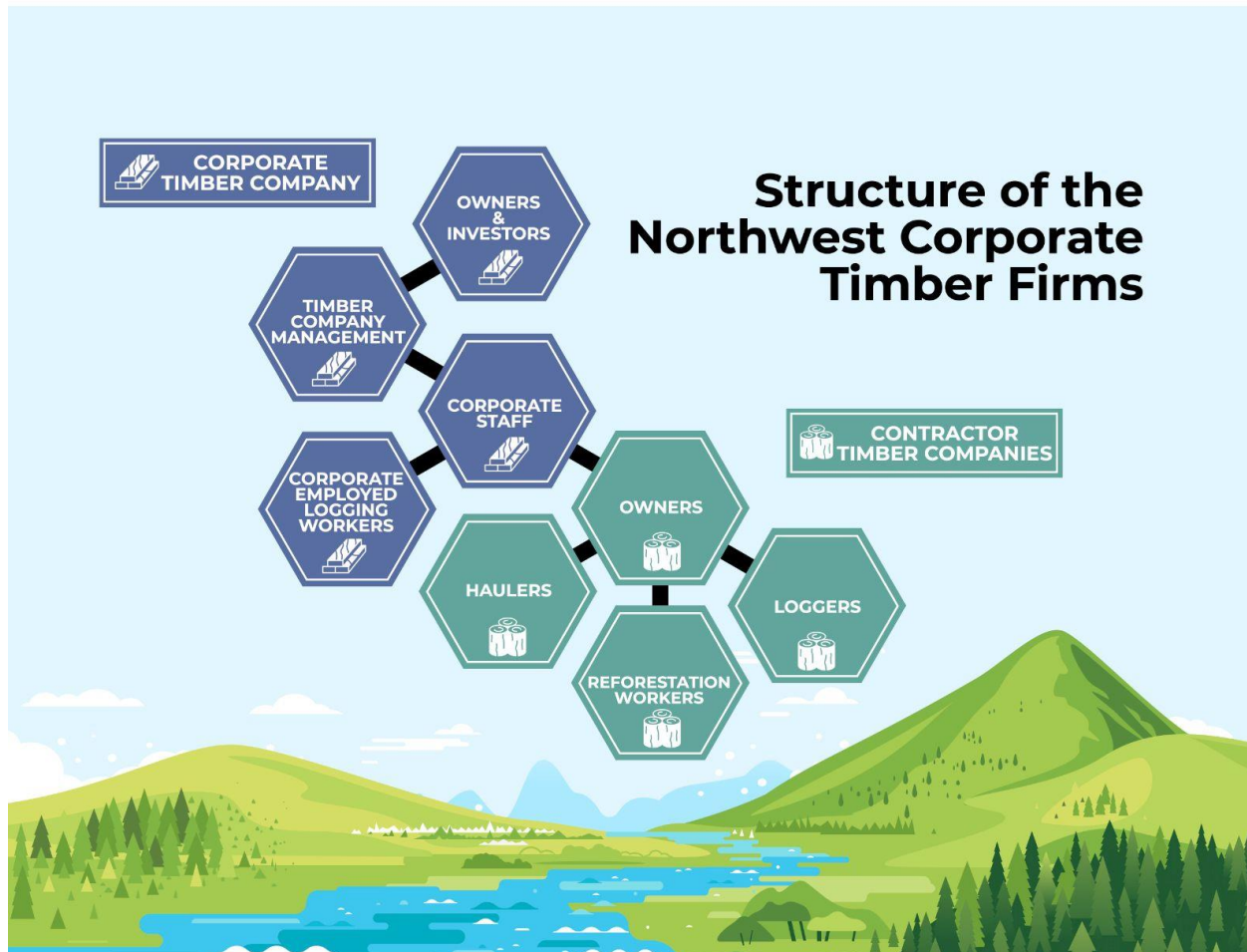
Oregon's wet forests in the Coast Range and the western Cascades are known for their unique ecological qualities and their timber growing potential. Large native forests of Oregon permanently sequester massive amounts of atmospheric carbon in the biomass of living trees and in soils. In contrast, industrial timber's landscape of small tree plantations results in a massive deficit of stored carbon compared to the prior native forest. Hudiburg et al. (2019) explores the correct approach to working forest carbon accounting in the science letter published by IOP Publishing, Meeting GHG reduction targets requires accounting for all forest sector emissions.



Appendix 2 Structure of NW Corporate Timber Firms



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The above diagram illustrates Oregon's corporate timber firm structure. A relatively lean and compact corporate firm oversees land management.

Appendix 3 Top Ten Corporate Industrial Timber Extractors



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The Corporate Firm

The largest corporate forestland firm in Oregon is Weyerhaeuser and the company is a REIT. A REIT may own up to 25 percent of its value in non-forestland assets as wholly owned subsidiaries. The Weyerhaeuser Company owns approximately 40 percent of all industrial forestland in Western Oregon. Oregon's largest TIMO is Hancock Timber Resource Group, a wholly owned subsidiary of Manulife Financial Corporation. As a TIMO, Hancock manages timberlands on behalf of its landowning clients.

Rank	Company	Acres
1	Weyerhaeuser Company	1,755,069
2	Roseburg Forest Products	466,074
3	Hancock Natural Resource Group	304,934
4	Seneca Jones Timber Company	172,949
5	GreenWood Resources	166,758
6	Stimson Lumber	156,405
7	Campbell Global, LLC	150,336
8	Cascade Timber Consulting, Inc.	144,410
9	Forest Investment Associates	137,714
10	Guistina	135,562

Data comes from CRA's 2020 forest ownership analysis (Coast Range Association, 2020)

Together, the 10 largest forest firms own around 3,563,179 acres or 81 percent of the 4.4 million acres of industrial forestland in Western Oregon.

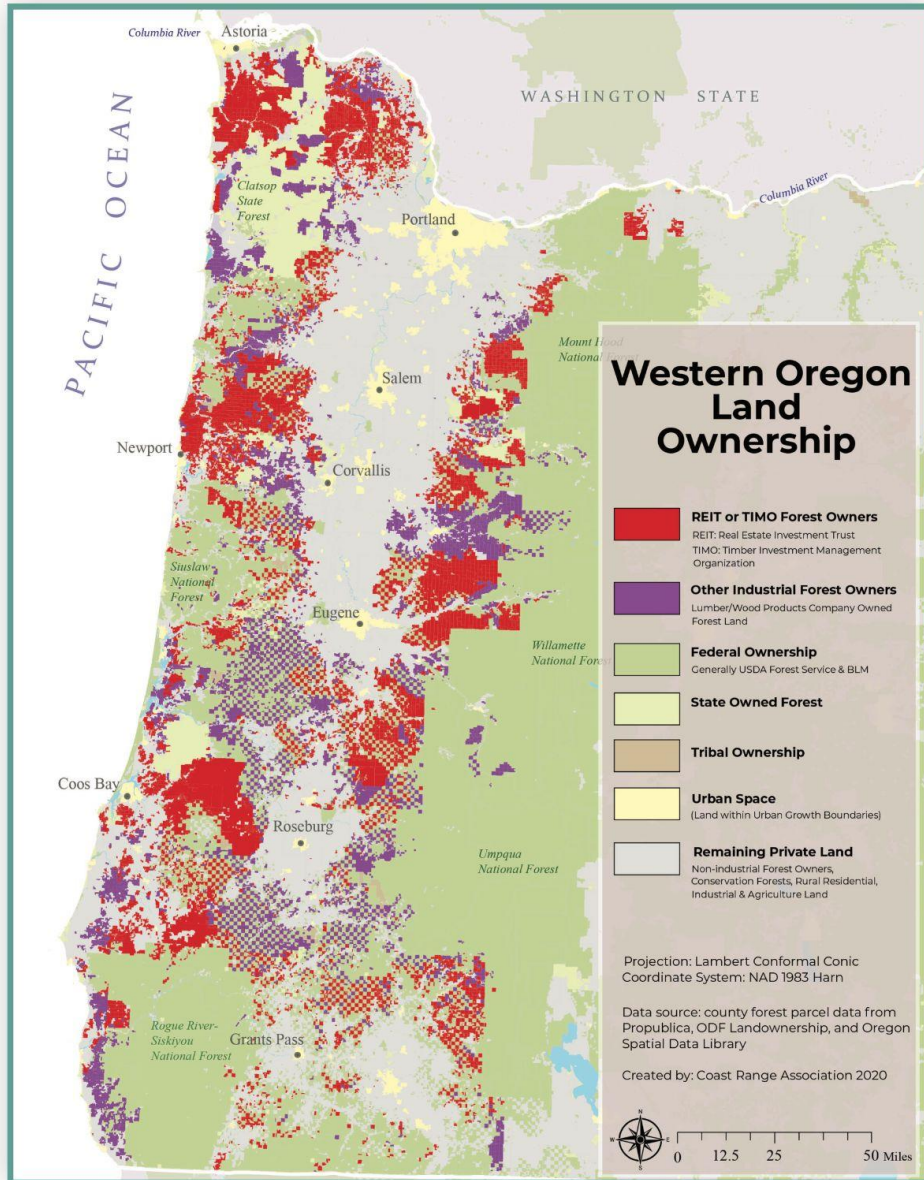
Across Oregon's timber industry, outsourcing the day in and day out work of forest operations is the norm. One might ask: If forest owning firms do little of the work why are they here? The answer is simple: they are here to dictate financial forest management and collect the rent.

Appendix 4 Western Oregon Land Ownership



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2020 Coast Range Association Analysis of Industrial Forest Ownership



Appendix 5 Major landowners Clatsop County, OR



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acres of nonindustrial ownership holdings? We don't know. But the outcome is that small rural valleys become depopulated, small bottomland agriculture ceases to exist, and associated economic activity disappears. The growth of industrial forest holdings contributes to the further urbanization of Oregon. Today, Oregon is the 19th most urbanized state in the nation.

2) The percentage of forest owned by the 10 largest industrial forest firms has steadily increased through mergers and buyouts. Today, these 10 firms dominate Western Oregon's landscape. At least 40 percent of private forestlands are owned by investment companies (Schick, 2020). In 1996, when the Coast Range Association conducted its first analysis of Coast Range forest ownership, 10 landowners often dominated each county, with 50 large industrial firms being the region's major timber owners. Twenty-four years later, private timber ownership in most counties is dominated by two or three industrial forest owners.

Western Oregon comprises 19 counties. The map below shows the major landowners in Clatsop County.

