



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BOARD OF LICENSURE OF FORESTERS
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Janet T. Mills
Governor

Anne L. Head
Commissioner

Public Board Meeting
Thursday, July 27, 2023
Agenda

Location: 221 State Street, Augusta ME 04330-Central Conference Room

Time: 9:00 a.m.

I. CALL TO ORDER

II. AGENDA MODIFICATIONS AND APPROVAL

III. MINUTES REVIEW AND APPROVAL

- Review and Approval of May 25, 2023 Minutes

IV. COMPLAINTS

None

V. DIRECTOR'S REPORT

A. Presentation of Basis Statement and Summary and Response to Comments and Small Business Impact Statement for proposed rulemaking:

- Chapter 70: Qualifications for a Forester License (Amended)
- Chapter 70-A: Licensure by Endorsement (New)
- Chapter 100: Code of Ethics (Repeal and Replace)

Potential to vote to adopt

VI. PUBLIC COMMENT

Under this item, the Board will offer an opportunity to members of the public in attendance to comment on any public matter under the jurisdiction of the Board. While the Board cannot take action on any issues presented, the Board will listen to comments and may ask staff to place the issue on a subsequent agenda. At the discretion of the Board Chair, a time limit on comments may be set.

VII. MEETING SCHEDULE

- Next meeting is currently scheduled for Thursday, September 28, 2023

VIII. ADJOURNMENT



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**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL REGULATION
221 State Street Augusta, ME 04330**

**BOARD OF LICENSURE OF FORESTERS
MINUTES OF IN PERSON BOARD MEETING
May 25, 2023**

MEMBERS PRESENT	OTHERS PRESENT
John Ackley, Chair	Catherine Pendergast, Director
Sarah Medina	Elizabeth Stivers, Assistant Attorney General
Keith Kanoti	Regina Ritchie, Professional Licensing Supervisor
Steve Pelletier	Shara Chesley, Office Specialist I
Theodore Shina, Complaint Officer	Jen Maddox, Office Specialist I
MEMBERS ABSENT	

Location:
221 State Street, Augusta

Start: 9:02 a.m.

End: 10:57 a.m.

CALL TO ORDER

The meeting was called to order by the Chair, John Ackley at 9:02 a.m.

AGENDA MODIFICATIONS

None .

MINUTES REVIEW AND APPROVAL

A motion was made by Shina and seconded by Kanoti to approve the January 26, 2023 minutes. Ackley, Medina, Kanoti, and Shina voted in the affirmative. Pelletier abstained.

PROPOSED RULEMAKING: Chapter 70: Qualifications for a Forester License, Chapter 70-A: Licensure by Endorsement and Chapter 100: Code of Ethics

Public Hearing

COMPLAINT PRESENTATIONS

2022-FOR-18774

A motion was made by Medina and seconded by Pelletier to offer a consent agreement with a warning. Motion withdrawn by Medina.

A motion was made by Ackley to offer a consent agreement with a warning. No second. Motion failed.

A motion was made by Medina and seconded by Pelletier to dismiss the complaint with a letter of guidance. Ackley, Medina, Kanoti, and Pelletier voted in the affirmative. Shina abstained.

DIRECTOR'S REPORT

The Board discussed the possibility of the Forest Service requiring licensed foresters to report discipline to the Board and directed AAG Stivers to look into the matter.

PUBLIC COMMENT

A member of the public made comments regarding the rule review discussion.

ADJOURNMENT

A motion was made by Pelletier and seconded by Medina to adjourn the meeting at 10:57 a.m. Unanimous.

1. **Greg Foster.** Timberstate G., Inc., Consulting Forester, Raymond, ME. Thank you very much my name is Greg Foster and I'm a consulting forester in southern main. I offer services to landowners and I offer myself as an agent to represent landowners' best interest in doing timber sales. And I'm here just in support of the Code of Ethics Change. I support that and it comes from experience of clients that I've worked with that I was preparing to do some work for them and then I was interfered in the sense of by procurement forester who offered to do some things that were contrary to what I believed was right for the forest landowner. And this is the reason I think the Code of Ethics can be tightened up a little bit. And I don't think it would stop procurement foresters doing what they're doing but it might make it a little better in terms of them representing themselves accurately and correctly to the clients so they know what to expect from that forester. I don't know, I think that's all I need to say, and certainly can answer any questions you have.
2. **Cliff Foster.** Timberstate G., Inc., Consulting Forester. I work for the Maine Forest Service for 36 years, retired in 1986 and started my own consulting business, which my son is now running. I will say one thing, I'm not a fan of government getting involved in business particularly on some issues. This issue before us is one that happened because of somebody who had a license as a forester and also had a logging business. There is a conflict there, because who does he represent – the landowner or his own business of buying timber? I think it's an ethics question more than anything else. Uh, that's especially something that you guys have to deal with and I don't think it's a simple one. Some of the people who are in this business are friends of mine for example. In that situation I think when you are running a business and representing a client supposedly you have to tow a pretty fine line and that's what brought this bill here before us. I thank you very much.
3. **Caleb Winslow.** Wadsworth Woodlands, Cornish, ME. I am here to express my concern over certain biases with these code of ethics. There are many ways in the state that foresters practice, particularly for private, small landowners. There are many methods of business and models of forestry that can be conducted ethically and responsibly with good outcomes and landowner objectives at heart. There is no way to legislate ethics, someone is either going to practice ethically with the forestry model they choose or they are not. And, seems that from an outsiders point of view that was not involved with developing these codes of ethics, there are certain forestry practices and models that are frowned upon just in the language of the ethics that can be done ethically and responsibly with the landowners' best interests in mind. And I think that you know certain forestry models and having certain advantages over some and disadvantages over others in a state's licensure code of ethics is not necessarily the place to have those sorts of biases. It feels as though ethics and the code of ethics for license should be more about values and what is right and what is wrong versus identifying certain forestry business models that introduce ethical decisions. Because at the end of the day whether someone is purchasing stumpage or operating under commissions or fees, if they are in the woods making decisions on behalf of landowners there are ethical decisions to be made regardless of how the forester is paid. If there is any compensation based on timber whatsoever, there are ethical decisions involved with the

commencement of those operations. To have a Code of Ethics that biases one model over others is just inaccurate and not true representation of how many various successful ways to operate forestry there are in this state.

4. **Reny Noel**. Southern Maine Forestry Services. Windham, ME. You've heard a lot from me over the last 3 years, it's the end of long process. Sunday I got a call. Stopped and picked up the phone; it was a distraught landowner. She had been away for a little while, she came home, she found her woodland, in her words, "devastated." I asked her, do you have a contract? She said "yes." I said then you have a contract dispute, you need to talk to a lawyer. The woman was distraught, she went into a long story, a forester who showed up there, sold her his services, and then did not make her happy. He did not disclose that he was a procurement forester. Disclosure is the root of all ethics. I'm not on the stand where the opposition to disclosure of what you are doing comes from. If you are a consulting forester with a fiduciary responsibility to the client, you disclose that. If you are a forester looking to buy stumpage or buy logs, you disclose that. To veil the purpose of why you are there I can't understand any reason other than to the various reasons why you would veil you are there to procure. You guys have heard it from me before over the past three years and that ends my comment.
5. **Harrod Burnett**, Two Trees Forestry, Winthrop, ME. Licensing is a consumer protection policy. The proposal seeking to distinguish those foresters, with a fiduciary responsibility to their landowning clients, from those employed by loggers and mills is an important distinction and overdue addition to our Code of Ethics. As the owner of a three-person consulting firm, with clients throughout southern Maine, it is our job to work in our clients' best interests. While I don't mean to suggest that we alone, among foresters, are able to clear that high bar, I've always been bothered by the slight deceit that is served by those who work for mills yet call themselves "landowner assistance foresters." While I don't mean to disparage the integrity of many of these colleagues, as a basic consumer protection imperative, the landowning public should expect and would benefit if they heard this short introduction from procurement foresters, "I'm here to buy your wood. Though I will try to act on your behalf, my fiduciary responsibility is to my company and its fiber supply needs." If licensing's goal is to educate and protect the public, then I believe that our code of ethics should be amended as proposed.
6. **Tom Cushman**. Maine Custom Woodlands, Durham, ME. Good Morning, My name is Tom Cushman and I am a Maine Licensed Forester. I am here today to oppose the proposed changes in the Foresters code of ethics. I would like to add I believe that the current code of ethics is excessively too long and much too prescriptive. First, I would like to remind everyone of a statement from the Maine Forester Board Website: "The Primary responsibility of the Board is to ensure the competency of foresters through examination; to issue licenses to those qualified to hold the title of forester, and to investigate complaints of noncompliance with or violations of the law and board rules." This proposed change to the Code of ethics does not align in my view with the responsibilities of the board. The code of ethics is for the individual with the license, not the company they work for how they do business. The COE should not define how the forester does business or who

they work for. Currently 15 states require licensing of foresters, 11 have COE associated with their respective licensing system and 10 of those are 1-1.5 pages long. Many of those follow the SAF Code of Ethics. 1-1.5 pages long and contain about 350 words. Maines COE as you folks know is 7 pages long and has 1877 words. The board should be looking at making its COE shorter not longer and less restrictive! SAF's COE is a little more than a page and is adopted by many other states as I previously mentioned.

The proposed COE is clearly trying to promote consultant forestry businesses and say they are superior to other ways of doing business, like stumpage procurement. None of these forms of doing business has anything to do with the individual forester and how they are licensed. You know, I've got a 4 year degree, I did an internship, I've got my license, and I have a COE to follow. So, none of that has anything to do with how business is done as long as the business being done is legal.

7. **Sam Blatchford**, Maine Custom Woodlands, Durham, ME. I believe the proposed rule changes to COE seem to only recognize procurement as a type of forester; to specifically target them suggests their business model is unethical. Throughout the proposed rule changes to the COE, passive allegations are spelled out and are not only I believe to be inaccurate but I think that they will have a direct negative impact on the forest industry in Maine as a whole, as thousands of acres are harvested with the oversight of procurement foresters every year.
8. **Jeremy Stultz**, Sappi, Durham, ME. I don't really have much to add. I guess I was here as part the subcommittee that helped come with all of this stuff. I think we reached the best compromise we could on a lot of the issues that were in front of us. And really the choice is up to this board as to whether or not they want to proceed with what they have based on testimony today or not. I guess from my perspective did the best we could to come up with what we have and I think it's ok. I do feel like similar to previous testimony there should not be an inherent ethical value placed on whether somebody is employed by somebody else or whether they are working on their own. I reject the notion that just because I am employed by somebody else who happens to be a manufacturing facility that buys timber that I can't inherently operate ethically for a particular landowner that I'm working for.
9. **Ted Wright**, Brunswick, ME. I'm an intern forester testifying today as an individual. So, I've been following this for about 3 years, ever since the licensure board became available by Zoom. I attended the first Zoom meeting I believe. I just want to state one thing I did find that was shocking with that meeting, is that there were things discussed during that board meeting that used people's companies' names, broadcast to everybody. And I was there, those were recorded, it happened several times, and those companies were called out during a licensure board meeting because they had a complaint lobbied against them. Which I found shocking and extremely unprofessional. And I don't know where that landed, I think somebody did mention that we are not allowed to use names and it was done two or three times after.

Since then, I really felt like I wanted to watch this. Because I do work for a nonprofit, I'm not representing them today. But I care about the industry. If everyone hasn't heard, the industry may be crumbling around us. And I care about the people who work, from the loggers to the foresters, to the mills, we all need to be successful and profitable and continue to provide good work.

So I want to start with that. That brings me to today. A lot of stuff has been happening, like I said, I followed all these meetings. It keeps going back to the business model. And I'm thinking to myself, as a new intern forester, like why is this going back to a business model when this is an individual license. This has nothing to do with who you work for. It's about acting ethically as an individual forester. That's all I can do in my nonprofit experience. I sit at a desk and do stuff but I'm still an intern licensed forester and I act ethically, it doesn't matter who I work for.

And just to bring that up, none of that is explained in here. It's only about procurement foresters versus consultant foresters. Those are the only two topics that are here. I'm not even listed in these new roles and duties here. Because I do not think anybody cares; this is a battle between two groups. One I think has had a lot more to do with it and a lot more influence, as we're here today with some things that people are concerned about, kind of shows you how much influence that side has had.

I do just want to touch on the length of the code of ethics as well. Reading this thing, I researched all the other code of ethics in US, and they are all very short and very to the point and they are only about the individual. They never mention who the business is that you work for and how that is going to influence your decisions. As a licensed forester, an individual, you act ethically. That's what this board is about, period. Doesn't matter who you work for. These other states, same thing, they're just one page, ours is 6, 7 pages, all kinds of like things like oh, if you work for this person, then you have to do this, because you automatically being considered unethical in my opinion. That's what this COE does.

If we want to go that model, the Real Estate licensure system has a model of brokerages which are the companies you know who can do what the companies do and they act ethically under that and then there is a brokerage model, a real estate model for individuals, for the realtors. Two different things. You have the individual and the company. Doesn't matter who they work for they can get a new job anywhere and they still hold their license. Somebody that's brokerage, they have to act ethically and have to make sure their realtors act ethically. Plain and simple. Business and individual. We're talking about an individual license here.

I've been reading a lot about this stuff. Just, it's been going on since like 1999. A lot of consultants will say, like we do a lot of RFPs, we work with contracts and stuff like that and I've never seen a consultant they are always paid hourly, like it's a 100 bucks. What's that value, here's 100 here's 200, whatever your value is, that's how you work in my opinion with a consultant. When consultants get commission, like a lot of times forestry consultants get a commission on hard wood logs, they get 20%, they get 15%. You have a paint gun, it's under your power how much you want to spray, you can make more money

as a consultant because you are getting a percentage of the income. I want to just lay that out, that has not been discussed and I find that may be an ethical issue because we are all just talking about how we all just work for the landowner no matter what. Well there is money involved. You can spray \$10K worth of wood and get \$2000 or spray \$100K worth of wood. It's all their decision, because it's all in their power as a consultant forester.

In closing, I guess, I think the thing is really long and in my opinion, could be shortened. And look more like the other states. And let's not have these battles over all these things. I work in a bunch of different states all around the country. None of these states have battles between foresters and procurement foresters and loggers. So maybe if we don't have a COE that's so long and prescriptive, we won't have all these underlying issues that nobody likes to talk about but apparently we are here today because we are talking about them. Other states do not have that it's been shocking and refreshing and I guess would be the word in other states that do not have these conflicts between all these different groups. I would appreciate a shortened code of ethics.

10. **Ben Balet**, Sappi, Belgrade, ME. I'm a licensed intern forester. I'd like to amend that I am representing myself as an individual and not our organization today. I think that this entire ethical amendment process here today was brought on because of competition between business and it has nothing to do with individual ethics. I agree with what most of the speakers today here have to say. I consider myself to be an ethical individual and I think what we are questioning and what the amendment is questioning is the ethics of business.
11. **Ben Carlisle**. President of Prentiss and Carlisle, Bangor, ME. We are a forest manager and forestry consulting firm located here in Bangor. I am not a license forester but we do employ a lot of them. We have approximately 75 employees, many of whom are licensed foresters, and most of whom are in Maine. We also employ various administrative staff, as well as six of our own logging crews and various equipment operators. And I like to think that we operate with the highest and professional ethical standards that are in the industry. Next year my firm will celebrate 100 years of being in business, and I believe our record of professionalism stands by itself.

To be clear, I am speaking today in opposition of these proposed changes in Chapter 100. I am doing so after very careful thought and consideration because I believe we should all hold ourselves accountable to a high ethical standard, and I believe this Board should expect and even enforce those standards in its licensing.

My opposition to these proposals stems from three general concepts and I have significant concerns about specific language used in this proposal. But I recognize that I do not have a lot of time so I do intend to submit written comments that go into more detail and I kindly ask that the Board consider those comments as well as my comments here today.

I believe the proposed changes in Chapter 11 are confusing to understand, and onerous to implement. I read legislation and legal documents all the time. Sometimes it feels like my only job. And yet I could not conclude one way or another whether or not certain disclosures might be required for some of the activities that we are doing. And I call particular attention to Chapter 100, Subparagraph 6, Subsection C, Item (1), sub-bullet (c). And again I will submit written comments but I could not interpret the intent, or determine in which cases it might apply. And confusion leads to a lack of ability to interpret, to enact the rules, and I believe will lead to difficulty in enforcement for this Board. The Code of Ethics should be simple, easy to understand, everybody knows what a conflict of interest is and where it applies. And if you look at most other codes of ethics as been previously talked about in the office of Maine professional licensing, they are generally limited to 2 pages. This proposal is nine or ten.

Second, I believe that narrowly defining the roles that this proposal does, and requiring foresters to select one role when performing services, makes it difficult for this Board to enforce the Code of Ethics. The Code of Ethics should be general in nature and allow this Board as much latitude as possible during enforcement actions. I can see a licensee going back and forth and defending and arguing and defending exactly what role they were performing in what circumstance and trying to pigeon hole these roles and these forester activities and craft rules around them will ultimately remove an important enforcement tool for this board, which is interpretation.

Third, I believe that the proposed rules seem to be carefully crafted to zero in on only one particular potential conflict of interest, that of buying stumpage. In the proposed rules, certain disclosures are only required when timber harvesting, inexplicably, and there are a myriad of other services that foresters offer which could also cause a conflict of interest to arise. The ugly truth is that foresters who buy stumpage, as well as those that sell stumpage, can be both conflicted. Said in another way, if you are paid on a percentage basis – which some people consider to be the gold standard of ethics – you are still incented to hygrade the lot. You are still incented to take kickbacks from loggers for giving them jobs. The lots may still be destroyed by a logger, the landowner may still be exposed and misled into poor silviculture and this Board should be focused on those unethical behaviors; it should be protecting the public from those issues, not from trying to specify what type of business models are ethical in rulemaking. And conversely, I will note that stumpage procurement can be done completely ethically.

Lastly and specifically and again I will submit written comments but Chapter 100, Paragraph 6, Subsection C, Item (1), sub-bullet (d), you'll see how confusing this is, speaks about disclosure of contracts to sell timber exclusively to one market. This is both an inappropriate encroachment into business practice, and I ask the Board to consider the situation where the forester may be completely unaware of an exclusive arrangement, as well as confidentiality provisions that legally prohibit this type of disclosure. For example, in my business, the forester procuring wood is completely disconnected from the person that sells wood into markets. There's a firewall in place, and it is intentional. We do not currently have any exclusive arrangements, but if a forester did, or if we did, a forester would be completely unaware.

Ultimately, I think the rules proposed in Chapter 100 are going to create a disincentive for a licensee to perform additional professional services that would otherwise be a benefit to the public. The COE should be encouraging licensees to serve the public with a wide variety of services and onerous rules and contracts and role defining rules may limit licensees from doing so. Some of the proposed rules and other people have highlighted this, such as in section 3 are veering away from promoting a COE and intruding into business practices and disclosure of propriety information that do little to promote the true ethical behavior which I believe this board is responsible for enforcing. So, I agree with the spirit of enforcing ethical behavior, I think the existing rules are working and the new rules are confusing.

12. **Elizabeth Olivier Cushman.** I speak to stand in opposition to the proposed changes to the foresters' COE. A little bit of background, I've been a licensed forester in Maine since 1985. And as a forester, I have worked for paper companies, land companies, private individuals, logging contractors in Northern Maine, schools as an educator and a forestry instructor, and for a forest management company. I started off with a map and compass, business was sought out by radio and newsprint ads, word of mouth and knocking on doors. Obviously that's not the case anymore. I've worked as an individual with partners to secure wood and to manage and to potentially harvest timber. In nearly 40 years, and through these various positions as a licensed forester, no state agency has ever told me how I earn my income, my wage. No one has ever questioned my integrity or my code of ethics. These proposed changes do not have to do with that. The proposed changes have to do with a group of people who are trying to manage how another group of people are making a living. Are engineers, lawyers, doctors, tradespeople, contractors questioned about how they secure their business, about how they do their work? Do they have intermediaries to do their work? They could have a private practice, work in a firm, a partnership, own a company, and work with a cohort of people. They all could and all represent their own businesses as well as the individual. I'm not even sure why this is being considered. The COE is not the issue here and should not even be up for discussion. In short, I do not want anybody else telling me how to make my living, I do not want anybody challenging my ethics and don't challenge my integrity. So, I'm not sure how this started out except that the group of people trying to affect another group of people and how they make a living.

MAR 16 2023

March 14, 2023

Jotham Trafton
258 Pleasant Point Road
Topsham, Maine 04086

Catherine Pendergast- Board of Foresters
35 State House Station
Augusta, Maine 04333

Dear Ms. Pendergast,

I write with concern that the present "Code of Ethics" for forester licensees may not be protecting the public from unethical practices. I shall try to describe a series of events that may be helpful to illustrate the need for change.

In 1998 I purchased Reachwood Forest in Newcastle, Maine; a 700+ acre woodlot that had been managed by David Schaible, ACF, Me.LF #45 under Tree Growth Tax Law. We updated the plan with the intent for sustainable and improved quality forestry. I was fortunate to be able to continue plans from the previous owner. I also developed a conservation easement with Maine I.F.W. to mesh with the forestry plan and to insure that this unique property would be protected forever from harm and development.

In 2001 sections of the property were harvested with the goal of timberland improvement. I was pleased with the quality of the work by the contractor managed by Mr. Schaible. With the proceeds from the sale I was able to renovate the old farmhouse. Using small machinery I maintained woods roads and harvested 10-30 cords of wood each year and picked up some quality logs from blowdowns. In my mind I was always preparing to pass the property on to the next generation.

In 2013 I gave the Reachwood property to my daughter, Anna Trafton. She had recently graduated from veterinarian school and she and her partner planned to manage the property as well as work in the community. This was a dream come true for both she and her father. He had prepared her with training on tractors, winches, chainsaws, and wood's safety. She was strong and loved the woods. I introduced her to her forester, land managers from I.F. and W, and my favorite places. As hard as it was to do so, I also tried to leave her alone to make decisions and develop true ownership.

Anna took advice from a forester who was listed as working for Prentice & Carlisle. She informed my daughter that Tree Growth enrollment mandated harvesting and that she could help arrange that. She also misinformed my daughter that a valid right of way to a landing site did not exist and that a property map was in error. A heavy high grade harvest commenced and proceeded rapidly.

I was unaware, and still am, of all that took place. Distraught, Anna called me to ask if the logging was as bad as it looked. I had not known it had taken place and was furious at her for allowing it. Asked why she had not consulted Mr. Schaible, she said that the lady was easier to work with. She said that damage to the forest would be contained and erosion controlled. This was not done.

Anna has contracted severe Lyme Disease and has been unable to work for the past two years. She and her family are planning to move away this summer. Our relationship is strained and I can only hope that some repair to Reachwood Forest may be my way to make matters improve. Following a Forester's Code of Ethics might have prevented this from taking place.

Sincerely,

Jotham Trafton

Pendergast, Catherine

From: David Schaible <timberlandconsultants@tidewater.net>
Sent: Friday, March 17, 2023 3:55 PM
To: Pendergast, Catherine
Subject: Comments on Forester Licensing Board Code of Ethics
Attachments: Comments, Code of Ethics.doc

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Please see attached. The proposed Code of Ethics is a good start but will not resolve all current issues, especially where more licensed foresters are directly engaged in the actual procurement and harvest of forest products than ever before. The practice of forestry in parts of Maine has become more about buying and getting the wood to the mills than sound forestry practices. The landowning public does not understand this and some trusting or unsuspecting landowners are being taken advantage, either by poor harvesting, paid low prices or both. Unfortunately, many in the profession do not recognize, or chooses to ignore, the conflicts of interest that are so prevalent. The licensing Board's obligation should be to protect the landowning public. I am glad that the Board is taking this step to address some of the issues.

One of the things the proposed Code of Ethics does not cover, but should, is disclosure by the forester about timber harvests-- who decides what to be cut, how, when, where and the expected outcome in terms of the residual stand, etc. Silvicultural clearcut?? Commercial clearcut?? Diameter limit cut?? Selection harvest??, etc. What a lot of the Code of Ethic boils down to is how the landowner and land are treated by the forester. Is the landowner getting what he expects?

Timber harvests are the one time a landowner can be really taken advantage of both financially as well as the condition of the forest after the cut is completed. Such disclosure could be rather complicated. The licensing law is not about silviculture, but is about how the forester goes about his business with regards to the landowner.

David Schaible

Comments on Code of Ethics

Suggested changes/additions in ***bold italics***. Reason for changes/additions or questions in *italics*.

4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:

- A. Procurement, which means purchasing forest products that have commercial value;
- B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
- C. Public services, which means providing services to a government entity ***or to the general public through a government entity***;

(The reason for this change is because not all services are directly to a government entity (example, Bureau of Public Lands) but may be delivered to others through a government entity (example, District Foresters, Maine Forest Service).)

3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting. *(Is the above saying that there can be no conflicts of interest, #4, for foresters working for their employer or that they can be ignored?)*

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must ***clearly identify themselves*** and disclose to a client or supplier:

- A. To whom the forester owes a fiduciary duty ***prior to any future agree-***

ment for services or purchase of stumpage;

(The reason for this change is because some procurement foresters do not clearly identify themselves or state their purposes, especially "cold calls" where the procurement forester approaches the landowner to solicit the purchase of stumpage.)

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel; **or**
- (3) acting as the client's agent; or**
- (4) accepting or disbursing client's funds on the behalf of the client.**

(The reason for these changes is because these are areas for potential misunderstandings or problems that can easily develop, especially for consulting foresters handling the client's money or the client questioning the forester's decisions or actions)

Pendergast, Catherine

From: David Schaible <timberlandconsultants@tidewater.net>
Sent: Monday, June 5, 2023 3:00 PM
To: Pendergast, Catherine
Subject: comments on proposed
Attachments: Comments, Code of Ethics.doc; Code of Ethics hearing.doc

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Please see attached comments regarding the proposed Code of Ethics. I submitted one of the attachments earlier but have since made a few additions/changes that in my mind clarify things a little better.

The proposed Ethics change is a good start but will not resolve all current issues, especially where more licensed foresters are directly engaged in the actual procurement and harvest of forest products than ever before. The practice of forestry in parts of Maine has become more about buying and getting the wood to the mills than sound forestry practices. The landowning public does not understand this and some trusting or unsuspecting landowners are being taken advantage, either by poor harvesting, paid low prices, both or more. Unfortunately, many in the profession do not recognize, or chooses to ignore, the conflicts of interest that are so prevalent. The licensing Board's obligation should be to protect all parties but especially the landowning public seeking forestry services or when approached by a forester looking to buy standing timber for harvest.

One of the things the proposed Code of Ethics does not cover, but should somewhere at some time, is disclosure by the forester, whatever his/her affiliation, about timber harvests-- who decides what to be cut, how, when, where and the expected outcome in terms of the residual stand, etc. Silvicultural clearcut?? Commercial clearcut?? Diameter limit cut?? Selection harvest??, etc. What a lot of the Code of Ethics boils down to is how the landowner and land are treated by the forester. Is the landowner getting what he expects? Timber harvests are the one time a landowner can be really taken advantage of both financially as well as the condition of the forest after the cut is completed. Such disclosure could be rather complicated. The licensing law is not about silviculture, but is about how the forester goes about his/her business with regards to the landowner and the impact on the forest land.

I am glad that the Board is taking this step to address some of the issues.

Thank-you for your consideration.

David Schaible

Comments on Code of Ethics

Suggested changes/additions in ***bold italics***. Reason for changes/additions or questions in *italics*.

1. Code of Ethics

The following Code of Ethics defines the conduct of foresters in their relationship with clients, ***prospective clients***, employers, other professionals, and the public. Etc.

(The reason for this is prospective clients are the ones that need full disclosure, before they decide to enter into any agreement with a forester.)

4. Forester. "Forester" means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:

- A. Procurement, which means purchasing forest products that have commercial value;
- B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
- C. Public services, which means providing services to a government entity ***or to the general public through a government entity***;

(The reason for this change is because not all public services are directly to a government entity (example, Bureau of Public Lands, on state owned lands) but may be delivered to others (private lands) through a government entity (example, District Foresters, Maine Forest Service).)

3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting. *(Is the above saying that there can be no conflicts of interest, #4, for foresters working for their employer or that they can be ignored?)*

1. General Duty

A forester must act towards the client, supplier, and employer in all

professional matters with loyalty, fidelity, and integrity in word and deed. Prior to providing services, a forester must **clearly identify themselves, who they are working for** and disclose to a **potential** client or supplier:

A. To whom the forester owes a fiduciary duty *with respect to the agreement* (What agreement??)

(The reason for this change is because some procurement foresters do not clearly identify themselves, who they are working for or state their purposes, especially "cold calls" where the forester approaches/contacts the landowner specifically to solicit the purchase of stumpage but does not state such. Some procurement "sold" on the basis of forest management not disclosing the forester's primary interest is cutting wood.)

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel; **or**
- (3) *acting as the client's agent; or*
- (4) *accepting or disbursing client's funds on the behalf of the client.*

(The reason for these changes is because these are areas for potential misunderstandings or problems that can easily develop, especially for consulting foresters handling the client's money or the client questioning the forester's decisions or actions).

Also, only a forester with a fiduciary agreement with the owner can file for, on the owner's behalf, a FOResT harvest notification. Maine Forest Service ruling.

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Lloyd C. Irland comments on May 2023 Draft of Maine Ethics Code

May 30, 2023

I see a significantly improved Ethics Code here. I would suppose it's too late for further edits, as much consideration has gone into this draft. For the record, however, I offer a few observations:

First, all provisions dealing with disclosures are very important. I urge the Board to make no changes other than those that would make provisions and their intent more clear.

Section 1 or a preamble could describe a wider purpose, roughly as follows:

"The purpose of this Code is to supply guidance on what is expected of professional foresters in dealing with clients, and to minimize misunderstandings that often occur. Many landowners seeking to develop management plans or to sell timber are not aware of many details, because they enter the markets infrequently or are doing so for the first time."

Section 2. 8 I would replace "of a purchase price by a prospective buyer" with:

"to buy or sell land or timber"

Section 3.2. I think disclosure without specifying "in writing" is not really disclosure at all. A client can claim they were never so advised, and the forester cannot prove it was done. It might be argued that Sec 6 specifies written agreements, but I see "in writing" in 4 (a) (1) and think it could be more widely used in relevant sections.

Section 3. I would add after "concerning"... "or owned by". Could be uncertainty as to meaning of "concerning" by itself.

(appraisers regularly share client data on transaction prices and terms – that is their job. In many cases it can be done without violating confidentiality)

Section 4 C You could delete "arising from timber appraisals. Does not add to the meaning as I'd read it.

Section (6) C (h) Should add: "It is unethical to attempt to gain business by knowingly promising unrealistic completion dates for the work."

I am taking the liberty of attaching a list of my past writings on this subject for the record and your file, in place of a resume on my qualifications for making these suggestions. I also attach a short unpublished essay on the subject that the Board might find useful. I should have sent these sooner.

Professional Practice and Ethics

Irland, "Getting and Keeping Secrets." The Consultant. Summer, 1990. pp. 11-14.

Irland, "Pesticides: ethical problems for foresters." The Consultant. January 1983.

Irland, "Should business ethics have different standards?" The Consultant. Fall, 1992. pp. 30-31.

* Irland, "Developing ethical reflection." J. For., April 1993, p. 11. *Reprinted in Murgia, L. ed. 2013. Introduction to Consulting Forestry. Bethesda, SAF.*

* Irland, "Recognizing and resolving conflicts of interest." J. For. Sept. 1995, p. 26-29. *Reprinted in Murgia, L. ed. 2013. Introduction to Consulting Forestry. Bethesda, SAF.*

Irland, "Advertising professional forestry services: applying the ethics codes." The Consultant. Summer, 1997. p. 28-30.

Irland, "Ethical reflection." The Consultant. Summer, 1999, p. 18-20 (an annotated reading list).

Irland, "The Ethics of forest management". Northern Woodlands. Summer 2005. p. 9.

Irland, "An Applied Ethics reading buffet" Environmental Practice, Spring 2006.

Irland, Here's How to Think about Ethical Problems. Forestry Source, SAF, Nov. 2007. (excerpt from book)

Irland, (guest editor) Special issue of Environmental Practice on ethics. Vol. 14 (3) Sept. 2012.

Letter from the Editor: is it Ethical? P. 169-170.

Liegel, Bates, and Irland, 2012. Conflict of interest: an overview for nonprofit board members. In same issue of Env. Practice, pp. 206-2011.

Irland, 2015. Professional ethics at Salt Lake City Convention. New England SAF News Quarterly, Jan 2015.

Irland, 2019. Some sources of ethical guidance. Forestry Source, Jan. p. 15.

Irland, 2019. Professional ethics survey. NESAF News Quarterly. Vol 80 (1): 11. Jan.

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Irland, 2020. Ethics can't be taught, so ethics courses are useless. Really? Forestry Source. June 2020. P. 20.

Irland, Ethics Review NESAF NQ, 81 (2), 2020. (listing of recent forestry ethics articles)

Irland, 2020. Preface, to A Etica de terra de Aldo Leopold. Trans to Portuguese by Dr. Alvaro Boson de Castro Faria of Universidad federal de Parana, Brazil. Curitiba: Appris.

Irland, 2023 forthcoming. Ethics. Chapter in Carbonetti, R. ed. Introduction to consulting forestry. 2d ed. SAF/ACF Washington, DC.

Ethical Duties, Roles, and Professional Forestry Ethics Codes

June 8, 2020

(one addition to refs list May 20023)

At different stages of their career, foresters may wish to deepen their understanding of professional ethics. This may occur during the college years, in the course of studies; or in early years of employment when practical problems engage their attention. Or, when promoted to levels of responsibility where decisions raise ethical issues not encountered when working primarily in the field. Or, when retiring from government or corporate work, in a highly procedure-oriented setting, and beginning to work independently. This essay breaks no new ground but instead serves as a refresher to set a stage for further study, discussion, and thought about particular issues.

Specific objectives are these:

- Explain how professional and civic duties and roles interact and overlap in workplace settings;
- Show how resolving ethical issues requires clarity on understanding the specific roles and duties involved;
- Elaborate on the concept of fiduciary duty as a core responsibility of a professional land manager;
- Advocate the importance of a number of generally accepted professional duties that are only included in the current SAF Code by implication if at all.

OUTLINE AND APPROACH

This article reviews eight broad categories of professional duties. These are implicit in the SAF Code (Society of American Foresters 2000). After reviewing these professional duties, the discussion reviews the various roles in which a forester may function, and the importance of standards in helping professionals navigate conflicting duties and roles. Finally, a number of civic duties are briefly noted.

The order of listing in Table 1 does not suggest which duties ought to supersede others. Some SAF ethical pledges actually serve several duties, e.g. the duty of self-improvement serves self, clients, profession, and the public. Some items noted as absent here could be implied by reasoning from existing SAF Pledges.

DUTIES OF A PROFESSIONAL

One might say that one difference between a profession and a job is a code of professional ethics. Such a code attempts to reduce to writing the duties of a professional, or to put it another way, the conduct which a person expects of a professional (Lebacqz, 1985; Martin, Vaught and Solomon, 2017). Sorting out duties and roles for oneself is part and parcel of thoughtfully considering ethical choices. These duties do not map one to one to the person or entity to whom that duty is owed: many duties represent claims on us from a number of directionsⁱ.

1. Family and Self

The need to earn an income is self-evident. It is the basis for ethics provisions concerning pricing of services, as well as others. It has been said that when Gifford Pinchot learned that his Forest Service employees had to live on their salaries, he did not believe it possible. Few of us are so fortunate that we never feel a tension between financial needs of our families and other professional or ethical commitments. A friend once remarked that it is critical to have a successful business, as that enables you to pass on tempting prospects that make you ethically uncomfortable.

2. General Public

A professional practices “in the public interest.” A professional is expected to assume more duties in society than, say, racing car drivers or rock musicians. In return, a profession receives certain privileges, including protection from charlatans through regulation. In some instances, other protections are involved such as attorney client privilege, or the privilege of a journalist to protect sources.

In engineering, ethics codes clearly state that the goal of the ethics code, and of professional practice, is *the safety of the public* (Burgess, 2019). Engineers make design and materials choices every day that represent tradeoffs between safety, durability, and cost (Burgess 2019). So broad mandates leave room for reasoned debate about trade-offs. The National Association of Realtors Code lists 27 standards of practice under the heading “duties to the public.”

Employer or Client

Situations where ethical issues may arise for an employer or client have not been very deeply probed in our forestry literature. It is much easier to decline a job from a small owner than to clash with our fulltime employer over a management or ethical issue.

The Realtors Code enumerates—in nine articles of fine print—a total of 37 standards of practice for duties to clients and customers. The ABA Model Code devotes 120 pages to laying out an attorney’s duties to clients (American Bar Association 2018). Duties to employ best scientific knowledge, professional standards, and current data and techniques, as well as to exercise diligence and to maintain currency with new developments are not only owed to the employer. They serve the profession and the public as well.

An important concept is the notion of a “duty of care” which is a succinct expression of the exercise of diligence, experience, judgment, and, when called for, compassion in making decisions. In few areas does the duty of care appear more important than in duties to employees.

3. Employees

Few ethics codes in the resource field that I have reviewed (Irland, 2019) make explicit a duty to employees.ⁱⁱ Yet, occupational safety, and various forms of discrimination, harassment or exploitation, have been much in the news lately (Radcliffe 2019). I was told of a case where a logger was permanently crippled by a falling “bumper” tree that arguably should have been

cut or avoided during a logging job. A court took up the question of exactly who was responsible. I don't remember the answer, but would ask, what was the duty of the forester who laid out and supervised the sale? Today, we understand that duties of care are owed to employees and contractorsⁱⁱⁱ. Occupational discrimination, hazing, harassment, and sexual harassment of people under one's authority are being brought out from the obscurity of Human Resources department rulebooks and training sessions and fully into the definition of what professional conduct means (Anon., 2019; Baker, 2019; Waring and Walters, 2019).

In our nation's recent upsurge in large wildfires, a number of tragic firefighter fatalities have occurred (Carroll and Irland, 2018; NWCG 2017). Incident commanders have to make wrenching decisions in real time about effective and timely deployment of crews, vehicles, and aircraft -- versus crew safety and potential damage to valuable structures and resources. In forestry school they told us about fire behavior and suppression but didn't tell us that some of us would face decisions like this.

4. Profession and Colleagues

Many ethics codes were initially adopted primarily *to protect the profession itself*. For example, doctors knew that snake oil salesmen and “quacks” were preventing people from getting proper treatment. By labelling themselves as “doctors” the quacks brought the entire medical profession into disrepute. Professionals also wish to protect themselves against unfair price-cutting or other forms of cut-throat competition. Ethics codes counsel against stealing one another's clients, employing undignified advertising, and making unwarranted negative statements about competitors. The National Association of Realtors Code lists 30 specific duties owed to other professional realtors. Of course, serious professionals care about the public benefit of their work, be it curing the sick, administering justice, building bridges, or caring for forests.

Bitter divisions have occurred over whether it is ethical for foresters employed by public agencies to “moonlight” on their own time as consultants. No easy answer can be obtained from the ethics codes. Generally, rules of the agencies involved and their legal advisers are binding.

Another difficult area is that of how a profession disciplines its members for improper behavior (Vicary, 2000). Most recognized professions require reporting of ethical lapses, and some even publish cases with the names of individuals involved when the charges are upheld by the Ethics Committees. A provision in the previous Code was deleted. Is it time to consider this again?

5. The Land

The Land Ethic has become an iconic element in forestry's professional culture. Yet we are far from reaching agreement on what it means in practice (for an entry into this enormous literature, see Sample, 2018). "The health of the land" is not self-defining.

The Wildlife Society and American Fisheries Society codes contain no reference to needs or goals of landowners, whether private, nonprofit, or public. Perhaps this is because the fish and wildlife are property of the state and not of any landowner. Further, their training is almost exclusively in biological sciences and not in economics or policy. Yet, members of these groups serve with organizations that actively manage land. Some fish and wildlife agencies derive significant revenue from resources they manage. For today, it is enough to identify the Land Ethic as a major unresolved area within our profession (Humphries 2000).

6. Those deserving of pro bono professional services

Pro bono services are different from coaching youth soccer or serving on the library board. In medicine and the law, professionals are expected to perform professional services for needy or deserving clients on an uncompensated basis. In natural resource professions, discussion of such a duty is virtually nonexistent. Yet it is a hallmark of fields we consider "the learned professions." Should SAF be thinking about this?

7. Special Case of Fiduciary Duty

Fiduciary duty has been little discussed in forestry ethics literature. (Noel 2019) A fiduciary is one who makes decisions on behalf of another. A fiduciary is simply a trustee. Trusteeship, in turn, involves four things (see Irland 2007, chs 6 and 22, and Smith, 1995). So, when a question arises it is essential to be certain whether one is acting in a fiduciary capacity or not.

A **Trustee** is expected to exercise business, legal, and professional judgment strictly *for the benefit of the beneficiary*. The trustee is a decisionmaker, not an adviser or agent. As decisionmaker, one is expected to weigh choices in a prudent manner (once known as the “prudent man rule”). Judgment is to be exercised with the same care and diligence one would apply to one’s own business.

A **trust corpus**, or body of the trust^{iv}, could be a managed forest, a preserve, a portfolio of financial instruments, or any form of income property. In Maine, for example, the State Forester serves on a three-person Board that governs Baxter State Park. Foresters and resource professionals serve on similar trust boards overseeing public lands in a number of states (Culp, Laurenzi and Tuyell, 2006; Souder and Fairfax, 1996).

The **Trust beneficiary** is the natural person or institution intended to benefit from the trust. In nonprofits managing land for biodiversity conservation, the beneficiary is “the environment.” The beneficiaries may also be recreation users, duck hunters or some other identified group.

Trust Documents may take a variety of forms. These set forth the goals, constraints and requirements within which a trustee is to act. The trustee's duty is to abide by the provisions of these documents to the best of their ability, and to seek unbiased advice in instances where the intent is unclear or when unforeseen circumstances arise. I once encountered a situation where I sensed that the concept of fiduciary duty was being abused. A timberland manager asserted Fiduciary Duty to a client to justify practices that I considered to be abusive. I was told, “It’s my duty to get the highest possible financial return for my client.” Is it? Having reviewed a range of duties, let’s now turn to various roles foresters play in their work.

THE FORESTRY PROFESSION: A DIVERSITY OF ROLES

The diversity of roles played by foresters complicates discussions of ethical duties (Table 2). These roles apply in most lines of work including consultants, government agencies, or nonprofits.

As an *employee* of a government or private landowner, a forester follows landowner goals and lays out and carries out operations according to settled policies and procedures.

An *agent* is different from an employee -- although to watch what is happening you might not notice. An independent consultant acts as an agent when supervising the sale of a landowner's timber. An agent often handles client funds, and is hired for specific tasks, usually not in a long-term employment relationship. When handling client funds, a consultant is also acting as a fiduciary.

A forester may serve as an *adviser*, as when making recommendations in a management plan. The forester may not be involved in final adoption of the plan or in implementing it.

The roles of employee, agent, adviser, and trustee are different, even though they often involve similar activities. It is easy to miss the difference, and then stumble into an ethical morass. This is one reason why ethical training and discussion is critical—to help professionals recognize the ethical duties applicable to particular roles.

So, we have now outlined eight different categories of professional duties, and noted 11 different roles within which work may be performed. At work, we may find ourselves in situations where duties and roles are not tightly aligned with each other or involve different or overlapping ethical pledges.

BALANCING CONFLICTING DUTIES

Role of “The Facts” – In making judgments on ethical problems, factual particulars often shape what is the best ethical decision. This is one reason why broad mandates generate so much debate when attempting to apply them. It is also why brief two-sentence case studies generate extensive debate but rarely lead to firm conclusions.

SAF's Code urges members to **challenge incorrect statements**, and to advocate **sound management**. It assumes that the individual member actually knows with a high degree of certainty which statements are scientifically incorrect (or, that the SAF itself does). But since forestry's earliest days, on issue after issue, the “scientific facts” have been disputed among foresters and forest scientists (for some examples, see Irland 2018). But the same view of the facts and the science is not always shared by all SAF members.

Lack of agreement on the content of professional standards – SAF's Code requires members to practice in accordance with modern science and professional standards. Supposedly, such

standards can distinguish sound management from unsound management. The difficulty is that even official lists of Best Management Practices (BMPs) for water protection, or Standards and Guidelines for management practices, cannot resolve all questions.

Importance of Judgment – Professionals are persons who rely on practical experience and who exercise **professional judgment**. Many land management questions involve balancing practical day to day needs with a land ethic. They involve more than just rules, data, measurement, and calculation. Other professional codes emphasize the role of judgment, while SAF's Code seems to suppose that standards and science will settle the practical questions and eliminate debate over what "the facts" are.

DUTIES OF A CITIZEN

A number of familiar duties are not mentioned above – you may wonder why. Some are noted in professional ethics codes, such as the duty to obey the law (Table 3). I associate these with being citizens and members of a community but not strictly tied to our roles as professionals.

These roles are important to people and how they make choices. They may not always align with professional commitments. I assume that the duty to **obey the Law** is not strictly speaking an ethical duty though often included in professional ethics codes. This duty is not mentioned specifically in the SAF Code, surely because it was considered unnecessary. But failure to obey the law is usually grounds for ejection from professional associations.^v **Telling the Truth** – the duty of Candor -- is not unique to members of professional groups. However, as noted above, foresters and scientists do not always agree on what "the Truth" is.

Duties to country are usually taken to supersede most of the others. Some people find, however, that this duty can be cancelled by still higher loyalties, as for conscientious objectors to warfare, or whistleblowers exposing what they believe to be wrongdoing.

Giving **aid to persons or groups deserving of charity**, such as disaster victims, those less fortunate, or immigrants seeking asylum from tyranny, genocide, and violence is always praiseworthy. This is a general duty of all citizens, but especially expected of professionals.

Many natural resource professionals give time to **community and local school activities** by serving on town and county committees, coaching youth sports, and in numerous other ways. Such involvement is usually expected of professionals.

IN SUM

To act as a professional is to acknowledge that one will face situations in which conflicts between legitimate duties, or claims on our loyalties, will arise. Awareness of these duties and roles in all their complexity will help us to make sound ethical choices. To suppose that “my conscience,” or “my sense of right and wrong” will always recognize the problem in the first place, and then yield a defensible answer, is a false hope. At worst, it can degenerate into a rationale for expediency.

To function in society, an Ethics Code must be clear enough to supply useful guidance to members and also clients and the public. It must also steer clear of becoming a mind-numbing laundry list of must-do and must-not statements. To be workable, though, a Code must be supplemented by further commentary and more detailed guidance advising how the code's provisions can be applied to commonly encountered situations, and how conflicts between provisions can be handled. It is especially difficult when we are too busy or rushed to seek advice and think a problem through in all its aspects.

How to navigate when duties and roles conflict is not addressed here. It is enough for one article to suggest how to recognize these conflicts when they arise. I claim no particular wisdom on this, and wish that someone who possesses such wisdom could be found to instruct us all. All I can do is quote an ancient sage named Koheleth who advised us, “in much wisdom is much grief” (Ecclesiastes 1:18).

IMPLICATIONS FOR SAF

1. A full review and re-think of the SAF Code has not occurred for many years. Of a fair sample of codes, its last formal review was a long time ago (Irland, 2019). Is it time?

2. I argue here for recognizing several categories of duties that are not explicit in the current code and for considering them in any future code revision process: Duties to family and self; to employees; to those deserving of pro bono services; and fiduciary duties, as well as a duty to report ethics violations to the Society. In some professions, members sign a pledge to abide by their ethics code on joining and periodically thereafter. Surely, upon thorough discussion, other categories and more specific points will be raised by others.
3. Further discussion is needed to develop a shared sense of the content of our Land Ethic, and to understand more deeply how foresters can come to grips with the mandate to work by “professional standards” when it cannot be said that widely shared standards exist.
4. Codes assume that practical questions will align with one duty at a time. SAF’s code is in good company on this. Practical guidance is needed on how to navigate situations when ethics pledges, duties, and roles conflict.
5. Teaching materials and cases now available for college education and continuing education in ethics too often are long books and treatises^{vi}, or two sentence “cases”. SAF members and teachers need something in between.

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End Notes

ⁱ A bit of trolling through dictionaries and a thesaurus persuades me that the term “duties” suits the needs of this essay, despite the fact that the SAF Code speaks of “responsibilities” and gives its specific commitments as “pledges”. In the dictionaries these words are often used in definitions of each other, suggesting a certain equivalence. Duties has the virtue of brevity, and as shown in the text, the term is regularly used in other professional codes.

ⁱⁱ Several codes I have reviewed retain a strongly individualistic flavor, as though the Members are solo practitioners whose actions affect only themselves and individual clients and are not part of a large organization. Further, there is no mention of the fact that Members are often expected to conform to other ethics codes. The individualistic flavor also may explain why duties to employees are not mentioned.

ⁱⁱⁱ OSHA and other regulations speak to the safety issue, but their presence in the woods is minimal. Guidelines may be less than clear, and the rules are not a substitute for accepting an ethical duty. Ongoing supervision to ensure compliance remains a duty of managers.

^{iv} A related concept is that of the public trust doctrine which arises for certain classes of public property. It is discussed in an ample literature (recently, Environmental Law Institute, 2018) and cannot be engaged here.

^v Cases arise where an individual feels it necessary to break a law because of a strongly felt duty to a higher power than the law or the country. The cases of draft resisters, journalists defying court orders to identify sources, or protesters disrupting legal industrial or timber harvesting operations are well-publicized examples, as are individuals publicly releasing highly sensitive classified material. Such cases are not considered here. I think they are outside the scope of strictly professional ethics as I view it. Further, the issues are difficult. Claims by such individuals cannot always be taken entirely at face value; all relevant details are not available to the average newspaper reader. On the other hand, State Department diplomats who defied orders and signed paperwork enabling Jews to escape Nazi-controlled areas are now rightly seen as heroes. Does time make a difference?

^{vi} I plead guilty to being a part of this: (Irland, 1994, 2007).

Pendergast, Catherine

From: Simon Snyder <ssnyder64@hotmail.com>
Sent: Monday, May 22, 2023 4:25 PM
To: Pendergast, Catherine
Subject: Forestry Initiative Under Cons. 5/25 Hearing

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Pendergast,

I will not be able to attend Thursday's hearing but I wanted to express my support for the changes under consideration.

My family began with an application for woodlot consideration on a property straddling Portland and Westbrook. I just sold that parcel on March 2nd of this year. The buyer's plan to develop the site is not on the immediate horizon and he is likely to develop a forestry plan to submit within the next year.

The program certainly allowed our family to more readily hold on to our parcel.

Thanks,
Simon Snyder
528 Stroudwater St.
Westbrook 04092
347 695-5289

Pendergast, Catherine

From: Claire Langlois <clairemlanglois@gmail.com>
Sent: Thursday, May 25, 2023 1:29 PM
To: Pendergast, Catherine
Subject: Forestry

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Catherine, I would like to comment on the Forester Code of ethics bill coming up soon.

First of all I want to introduce myself to you. My best friend since 1986 is Pamela Elwell so I feel like I may have met you in the past.

My family owned approximately 247 acres in the Falmouth/ Windham/Westbrook area since the 1960's so I often assisted my father with land management.

My father taught me how to use a yardage stick and to always drop in unannounced on the woodcutters and always measure their load before they removed it from the property. He made sure the woodcutters knew the property lines. He also got permits as needed when cutting near the water as a responsible landowner who wanted to avoid fines.

I took over the forestry management in 2008 and have since downsized to a small 13 acre wood lot. Rene Noel has been working with our family for decades on our forestry plans and has been helpful explaining the business.

I had received a mailer from another forester who I thought I might have tour the property with me so I could get another opinion.

Since it was winter and I hadn't heard from my usual forester (who was intending to walk the property when there was less snow in the spring) , I asked this new forester about him.

The new forester told me that my forester had retired and other people took over his business.

So I figured I had to go with him even though he was going to leave most of the limbs in piles when I really wanted a park like environment when the trees were removed. He did not tell me what I would get for the lumber or send a contract.

He did not mention the value of the soft maple to build Enviromats with or the price paid for the few oak veneer logs. He seemed to think the soft wood wasn't worth all that much.

All this forester would do is bring in two guys to cut the trees, skid them to a landing, leave piles of limbs and chip the top part of the trees only. He said a 12 acre wood lot is too small to get any other equipment.

On the other hand I feel that Rene Noel was willing to bring in the equipment which would cut the whole tree, chip the limbs and brush to create a park like area.

He provided prices for the different types of trees as well and gave me an estimate plus is sending a contract as soon as the land dries out enough to cut.

Why can't all licensed foresters do this?

As a consumer and the person who is responsible for the creation of more than a hundred of acres of conservation land around Highland lake, I feel strongly that the forests should be well managed and aesthetics are important.

My land abuts the Suckfish brook Conservation area which is the project I created when I was the Power of Attorney for my 95 year old father who is now deceased.

So it is important to keep the forests looking healthy and not covered with dying or dead trees and brush piles.

We need to have ethical foresters who understand what needs to be done in these "niche " wood lots which are near urban areas or watersheds.

I hope my experience will help our state understand how important good forestry practices are especially for smaller forests near urban areas.

Sincerely,

Claire Langlois

Pendergast, Catherine

From: rprmichela@aol.com
Sent: Monday, May 22, 2023 3:49 PM
To: Pendergast, Catherine
Subject: Proposed Forestry Ethics Rule Changes

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Pendergast,

My family organization has used the services of a licensed forester for many years after a logger did a number on our tree farm. We believe we have received great service over the years.

I support changes to the current logging rules which will require more disclosure by foresters to landowners, in particular for whom the forester is working and what their objective is. I think it is also important for a forester to disclose any conflicts of interest.

Thank you,

Rebecca P Michela
President, Moose Pond Associates
Bridgton, Maine

Pendergast, Catherine

From: Bonnie Hoag <hoagbster@gmail.com>
Sent: Tuesday, May 23, 2023 3:19 PM
To: Pendergast, Catherine
Subject: Rule Changes for Foresters

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in regard to the rule changes regarding an increase in disclosures to the Landowner. I believe that any changes to improve transparency and honesty is common sense and urge you to adopt the rule improvements.

Bonnie Hoag
179 Falmouth Road
Falmouth, Maine
hoagbster@gmail.com

--

Bonnie



Ellis' Professional Forestry Services

P.O. Box 71, Hudson, Maine 04449

• (207) 327-4674 •

May 24, 2023

To: Maine Forester Licensing Board

From: Kirby Ellis LF3187

Re: Code of Ethics

In my opinion the changes being suggested to the Maine forester code of ethics are long overdue. I say this after a number of landowners I work with have told me a procurement forester from a large company approached them saying that paying me as a consultant is a waste of money. They will do the same thing I do without charging anything and pay a lot more stumpage than any consultant can offer.

This type of conduct is not only unethical but untruthful when the landowner isn't getting all of the information.

Pendergast, Catherine

From: Teresa Davis <tld7246@gmail.com>
Sent: Wednesday, May 24, 2023 8:48 AM
To: Pendergast, Catherine
Subject: Forester Ethics Rule Changes

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Catherine,

I am a private consulting forester, practicing for 30 plus years now and I support the proposed changes to our Ethics rules. Landowners should be aware of the motives of their forester and there is no need for secrecy in that regard.

Thank you.

Teresa Davis

LPF #1094
LSE #203

Pendergast, Catherine

From: jayc oldfarmchristmas.com <jayc@oldfarmchristmas.com>
Sent: Monday, May 22, 2023 7:29 PM
To: Pendergast, Catherine
Subject: Professional Forester Disclosure Rule Change for 25 May Hearing

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Pendergast:

I'm writing in support of the proposed rule changes, requiring more explicit disclosure by professional foresters to landowners, regarding the forester's relationship with the landowner and buyers. I have a woodlot in Maine, and have also sold timber when clearing land for development. I have always used a forester whom I trust, and I must say that a landowner has only the forester to rely upon regarding the equity of any sale. It is literally impossible, once the wood is being cut and hauled, to even know how many trucks are departing to what market. And I'm pretty savvy. In short, a landowner must rely on the forester to ensure they are getting fair weights, fair prices and a good cut. It only makes sense that a forester be obligated to disclose any relationships that might rise to a conflict to ensure that landowners are treated fairly and in an honest manner.

Please forward my comments for the record.

With best regards,
Jay Cox

The Old Farm Christmas Place, and
Old Farm Store, LLC
1148 Sawyer Road
Cape Elizabeth, ME 04107
Ph: 207-799-0096
Fx: 207-799-0154
email: jayc@oldfarmchristmas.com
www.oldfarmchristmas.com

Pendergast, Catherine

From: board, foresters
Sent: Friday, June 2, 2023 8:57 AM
To: Pendergast, Catherine
Subject: (FOR) FW: Disclosure rule Changes

-----Original Message-----

From: Ervin Tower <detower@fairpoint.net>
Sent: Thursday, June 1, 2023 11:56 AM
To: board, foresters <foresters.board@maine.gov>
Subject: Disclosure rule Changes

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Board Members,

I am in favor of the proposed rule changes that require more disclosure by the Forester to the land owner about who the forester works for and purchasing wood.

Thank You,

Ervin Tower

LPF # 3162

Patten, ME 04765

207-528-6271

Pendergast, Catherine

From: Rocky Swain <rkybob2@gmail.com>
Sent: Tuesday, May 23, 2023 9:56 AM
To: Pendergast, Catherine
Subject: Forester Code of Ethics rule changes/additions

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings,

I own approximately 900 acres of managed timberland in Andover, Maine, although I live most of the year in Kentucky. Due to this distance, I rely on a professional forestry company to help me track growth, stumpage value, log and pulp prices in the area, etc.

Obviously, forester professionalism and ethics are very important to me.

Rene Noel provided me with a markup showing the proposed changes to the BOARD OF LICENSURE OF FORESTERS Chapter 100: CODE OF ETHICS.

I agree with Mr. Noel and other experienced foresters that these changes and additions to the code are a step forward, and will do much to protect landowners, log buyers, and professional foresters as well.

My family and I will be very happy if these recommended changes and additions are approved by the board.

Thank You,
Robert J. Swain

To: Board of Licensure for Foresters

From: Rene D. Noel, Jr ACF, Maine Licensed Forester #325

Date: May 31, 2021

RE: Comment of proposed rule 100 changes

The testimony at the public hearing was interesting. Some colored the proposed rule changes as competition between two groups of foresters. It actually stems from the natural conflict of interests between buyers and sellers. There are foresters who represent sellers and foresters who are either buyers or represent buyers. Neither of these roles is better or worse than the other. They are different roles necessary for the management of forests and sale of forest products from smaller forest holdings.

A point that was not made is that foresters advising small landowners are not only providing guidance in forest management but when giving advice on selling timber are acting as financial advisers.

As I read the current version of Ethics Rule, foresters are required now to disclose conflicts of interest. Anecdotal evidence is that some foresters do not disclose the conflict between buyers and sellers. For some perhaps they do not even realize such a conflict exists. The proposed changes define there is such a conflict and disclosure of it must be made. Landowners deserve to be aware in whose interests a forester working when negotiating for services or sale of stumpage.

Some also testified these proposed changes are an attempt to control how they run their businesses. Rereading the proposed change I do not see where that is so. There is nothing in the proposed changes that restricts a forester from buying timber for their own business or for their employers or running their business anyway they see fit as long as when they represent themselves as foresters they disclose their interest and do business in a fair, honest and ethical manner.

I agree with those who expressed that brevity is a virtue. However, so is clarity? The rule serves as a guide to how foresters should honestly and ethically practice. It must also serve the role of being enforceable when the board deals with complaints. It needs to serve both roles without ambiguity. I believe the proposed rule changes are a step in the right direction and the length of rule is a non issue.

There were also comments about individuals or company names being brought up during committee discussions. I was there (or at least on Zoom) for most of those meetings and I do not recall specific companies or individuals being discussed. The exception being individuals who discussed their own or their employers' experiences or opinions. These would hardly be considered breaches of confidentiality.

I do not consider myself an expert on ethics though over my career I have had a fair amount of experience with ethics rules and their enforcement. Perhaps the two most pertinent are a long stint on the Forester's board and several terms on the Association of Consultant Foresters Ethics Committee including one term as chairman. Much of my time on the licensing board I served as complaint officer and in that role investigated a fair number of complaints. Also during my time serving on the board, the rules were last reworked and updated through rule making. Some of the changes made were to address the board's experience with issues that had come about as a result of complaint investigations and hearings. Also during my time on ACF's ethics committee we investigate a number of complaints and referred them to the Executive Committee for action. During my tenure on ACF's ethics committee its Code of Ethics was reviewed and updated.

During my public comments I did not intend to bring up another anecdote of a forest landowner unhappy with the result of forestry work done on their land. However, the call was recent and it was fresh on my mind. I am busy with my life and forestry practice and I am not on a mission seek these complaints out. Yet, I get calls regularly from folks' complaining about how their forests have been mistreated or that the income received was less than expected. Foresters fortunately are not involved in the majority. However, in a disturbing number foresters are involved. I have not kept records but foresters' involvement seems to be increasing in recent times. Typically there is little I can do to help these people short of recommending consulting a lawyer, referring them to Maine Forest Service Rangers or when a forester is involved also informing them of the board complaint process.

These calls happen a lot and other foresters tell me they get similar calls. Still, I'm sure we are only hearing from a small percentage. As the saying goes, 'where there is smoke there is fire.'

Most landowners in the southern third of Maine and south-eastern section New Hampshire, where my company works, are very ignorant of what is in their forests. Species, products, volumes and values are foreign things to them. A good many cannot tell a maple from an oak or a pine from a fir. Never mind the specifications for a veneer log in comparison to a grade saw log, pallet log or a stick of pulpwood or firewood. Not many have a clue of stumpage prices for various products, utilization standards or how much value is in their forest. The jargon of our industry often does not paint an accurate picture their minds of the condition their forest, treatments recommended and likely results of those treatments. The financial details often totally elude them. I can't tell you how many times a landowner has asked me how much it would cost to have a thinning and improvement harvest or other commercial treatment done on their property! If they don't seek a good knowledgeable advisers many are lambs which can easily be led to slaughter by someone who is willing to act unscrupulously.

The Forester Licensing Board exists to protect the public. It accomplishes this by assuring foresters are competent and provide their services in an honest and ethical manner. The board serves the public at large, foresters and in particular the owners of forestland. Forest landowners knowingly or unknowingly are the ones who rely most on the board to administering the law and

rules of the board. It is not the board mission to educate forest landowners. However, it is the board's mission to have rules that encourage foresters to fully disclose who they are, who they represent, their purpose in approaching landowners, to whom they owe a fiduciary duty and other pertinent facts of which landowners should be aware to make informed decisions. Hiring a forester as a consultant to market their timber or selling stumpage to a forester, foresters' business partners or foresters' employers involves decisions which will affect the long term condition of their forest and the financial return of those transactions. For most people, outside of purchasing a home, selling stumpage is often one the most complicated and the largest (financial) transaction of their life.

I favor the proposed rule changes as I believe it will make clear to foresters of all stripes they should treat land owners fairly, honestly and ethically. For those few licensees who may veil their intent for the nefarious purpose of defrauding landowners the rule changes will make enforcement easier.

Thank you for your time and consideration.

Pendergast, Catherine

From: board, architects
Sent: Thursday, July 20, 2023 12:27 PM
To: Pendergast, Catherine
Subject: FW: Forester code of a ethics

-----Original Message-----

From: Linda Kallenbach <lindapuff@aol.com>
Sent: Monday, May 22, 2023 1:43 PM
To: board, architects <architects.board@maine.gov>
Subject: Forester code of a ethics

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Rene Noel's proposal sounds important. I would assume that any landowner hiring a forester would expect this kind of transparency, especially novices like myself who rely on these folks.

Thank you,
Linda Kallenbach
Durham, ME

Sent from my iPad

Pendergast, Catherine

From: Erik Grove <erik@someforest.com>
Sent: Monday, June 5, 2023 3:22 PM
To: Pendergast, Catherine
Subject: comment on proposed rule making for code of ethics to foresters licensing

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Catherine Pendergast and the rest of the licensing board members,

I am strongly in favor of adopting the new proposed rules to strengthen the foresters code of ethics.

Most or all of the licensing board members are from the north central part of the state with an industrial or large land owner perspective. As such the large landowners, industrial and investment type owners have substantial knowledge on commodity values and the industry. As such, these buyers and sellers have similar knowledge and negotiations are on an even footing.

The primary purpose of licensing is to protect the general public. The majority of the general public is woefully ignorant on all things forestry, and timber harvesting. The vast majority of small private land owners live in the southerly and easterly portions of the state. These small landowners frequently only sell timber once in their life. Because of this the negotiation process is not even close to being an even balance of knowledge, the requirement for fair negotiation and bargaining.

These small private land owners have limited knowledge at best of the many roles a forester plays. Most do not comprehend the difference between a forester working with a fiduciary agency to the land owner and a forester with an agency to their employer buying and procuring wood. As such, many small private landowners take the word of any forester as unbiased fact. They view a forester as an impartial professional more like an umpire. While all foresters have knowledge, they use it to benefit different parties.

Unfortunately, some unscrupulous wood buyers will use their status as a licensed forester to give weight to their statements to coerce an unknowing seller into parting with their timber. "You need to hurry up and cut your trees before they die !" is one of the oldest lines in the book. When a logger says it, what can you say? But when a licensed forester makes an outright lie they should be held accountable. These strengthened and clarified rules should help do this.

Requiring a forester to state on whose behalf they are working should not be a hardship to any professional doing their job. All jobs that foresters perform are important. Procurement and buying timber is a very important and honorable job. Those foresters doing their job ethically should welcome this rule change so that they are not competing against those employing unscrupulous methods.

"Hello, I work for XYZ Company and I would like to buy your wood !" That shouldn't be viewed as a terrible thing to have to say. Any forester in the act of buying wood that can't make that statement certainly needs better training by their employer. Having to rely on deceptive practices is a black eye on the profession.

Sincerely,
Erik Grove, ACF
Maine Licensed Forester #3273
New Hampshire Licensed Forester #292

Pendergast, Catherine

From: Pendergast, Catherine
Sent: Monday, May 22, 2023 4:29 PM
To: 'lindapuff@aol.com'
Subject: Forester Rulemaking Comment

Dear Ms. Kallenbach,

Your comment regarding the Forester Rulemaking has been received.

There will be a public hearing on Thursday, May 25, 2023. Information on how to attend the meeting virtually or in-person is available on the Board website at <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters/home/board-meeting-information>.

The proposed rules are available at https://www.maine.gov/pfr/professionallicensing/sites/maine.gov.pfr.professionallicensing/files/inline-files/forester_proposed_rulemaking_5_3_2023.pdf.

Feel free to contact me with any questions.

Sincerely,

Catherine E. Pendergast
Administrator
Board of Licensure of Foresters
(207) 624 - 8518
www.maine.gov/professionallicensing/

Notice: The information contained in this email message is for general informational purposes only and is not intended as legal or business advice.

*** IMPORTANT NOTICE:** Staff of the Office of Professional and Occupational Regulation is temporarily displaced while the building located at 76 Northern Avenue in Gardiner, Maine is closed for remediation work. During this temporary displacement, the best way to contact us is by email or by phone or through our other online services.

Pendergast, Catherine

From: jake@fsmaine.org
Sent: Tuesday, March 07, 2023 4:52 PM
To: Pendergast, Catherine
Cc: 'Ackley, John'; Steve Pelletier
Subject: Forester Licensing Rules/Comments

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Catherine –

I am writing today to submit comments regarding the suggested edits to the forester licensing laws that are now under consideration. I am writing in my own capacity as a licensed forester in the state of Maine and not as a representative of the Forest Society of Maine (my employer).

First, a general comment about how little reference there is to the actual forest and management thereof. Most of the law is contract related and fiduciary and legal considerations seem to be the only focus. That doesn't suggest to me that there is much actual implications for the management and condition of the forest, which is unfortunate. It seems like any unethical or illegal activity would be covered by contract law and having a forester licensing law adds no meaningful additional protections to the forest resource or the public – this may be outside the comments what you were looking for but calling a section the "Code of Ethics" and then only talking about contract and legal relationships doesn't seem to make much sense to me.

Secondly, I believe there is a typo in Chapter 100 Section 3.6.C.(c). "Any financial or purchase interest the forester OR the forester's employer..." (as currently drafted it states: "...interest the forester of the forester's employer...")

Third, I believe in Chapter 100 Section 3. subsection 15. More is needed. I suggest the following edit: "If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event must a forester knowingly participate in forestry operations or condone any activities, that violate of any laws, conservation easements, or other legally binding agreements applicable to the forestry operation activities."

Fourth, I believe Chapter 100 Section 4. More is needed, I suggest the following: "Comply with Laws and Legal Agreements A forester must at all times in the performance of forestry services abide by federal and state laws, and municipal ordinances, and legal agreements involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

As the proposed changes relate to the ethics of a licensed professional's activities I don't think its unreasonable for them to be aware of and in compliance with any legal documents governing the forestry undertaken on a property (whether that is agreement to use a road to access a property, or knowing about a conservation easement that's in place on the property). To not make reference to or inclusion of all the agreements that can affect a property is incomplete in my opinion.

Thank you for your consideration of these comments.

-Jake

Maine Licensed Forester #3673

Pendergast, Catherine

From: Ed Witt <ed.witt2011@gmail.com>
Sent: Friday, March 17, 2023 7:04 AM
To: Pendergast, Catherine
Cc: cwinslow@wadsworthwoodlands.com; bbarberi@hancocklumber.com; jhall@hancocklumber.com; ashultee@hancocklumber.com
Subject: Proposed Forester Licensing Board Rule Changes Chapters 70 & 100

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Catherine:

I am a Maine Licensed Forester (#802) and am writing concerning the Forester License Boards proposed rule changes to Chapters 70 & 100. I just learned of these proposed changes a few days ago. I have some serious concerns with these changes and would like to have the opportunity to discuss them with the board. I will provide a few brief comments but I am requesting that a public hearing be held concerning the proposed rule changes for Chapters 70 and 100.

Several of my major concerns are as follows:

1. I disagree that these changes are routine technical changes. I feel that the proposed rule changes are substantial and require additional vetting by the board, the public (especially landowners) and Maine Licensed Foresters.
2. There are several typo's, references to paragraphs that don't exist and new language that is not in the current law that is not underlined in the proposed law.
3. The definition of "Management" is much too narrow and is not consistent with the Society of American Foresters definition. Landowner objectives, economics and landowner rights need to be considered.
4. Disclosure of confidential mill information is a major deviation from historic industry practices and jeopardizes mill operations by making mill pricing public information. Have there been complaints concerning this aspect of the forester licensing requirements?

These are just a few of my concerns. As I stated above, I would like to request a public hearing to discuss the proposed changes. Would you please acknowledge that you received this email. Thank you for your consideration.

Sincerely,

Edward G. Witt, Sr.
Maine Licensed Forester #802

Pendergast, Catherine

From: Jeff Hall <jhall@HancockLumber.com>
Sent: Friday, March 17, 2023 7:49 AM
To: Pendergast, Catherine; Aaron Schulte; Butch Barberi; Ed Witt; Caleb Winslow
Subject: Proposed rule changes.

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Catherine,
I'm a log buyer for Hancock Lumber, and as I read some of these rule changes it seems to target procurement foresters and their potential lack of integrity and ethics. I personally have been buying logs for 30 years, and I don't find that an issue. I procure logs from a number of very ethical, high quality people that I am happy to business with 24/7. I think this rule change should be going to public hearing.

Thank you,
Jeff Hall
Hancock Lumber
207-329-9128

Sent from my iPhone

March 16, 2023

Catherine E. Pendergast
35 State House Station
Augusta, ME 04333-0035

Dear Ms. Pendergast,

I am writing this letter to submit comments regarding the Rulemaking process for the repeal and replacement of the Chapter 100- Forester Code of Ethics.

A question that looms in my mind and in the mind of many other colleagues across the state whom I've spoken to: why are these changes necessary?

As a general observation, these changes seem to target certain forestry business structures more than others; particularly, stumpage based forestry practices. The code of ethics emphasizes the importance of disclosing roles, and appears to indicate an exclusive distinction between procurement and consulting practices. The emphasis placed by the proposed changes on the disclosure of these roles reveals an embedded assumption that foresters cannot procure forest products while providing ethical consulting services simultaneously; an assumption that is entirely inaccurate and degrading to Maine's foresters who work hard for landowners to help them achieve their management objectives via responsible and professional timber harvesting.

The code of ethics goes on to require that foresters state whether they are procuring forest products that have commercial value, and what financial interest they or their employer have in those products. This statement is entirely unnecessary and is another example of how the proposed rules target stumpage based services. As one of Maine's leading and most critical industries, the entirety of the forest product sector in Maine is built on the fact that forest products have commercial value, and stating such in any agreement is irrelevant. The fact that a forester is entering into agreement to pay landowners for forest products produced via timber harvesting is natural recognition of the landowner's valuable forest products and any forester's interest therein.

Additionally, the code of ethics state that foresters must disclose any contracts to sell forest products exclusively to a particular market, mill, or purchaser. This is a direct and complete infringement on open market practices for forest products. It also significantly affects a forester's ability to utilize their relationship and status with any particular market for the purposes of fetching higher rates that translate into higher rates of return for the landowner. Foresters and their firms work hard to develop long-lasting, mutually beneficially relationships with various mills that poise them to remain competitive with landowner stumpage rates, and for any licensing code of ethics to hinder those types of open market practices is intrinsically unethical.

In closing, the assumptions and bias contained within these code of ethics have no place in a statewide licensure code of ethics. There are many ways to conduct forestry within this state, all of which can be conducted ethically, responsibly, and centered around landowner's best interests. Any forester or firm that is paid for their services via forest products in any way requires ethical practice during timber harvesting facilitation, regardless of whether the harvest is administered based on fee, commission, or stumpage. I urge the board to reconsider these proposed changes to rid the code of ethics of the unfair bias and assumptions contained within the currently pending changes.

With Respect,



Caleb Winslow
Forester, Wadsworth Woodlands
ME LF #4011

Catherine E. Pendergast
35 State House Station
Augusta, ME 04333-0035

March 17, 2023

Dear Ms. Pendergast,

I am writing this letter regarding the repeal and replacement of the Chapter 100- Forester Code of Ethics.

As a licensed forester I am employed by a timber harvesting and forest management company, I have a 4-year degree, passed the Maine forester licensing exam, completed a 2-year internship, and faithfully fulfill the yearly required CEU's for 3 states in which I hold a license (ME/NH/VT). Additionally, I've previously worked at a forestry consulting firm for 2 years and have almost 19 years' overall experience in the field. I would fall under 3 of the 4 definitions of a forester. My goal is to help educate every landowner we meet and speak to them about their land and how to improve it. I use my past education, work experience and continuing education to provide professional guidance using sound forestry practices for those situations. I enjoy interacting with people and being involved in as much of the operation as possible from the initial conversation to the closeout of the job. This ensures the harvest is being conducted correctly. Is this unethical? Sounds ethical to me.

After reviewing the proposed revisions, it is my opinion that the main goal is to divide and discredit the licensed foresters who work for land management/forest industry companies and only promote the licensed foresters who work as consultants. It seems to imply that only independent third-party foresters are ethical, and practice good forestry and the remaining foresters are unethical in the way they operate and practice non-sustainable forestry. I know there are properties that if asked who conducted this harvest, a third-party forester or a land management/procurement forester, a person could not tell the difference. There are lots where the a third party forester cut and you would say was this the right thing to do.

It is hard to find another profession or license in which people would be divided and discredited in this way. From the financial standpoint, companies who employ foresters have operating costs as any other company would. These can fluctuate yearly or daily and be major factors in stumpage values paid to landowners. Businesses cannot operate at a loss and still provide a service. Do you ask your local grocer or gas station owner for a line by line breakdown of how they come up with their prices?

To become a Maine licensed forester, most attend an SAF accredited university or college for their degree, while we all must take CEU's that are SAF accredited, and the Forester licensing exam is heavily dependent on SAF to help with the examination and provide certification. The streamlined SAF code of ethics would be much better suited for Maine. The current version of the Code of Ethics is some of the most extensive in the country. Does that make Maine licensed foresters more ethical than other states?

Sincerely,

Darren Riggins, Licensed Forester ME/NH/VT
Western Maine Timberlands, Fryeburg, ME

Pendergast, Catherine

From: Brian Reader <breadertrees@yahoo.com>
Sent: Friday, March 17, 2023 9:26 AM
To: Pendergast, Catherine
Subject: Forester Code changes

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Catherine,
I wish to comment on the proposed changes that are being made to the Licensed Forester Code of Ethics. I do not agree with these proposed changes, and I think how people conduct their forestry business is up to them. Though I do understand the need for professionalism, and to avoid conflicts of interest, potential deception, etc., but anyone who is marking the trees to harvest and receiving financial return from them, could be considered conflict of interest as well. This is a subject that has been debated for many years, and the code of ethics should not discriminate against foresters who choose to buy stumpage, whether industry foresters or otherwise. It also sounds like this is some sort of back room deal that is trying to get pushed through without licensees being made aware of the proposed changes.

Sincerely,

Brian Reader, ME LPF #3538

Reader Forest Management LLC

55 Oak Street

N. Waterboro, ME 04061

207-205-5917



**Prentiss
& Carlisle**

Forest Resource Management and Timberland Services

107 Court Street | PO Box 637 | Bangor, Maine 04402-0637
207.942.8295 | fax 207.942.1488 | prentissandcarlisle.com

Comments To Proposed Rulemaking

June 2, 2023

Chapter 100: Code of Ethics

Dept. of Professional and Financial Regulation
Office of Professional and Occupational Regulation
Board of Licensure of Foresters

Submitted by: Thomas R. Nelson, V.P.
Prentiss & Carlisle Management Co., Inc.
License Number LF915

My name is Tom Nelson. I am a licensed forester employed by Prentiss & Carlisle for 50 years. I currently manage P&C's Woodlot Mgt. Services program and supervise a staff of 11 foresters, 5 in New York and 6 in Maine.

This group offers a wide array of professional forestry services to landowners large and small, both public and private, including forestry services to Maine Woodland Owners (SWOAM).

In addition to these services P&C purchases stumpage and markets timber from many client properties. We are a vertically integrated company offering clients a one stop shops if they so choose. We have always worked with high ethical standards and much of our business comes from word of mouth from past clients.

I am writing today in opposition to most of the proposed changes in Chapter 100. I believe as professional foresters that ethics and acting in a professional way is extremely important. The current Code of Ethics is broad and leaves the Board flexibility to act if necessary and the proposed changes, in my opinion, do not clarify and add more difficulty in interpretation. I get the sense that the proposed changes arise, to a high degree, from what role or business model is practiced. The listing of "roles" appears to focus on business practices rather than on the forester. The license is to the forester not the business he or she works under. As a licensed forester, I am the one who needs to decide if I am following the ethical guidelines and hold myself accountable. Listing "roles" adds nothing to process as they are open ended and in many cases a foresters role overlaps into multiple ones as stated. They appear focused upon whether the stumpage is being purchased and later tied to when signed agreements are required. I believe This is getting into the weeds. Foresters practicing other roles can equally share in unethical behavior and one could argue should have agreements. P&C uses signed agreements as a standard practice. I don't believe this belongs in the Code of Ethics.

The stated intent of the changes is to clarify the Code of Ethics. In my opinion most changes only complicate and confuse interpretation.

The Board should be focused on unethical behavior rather than business models and roles.

The added disclosure of contracts to sell timber exclusively one market seems totally beyond the scope of the Boards intent. Proprietary business relationships should not be included in the proposed changes.

Paragraph 15 only creates disputes regarding actions that may cause harm to the forest. This is not clear and should be left to the Maine Forest Service to enforce.

The definition of "fiduciary responsibility" and required disclosure requirement appears again to focus on certain business models. This is inappropriate and does not clarify its goal.

Summary

The current rules appear to work well and allows the Board flexibility to interpret and enforce the rules of ethical behavior. To my knowledge, the number of cases brought before the Board has been low. I believe most of the proposed changes will only add difficulty for both the Board and the forester interpreting them.

My sense is that the proposed changes are being pushed by a minority of licensed foresters who may not favor other business practices or business models. This should not be factored into rule making and the Code of Ethics regarding an individual forester license. Landowners should have the option of choosing from an assortment of forestry services and foresters should not be hamstrung by trying to interpret what role they play. We should encourage landowners to engage a forester in their forestry needs. There continues to be a significant number of harvests that do not engage a forester.

Thank you for the opportunity to state some of my concerns regarding the proposed changes.

Respectfully submitted,

Thomas R. Nelson, V.P.
Prentiss & Carlisle Mgt. Co., Inc.
107 Court Street
Bangor, Maine 04402-0637

Dear Ms. Pendergast,

My name is Jennifer Greaney, I am co-owner of Western Maine Timberlands Inc. located in Fryeburg Maine. I am writing today regarding the proposed rulemaking to repeal and replace Maine Licensed Forester and Code of Ethics.

Our company became certified under the Master Logger Certification program in 2002 as a way of showcasing and raising the bar for professionalism in our industry. In 2010 we decided to add a licensed Maine and NH Forester to our staff to better assist our clients and be able to offer other services that required a license. As a Master Logger certified company, we have a code of ethics that we abide by just as our forester has a code of ethics with regards to forestry practices and licensing.

The expansion of the current COE is confusing and seems to target specific individuals based upon who they work for or if they own their own company. With reading the proposed changes it almost seems to discredit particular foresters.

With our neighboring state of NH currently looking to repeal more than 30 licenses with forester's license at the top of the list, the State of Maine is looking to add additional requirements and creating complexity when it is not necessary. Seven pages regarding COE compared to other States COE speaks for itself in its direction of creating complexity.

With the proposed changes I can only assume this will lead to additional State personnel to review who is in compliance and who is not. This review of licenses will cause burden to tax payers if the proposed changes take place.

As a company with a high regard for ethics, consumer awareness and education we hope our concerns will be take into consideration.

Respectfully,

Jennifer Greaney

Western Maine Timberlands, Inc.

**COMMENTS TO PROPOSED RULEMAKING
CHAPTER 100: CODE OF ETHICS**

**Department of Professional and Financial Regulation,
Office of Professional and Occupational Regulation,
Board of Licensure of Foresters**

Comments submitted by:
Benjamin D. Carlisle, President
Prentiss & Carlisle Management Co., Inc.
Prentiss & Carlisle Co., Inc.

May 31st, 2023

Thank you for the opportunity to submit written comments regarding the proposed rule changes to Chapter 100 of the Board of Licensure of Foresters. My name is Ben Carlisle and I am the President of Prentiss & Carlisle. We are a forest manager and forestry consulting firm located in Bangor. We have approximately 75 employees, many of whom are licensed foresters, and most of whom are in Maine. We also employ various administrative staff, as well as six of our own logging crews and various equipment operators. I like to think that we operate with the highest professional and ethical standards in the industry. Next year my firm will celebrate 100 years of being in business, and I believe our reputation and record of professionalism speaks for itself.

I'm writing today in opposition to nearly all proposed changes in Chapter 100. I am doing so after very careful thought and consideration because I believe we all should hold ourselves accountable to a high ethical standard, and I believe this Board should expect and enforce those standards in its licensing.

General Concerns

My opposition to these proposals stems from three general concepts:

- 1) The proposed changes are **confusing to understand**, and **onerous to enforce**. In reading the proposed rules, I could not conclude one way or another whether certain disclosures might be required for some activities we are doing. I call particular attention to Chapter 100, Paragraph 3, Subparagraph 6, Subsection C, Item (1), sub-bullet (c). I could not interpret the intent of this rule, nor could I determine in which cases it might apply. Confusion leads to a lack of ability to interpret rules and enact them, and I believe will lead to difficulty in enforcement for this Board. The Code of Ethics should be simple and easy to follow. If you look at most other codes of ethics within the Maine Office of Professional and Occupational Regulation, they are generally limited to 2 pages. The proposal is nine. Your stated intent is to clarify the Code of Ethics, when in fact the proposed changes make the Code longer and more confusing.
- 2) Second, I believe that narrowly defining a forester's roles, and requiring foresters to select one role when performing services, will make it much more difficult for the Board to enforce the Code. The Code of Ethics **should be general in nature** to allow this Board as much latitude as possible during enforcement actions. I can envision a licensee defending and

debating exactly what role they were playing under what circumstance. The “role” the forester is acting under could change daily - our foresters are often asked to tidy up unrelated boundary lines, or provide mapping services, for example, when also administering a timber harvest. Trying to pigeonhole certain forester activities and craft rules around these activities will ultimately remove an important enforcement tool for this Board – interpretation.

- 3) Third, and most importantly, the proposed rules seem to be carefully crafted to zero in on **only one particular potential conflict of interest**, that of buying stumpage. In the proposed rules, certain disclosures and written agreements are only required when timber harvesting, despite the fact there are a myriad of services that foresters offer which could cause a conflict of interest to arise. The ugly truth is that foresters who buy stumpage, as well as those that sell stumpage, can both be conflicted and behave in an unethical manner. Said another way, even if you are paid on a percentage basis – which some consider the gold standard of ethics – you are still incented to hygrade or overcut the lot. If you are paid hourly, you can still pad your time. You can still accept kickbacks from loggers for feeding them jobs. The lot may still be destroyed by a logger, the landowner may still be exposed to being misled into poor silviculture, regardless of the business model being employed. This Board should be focused on THOSE unethical behaviors; it should be protecting the public from THOSE issues, not trying to specify what type of business models are considered ethical within rulemaking. **Ethics is about behavior**, not about any given type of business model.

Specific Language Concerns

I do have comments for the Board’s consideration regarding specific language in the proposed rule changes. My comments reference specific sections of Chapter 100 as provided in the draft rulemaking proposal.

- Paragraph 3, Subparagraph 6, Subsection C, Item (1), sub-bullet (d) speaks about disclosure of contracts to sell timber exclusively to one market. This is an inappropriate encroachment into proprietary business practice, and I ask the Board please consider the situation where the forester may be COMPLETELY unaware of an exclusive arrangement, as well as confidentiality provisions that legally prohibit this type of disclosure. For example, in my firm, a forester procuring wood is completely disconnected from the individual responsible for selling the wood. There’s a firewall, and it is intentional. We do not currently have any exclusive arrangements, but if we did, a forester would be completely unaware of it. My second issue with this item is the use of the first word “Any”, without geographic considerations, and regardless of whether or not the timber is intended to be sold into that market.
- Paragraph 3, Subparagraph 2, Subsection D also speaks to the disclosure of contracts to sell timber exclusively to one market, but unfortunately is much more broad. It states that a forester must disclose any existing such relationship prior to providing any services

(even if there is no timber harvest objective). When a forester is hired to write a management plan, for example, this disclosure is inappropriate.

- We question why timber harvesting and land alteration have been singled out as the only required conditions in which a forester must develop a signed written agreement as specified in Paragraph 3, Subparagraph 6, Subsection B, Item (2). This is of course good business practice for any service arrangement, but we believe business practice does not have a place in a Code of Ethics. Once again, I believe this proposed change to be the result of an implied bias against those foresters who perform such services.
- We have no objections to the various language changes from "shall" to "must", but we question the Board's purpose in such change, as either would permit the Board to interpret & enforce the Rules in the same manner.
- Paragraph 3, Subparagraph 2 proposes that a number of disclosures must be made prior to providing services. We believe we already comply with this portion of the draft Rules, however we think including them in the Rules will only lead to disputes and confusion as to whether or not these disclosures were sufficiently made (verbally or otherwise).
- Paragraph 3, Subparagraph 2, Subsection (A) refers to an "agreement", however the proposed Rules do not always require one, so we believe this reference is not appropriate.
- We object outright to the draft changes in Paragraph 15 because it opens substantial opportunity for disputes regarding which actions may cause "harm" to a "forest". We believe it is up to the Maine Forest Service to make such determinations.
- Regarding the proposed definitions in Paragraph 2:
 - We agree that the new definition of "conflict of interest" (Item 2) clarifies the Rules and is a good addition.
 - The definition of "forester" in Item 4 has been changed to include four roles that a forester may on occasion act under, which we believe is completely unnecessary and confusing. The purpose of this addition is unknown, but the proposed rules never differentiate these roles in subsequent sections, nor do the proposed rules apply differently depending on which role the forester happens to take. These four roles are referenced in two places, Paragraph 3, Subparagraph 6, Subsection C, Item (b) and in Paragraph 3, Subparagraph 4, Subsection B, Item (2), however in both cases these are all grouped together as only examples and have no effect. Moreover, the roles are "including but not limited to" the four roles stated ... so why include them at all? Aside from being unnecessary, as with many of the other changes, we believe that defining these roles in a Code of Ethics will only lead to confusion on behalf of licensees and limit the enforcement abilities of this Board.
 - Lastly, we feel that the inclusion of a definition of "fiduciary responsibility" (Item 3), and the associated disclosure required under the proposed rules, is a poor addition. First, the definition is misapplied. The phrase "fiduciary responsibility" by itself does not necessarily mean acting in the benefit of the client. A forester can

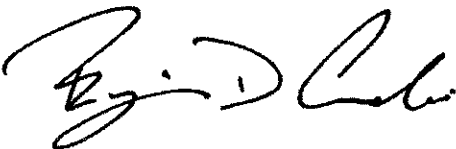
bear a "fiduciary responsibility" to other parties as well and can shift based on the business model of the forester's employer or the activity being performed by the forester. Therefore, defining it solely based on a relationship with a client is inappropriate. Second, the disclosure, which the proposed rules apparently only require for certain business models, will further confuse consumers and licensees alike, and will lead to debate regarding what disclosure was sufficient under what circumstance. Lastly, the act of disclosure is totally independent from whether or not the forester actually behaves ethically. Once again, we believe the Board should focus on behavior.

Summary

In short, we believe the existing Rules work well. They are both concise and flexible, and provide the Board with the broadest latitude while enforcing ethics violations. The proposed rules unfortunately veer away from promoting good ethical behavior of licensees and intrude into business practices that will do little to promote public benefit. Moreover, we feel that the proposed rules imply an inappropriate bias that foresters who procure wood are inherently unethical, when, in fact, there are many other services a forester may provide that could create conflicts of interest and potential ethics concerns. The Board should refrain from trying to define them all in rulemaking and instead rely on the more flexible Code of Ethics in use today.

Should the Board see fit to make a revision to the Rules, we believe the changes should only be modest and clarifying in nature.

Respectfully submitted,



Benjamin D. Carlisle, President
Prentiss & Carlisle Management Co., Inc.
Prentiss & Carlisle Co., Inc.
107 Court Street
Bangor, ME 04401

Pendergast, Catherine

From: Chandler Buie <chandler.buie@gmail.com>
Sent: Friday, March 17, 2023 2:33 PM
To: Pendergast, Catherine
Subject: Public Comment

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Catherine, I would like to provide my thoughts on the proposed ethics change.

As a licensed forester since 2006, I am disheartened at thought of so much effort to create a seemingly silly distinction between foresters. I would also have to disagree fundamentally with the principles guiding this change.

I have worked as a consulting forester and procurement forester and have provided the same level of unbiased service to landowners based on science and silvics. I as the ethics suggest were not at competing odds or in a conflict of interest.

Currently as a pulp buyer, it is my opinion that this change aims at affecting the free market and is an attempt by a very small group, to effectively try to eliminate competition for their business. Over time these changes would have negative long term impacts to an already struggling industry.

Thank you for your time.

Respectfully,

Chandler Buie
ND Paper, Procurement Forester
207-735-4871

Sent from my iPhone

March 16, 2023

Catherine E. Pendergast
35 State House Station
Augusta, ME 04333-0035

Dear Ms. Pendergast,

I am writing this letter to provide supplemental comments to go along with previous comments I have submitted regarding the Rulemaking process for the repeal and replacement of the Chapter 100-Forester Code of Ethics.

Attached to this letter is a newsletter published by Southern Maine Forestry Services. This newsletter discusses many of the perceived issues that the changes to the code of ethics are intended to correct.

In my previous letter that was submitted, I stated major concern over embedded bias and unfair assumptions within the proposed code of ethics. I then discovered this newsletter and was blown away by some of the statements made within, statements which correlate strongly with proposed resolutions within the pending legislation. And statements which are boldly inaccurate and largely presumptuous of foresters across the state who deserve better than to have their licensure code of ethics contain such erroneously biased rules.

The purpose of this supplemental letter is to submit this newsletter as further evidence of the bias contained within the code of ethics. It is readily apparent that the forces behind the changes to the code of ethics conduct their forestry business in the same methods as discussed in the attached newsletter. It is also known fact that the founder of the company which produced the attached newsletter was a leading proponent of the pending changes to the code of ethics. The content of this newsletter combined with the significant influence the founder of the company which published said newsletter had on the pending changes reveals an egregious conflict of interest and an unethical attempt to provide a competitive advantage to a particular forestry business model. And in doing so, publicly and erroneously disrespected a large group of foresters that are honest, good, and hard-working people who deserve better than to be degraded by a forestry company that considers themselves more worthy because of their particular business model. A state licensure board is not a suitable place for the legal establishment of anti-competitive rules.

Please review the attached newsletter and take note of the inherent and obvious conflict of interest and unethical nature of the proposed changes to the code of ethics in regards to the proponents of said changes and their way of business.

With respect as always,



Caleb Winslow
Forester, Wadsworth Woodlands
ME LF #4011

Southern Maine Forestry Services

2022 Newsletter

P.O. Box 910, Windham, Maine 04062,

(207) 892-6562

Office@Someforest.com,

Website: someforest.com

Forestry isn't rocket science. It's harder!

**YOU CAN LIKE AND FOLLOW US ON FACEBOOK-
SOUTHERN MAINE FORESTRY SERVICES**

Grow Your Trees, Grow Your Value

When planning this spring newsletter, we decided on "growth" as the natural theme of the season. Several weeks of writer's block ensued. I was meeting with a customer when their daughter asked me exactly what a forester does. Then it hit me. The simple answer is: We *grow* trees!

Loggers harvest trees. Foresters can supervise harvesting as well as many other tasks. A forester's license merely indicates a basic level of competency, not who a forester is representing or where their priorities lie. Foresters fall into four general groups: Research, education, government procurement, and consultants who act as fiduciary agents.

Procurement foresters work for mills or loggers who need wood. Their job is to buy as much wood as possible at the lowest possible price. They work for the best interest of their employers, as they should. But they do not represent the interests of the landowner who is the seller.

The last group of foresters is consultants. Consultants work for and represent their client, the landowner, to keep forest trees healthy and vigorous and to maximize income when harvested or both. To truly fulfill this role, a forester must act as a fiduciary agent to their client. There are many foresters advertising consulting services who are not fiduciaries. Many purchase stumpage no differently than a logger. A buyer profits more when a seller makes less. A fiduciary agent needs to be compensated in some way that is directly connected to the client's success.

Hopefully you have had the chance to walk in your forest. This time of year brings some of the best conditions to get outdoors and assess your land: Good visibility before leaf out, no bugs yet, and warm temperatures after a long winter. It is easy to get excited when we see young seedlings starting to grow in openings made during a harvest.

Those seedlings are the next crop of trees. Their species mix will have the greatest impact on what your forest will become and the potential income it will generate. While these little trees will have the longest to grow to become a mature forest, it is at this stage that is easiest to change the trajectory.

Do you want to grow this species for the next fifty to one hundred years? If the answer is no, now is the time to act. You can weed or selectively change the species composition or completely start from scratch by killing it all. Herbicides can be a great tool for accomplishing this. Killing all of the undesirable established regeneration would be an example of site preparation. A selective application, killing undesirable hardwoods to release white pine, would be an example of release work.

Have you spotted any invasive shrubs and vines? These are not desirable! If you are seeing just a few seedlings, hand-pulling will help keep them at bay. But if you have large mature plants, or large numbers of plants, pulling is not practical. An application of herbicide is the best and likely only way to kill the entire plant. Controlling invasive is another form of site preparation or release to grow desirable species.

Once we have spent time and effort to maximize the growth of volume and quality, the final step is maximizing income from harvested trees. Marketing is required to do this. It requires the unique skills and knowledge of a forester to do this job well and represent the seller.

A landowner who has limited knowledge and is not selling wood on a regular basis doesn't have the knowledge to best represent themselves. Loggers and procurement foresters are experts and represent themselves well. So should you, by hiring a consulting forester.

I frequently hear landowners say things like "I am just cutting off my lot before I sell the land, I don't need a forester." That couldn't be further from the truth. An unskilled seller will have no difficulty selling high quality timber. But they are unlikely to maximize the income.

A timber sale I managed last winter demonstrates this well. A company purchased a piece of commercial land to develop. The prescription was to clear 30-35 acres, while thinning the remaining 25 acres while leaving a productive forest. They tried negotiating with a local well known logger. He made a lump sum offer of \$60,000 for timber on the sixty acre lot. Was that a good deal? How would they know?

I was asked to look at the lot and felt the logger's offer was low. The land owner asked if I could generate enough additional income to cover my fee. I recognized the property and timber had several qualities that would make the timber more valuable: high volume, good quality, and made for a good harvest efficiency. Well drained soils and future development allowed harvest to be done during a time most land would be excessively muddy. In addition, I knew wood prices had risen rapidly over the previous 6 months due to a number of factors.

I quickly advertised the timber by bid amongst quality loggers we regularly work with. I invited buyers from a large area to ensure there would be no collusion. And I promoted the positive qualities listed above.

I was amazed by the half dozen offers we received. All offers were well above status-quo prices we had been receiving. In fact, the prices had grown to the level that we had not seen since prior to the recession.

The winning bid is now our company's record price on pine, \$315 per thousand board feet, including pallet. The final gross stumpage was \$120,900! Talk about growing a landowner's value! The key to generating that price for the landowner was hiring knowledgeable representation. We can't double your money on every job, but we always strive to maximize the value of the forest left to grow, as well as the value of the wood you choose to harvest.

Erik Grove, ACF
Consulting Forester



Growing Trees and Protecting Water Quality on the Lake Auburn Watershed

The Auburn Water District began working with foresters on its land as early as the 1930's, and in recent decades has utilized Southern Maine Forestry Services. The land base has grown since that time and is now the second largest managed by a water supply in the state of Maine. The primary objective is to provide the highest quality water possible.

High quality water is usually cool and high in dissolved oxygen. The solubility of oxygen is higher in cool water than in warm water. The decomposition of organic materials can reduce or eliminate the supply of dissolved oxygen. This is why LAWPC focuses on management favoring good quality softwoods such as eastern white pine, red pine, and spruce. Cutting cycles are 10-12 years, targeting lower quality, diseased, or damaged trees for removal. This enables LAWPC to capture potential mortality, reduce fuel loads, release regeneration, and promote growth in better quality trees. It is a conservative philosophy with an intensive approach. Through the use of whole tree chipping, LAWPC can also accomplish timber stand improvement. This is a weeding and thinning of smaller diameter stems, which are chipped and sold as biomass.

All skid trails are designated by a licensed forester, with trees marked for cutting oriented to that trail system. There are benefits to this environmentally and economically. Temporary bridges are used on all pre-designated brook crossings, and skid trails are located to minimize soil disturbance and erosion. Timber harvests are scheduled six months to a year in advance so that heavy equipment works when the ground is either frozen or dry.

Today's logging equipment is large and heavy. Modern skidders remove bunches of multiple trees at one time. Properly locating where they travel is important to minimize soil and residual stand damage. Successful results require a thorough understanding of forestry, soils, wildlife habitat, local and state codes, and a working knowledge of civil and mechanical engineering.

The economic benefit:

A recent study in the southeast compared the results of a stand marked by a forester to one that was harvested by an owner/operator. The annual growth post-harvest was 26% high in the marked stand than in the owner/operator selected harvest. Stumpage value prior to the next thinning was \$457 per acre higher in the marked stand.

LAWPC is now thinning some of their timberlands for the fourth and fifth time. On well-drained coarse textured soils with good timber it is not uncommon to grow about one cord per acre per year – more on better sites. The majority of the harvests remove 10-12 cords per acre or 20-30% of the stand volume.

By growing a cord per acre per year and harvesting every 10-12 years, LAWPC never exceeds growth and the forest is managed in a sustainable manner, protecting the soils and growing better quality, more valuable timber. Byproducts of this healthy forest are the increased water quality, and improved aesthetics and wildlife habitat.

Landowners who take this approach set themselves up for future success. While markets for low-grade wood from low quality trees can be tenuous, demand for saw logs from high-quality trees remains more consistent. Healthy forests benefit wildlife, watersheds, and those who live among them.

Chip Love
Consulting Forester



The Changing Forest

To most people a forest is a constant thing. The trees are just there and never change. However to a forester or other close observer the forest is always changing. At this time of year the buds on hardwood species are swelling. Flowers of red maples, catkins of aspens and willows along with many other species are blooming. Soon leaves will start to open and buds

of softwoods elongate and needles form. The forest changes from bare branches and tired looking softwoods to a kaleidoscope of shades of green as new foliage absorbs sunlight. What are not seen is stems and branches add a new layer of wood and grow in diameter. Also not seen is the struggle for sunlight, water, nutrients and room to expand. Some trees become suppressed while faster growing neighbors take the space they occupied. Come fall fruit and seed mature and fall to the ground. Leaves respond to shorter days by decreasing the production of chlorophyll giving us the beauty of fall colors. Softwoods seal their buds under a waxy coating protecting from the coming cold. Winter comes and the trees rest awaiting spring for another burst of competition and growth to fight for their place in the forest.

This and more is going on all the time but to the casual passer by the forest remains unchanged, trees are in their place not much different from year to year. A forester sees the changes that have occurred and can often predict changes that will occur in the future. Short live species are maturing and soon to die. A wolf tree crowding nice younger stems and will suppress them soon. Seedlings and saplings growing in the shade of the over story and will die if not released.

The forester also sees many opportunities to thin and harvest the stands to direct a forest's growth. Short lived species can be removed salvaging them before the die. Longer lived species can be thinned giving residual stems the room to continue or accelerate growth. Trees over topping those seedlings and saplings can be harvest releasing them to grow if they have greater potential.

Now at the end of my career I have seen many changes in forests that never seem to change.

A young stand of red oak I had thinned for firewood in the late 1970's is now a beautiful stand of 20" diameter trees of excellent quality. White pine seedlings I planted in the 1980's in an abandoned blueberry field that have been thinned once are now over 40 feet tall and 8-10" in diameter. A stand of middle age mixed growth I first had thinned about 40 years ago which has had two more thinning and improvement cuts and is now a beautiful stand with mature stems 80 to 100 feet tall with an understory of desirable saplings and small pole size stems. An old field which had grown up to popple, cherry and crooked pine is now a patch or young habitat used by many species of wildlife.

A forest is for ever changing and a well-trained and talented forester can direct that change to a desired goal.

Rene D. Noel, Jr.
Consulting Forester

Stand of gray birch, scrub oak and rough under-stocked pine clear cut and planted to white pine in 1991. First thinning applied in 2020. Forests are continually changing.

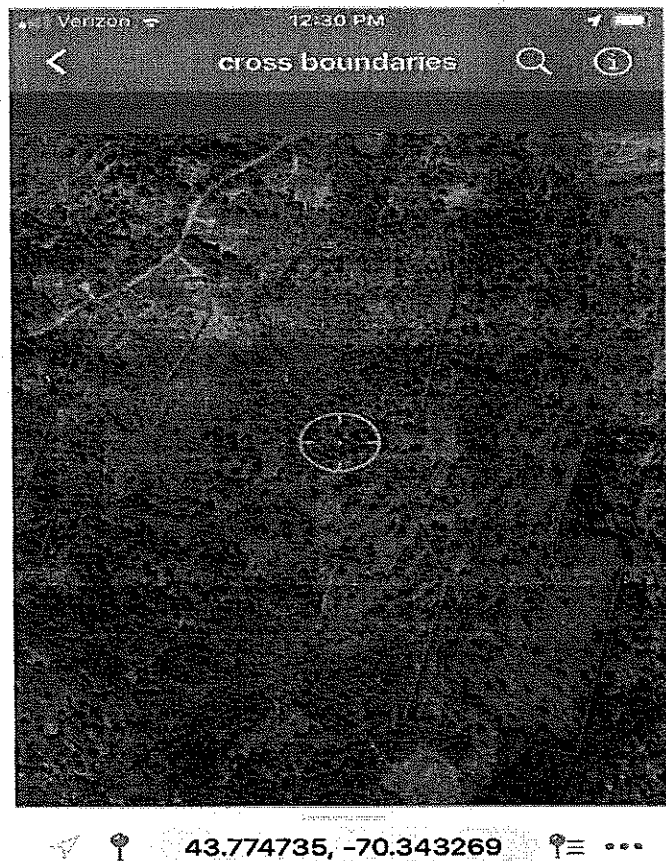


Perpetual Growth as a Forester

As we attend to our work managing the growth of healthy, productive forests, we as foresters also must ensure that we maintain continual growth in our knowledge base and skillset. Many professional fields require, or at least reward, continued education. The practice of forestry is one in which being a "lifetime learner" is particularly essential.

A forester generally begins their career in the woods with a four-year education in forestry which imparts an essential initial knowledge base. But trees grow slowly, the variables at play in forest management are infinite, and the college degree could be thought of as the basic qualification to *begin* the real learning process. Which, like tree growth in a forest, will be ongoing and incremental over years with no predetermined endpoint. Field observations of the results of a forester's own management decisions, or those of others who have come before, accumulate over the years. With the right mindset and environment there is always more to learn simply from a workday in the woods practicing forestry.

On a broader scale, our collective understanding of forest ecology and silviculture is also continually expanding and being refined. New research builds on, and sometimes brings into question, old understandings of how things work in the infinitely complex system that is a forest. New factors



such as invasive forest pests come into play, and questions of how to best react arise. A forester drawing solely on the lectures and textbooks they encountered in college will, sooner or later, fall behind the curve in the level of expertise they can bring to their work. We all attend various conferences and seminars as an important part of staying abreast of what researchers have been up to, and sometimes just as importantly, an opportunity to chat with and glean knowledge from other practicing foresters. In March, those of us at SOMEFS who were able attended the New England Society of American Foresters annual meeting in South Portland, and contributed our insight as forest managers to field tours of several of our client's properties, ranging from Portland to Denmark, ME.

As our collective and individual understandings of forest management grow and evolve, the associated technology also advances. Foresters have utilized things like GPS and GIS mapping software since the early days of its availability. Since then, traditional GPS units have given way to smartphone and tablet software, and desktop mapping software has evolved. There can be a tendency to stick with the technology that is familiar - after all, a compass, a paper map, and a Biltmore stick are often all a forester should really *need* - but there is much efficiency to be found in periodically investing the time to learn and adopt key upgrades in technology. We have in recent years shifted our GIS mapping processes from the older software to a more up-to-date solution, and invested in desktop and phone/tablet timber cruising software. Most recently, we have started the process of upgrading our database to a system that will better enable us to integrate data between our foresters, and meet our client's needs.

We at Southern Maine Forestry Services have collective experience that would tally up to about a century of managing forests. Enough years for a seedling to become a mature over story tree. As one of the younger foresters on the team, I've benefited from the accumulated experience my peers/mentors, and also observed that the learning process never stops. Here's to another productive growing season.

Nick McDougal
Forester

Forester Licensing Board Studying Forester Ethics

For the past two years a committee of foresters has been working with the licensing board to advance some changes primarily involving foresters whose job is buying stumpage from you land owners. The committee consists of two consulting foresters who are members of the Association of Consulting Foresters, two procurement foresters, a forester from the Maine Forest Service and a public member. The meetings have been Zoom meetings and I think unfortunately we have seen little participation from other forester organizations or groups which represent landowners. This rule change will have to go through the public hearing process and other bureaucratic procedures or any rule change. I'm hopeful landowners and other foresters will be heard in this process. I am sure those on the procurement side will participate to represent their interests.

This committee came about because of anecdotes of some landowners having not been well treated and possibly misled when they sold timber along with a complaint against a licensee which a number of foresters not on the board but familiar with the case felt the board had misjudged.

The crux of the matter is obvious. A buyer and a seller have opposing interests. The seller wants to maximize their profit and get the most they can in money or services. A buyer wants to pay as little as possible and be able to operate at the lowest cost to maximize their profit.

All foresters have knowledge and skills the average person does not. However, a forester cannot represent both sides of a buy/sell transaction. And a forester working as a procurement forester should not use his position and title of forester to mislead a landowner into believing he or she can represent their interest in the sale of their timber.

To this end we are working to change the rules to require foresters to state who they are representing, in writing and if they are contacting landowners as foresters whose interest is to buy your standing trees. Any forester will still be much more knowledgeable than most landowners but landowners will be on notice that they are involved in a buy/sell negotiation and not engaging a forester who will be representing them with a fiduciary duty to them.

Weighted Average Stumpage Prices

Reflecting Timber Sales between December 1, 2021 to April 30 2022

We get a lot of demand for this information but are always hesitant to publish it. These are average prices over many individual timber sales. Our working area covers from So. New Hampshire to Rangeley, Maine in the North to Waterville, Maine in the East. Markets and trucking cost to those markets vary greatly over that area. We have sold timber that varies from junk to very high grade. Logging chances have varied from difficult to super easy. Consult with someone who has no interest in buying your standing timber. Buyers are making purchase offers or telling you what they'd like to pay. An independent forester who represents sellers can tell you the true value of your timber.

Species	Product	Wt. Avg	Measure
All Species	Biomass	\$ 1.94	per ton
Ash	Sawlogs	\$ 270.79	per 1000 board feet
Beech	Sawlogs	\$ 116.38	per 1000 board feet
Black Birch	Sawlogs	\$ 143.57	per 1000 board feet
Black Oak	Sawlogs	\$ 332.32	per 1000 board feet
Fuelwood	Firewood	\$ 24.01	per cord
Hard Maple	Sawlogs	\$ 389.25	per 1000 board feet
Hardwood	Pulpwood	\$ 7.43	per ton
Hardwood	Sawlogs	\$ 362.33	per 1000 board feet
Hemlock	Pulpwood	\$ 3.13	per ton
Hemlock	Sawlogs	\$ 88.25	per 1000 board feet
Norway Pine	Sawlogs	\$ 112.03	per 1000 board feet
Poplar	Sawlogs	\$ 97.99	per 1000 board feet
Red Oak	Sawlogs	\$ 406.84	per 1000 board feet
Soft Maple	Sawlogs	\$ 261.23	per 1000 board feet
Spruce/fir	Sawlogs	\$ 195.97	per 1000 board feet
White Oak	Sawlogs	\$ 248.47	per 1000 board feet
White Pine	Pulpwood	\$ 1.78	per ton
White Pine	Sawlogs	\$ 246.91	per 1000 board feet
Yellow Birch	Sawlogs	\$ 217.00	per 1000 board feet

Some of you may be wondering why we are hesitant to give out the expected prices of wood. First is timber and land is too variable to lend itself to wide average prices. Second I recently someone with a woodlot called looking for a referral to a logger. He got upset I wouldn't give him a name. I said to him, "If you strike a deal and latter find it wasn't a good deal, I don't want to have been any part of that."

A Thankful Goodbye

In the past, I have written about what circumstances brought me to the field of forestry, and ultimately to Southern Maine Forestry Services. During my time here I have grown exponentially as a forester. My coworkers have become mentors and lifelong friends. The foresters here at Southern Maine Forestry Services have taught me countless lessons throughout my time. How to put the client's interests first, harvest administration, and proper silviculture, just to name a few. As I move on, these lessons will not be forgotten. I cannot thank Southern Maine Forestry Services enough for the opportunity to learn and grow as a forester.

I have had the opportunity to meet and work with many different people throughout my time. I always enjoy meeting new landowners and doing my best to reach their individual goals. It would not be possible to meet landowner goals without a good group of logging contractors. During my time, I have had the pleasure of working with several excellent contractors. As I move forward to build my own business closer to home, I plan to implement the same passion and ethics that I have learned during my time here. I am fortunate to have been trained by a great group of professionals at Southern Maine Forestry Services. Thank you to my coworkers, the contractors, and the landowners for helping shape me into the forester I am today.

Aiden Heikkinen

Wanted: Forest Technician/Forester

We are sorry to see Aiden leave, but fully understand the call and excitement of starting one's own business.

That said, our plate is full and we are in need of another person on our staff.

At this time, the workload would be largely technical in nature: Invasive species control and release using herbicides, marking timber for harvest, cruising timber, and boundary line maintenance are examples of the tasks a potential hire would be expected to complete.

While in immediate need, we will be looking for the right person for the job. Training in forestry to at least the Associate Degree level is desirable. An interested candidate should buy into our company culture and vision. Our client's needs and goals are always our top priority, and we serve our clients with a fiduciary duty. You should share that ethic. We expect excellent work from ourselves and the contractors who work on our client's lands. You should be interested in working hard, and expect those same standards of yourself. Finally, we are unapologetic forest geeks. We love the forests that are our workplace. We are passionate about creating conditions that grow large, high-quality trees. And when the time comes, we enjoy selling those trees to our client's best advantage and supervising high quality harvesting contractors. In short, we practice forestry as if the lands that we manage were our own.

We would also entertain taking on a more experienced forester. Our company's organization is similar to a law practice, but with titles of intern forester, forester, senior forester rather than associate, junior partner, and partner. If you like the thought of running your own practice, but would like to develop it within the support system of an established firm, this might be for you.

If you are interested in joining a team with this vision, by all means send us a resume or letter of introduction.

June 1st, 2023

Catherine E. Pendergast
35 State House Station
Augusta, ME 04333-0035

To whom it may concern,

The purpose of this letter is to make comments regarding the proposed changes to the Maine forestry licensing process Chapter 70 and 70a as well as the Maine forester code of ethics Chapter 100. I disagree with the proposed changes to both Chapter 70, 70A, and 100 and feel there is an underlying bias embedded in most of the proposed changes. There are many ways to conduct forestry business in this state, why are we trying to penalize a particular group of individuals because of their business structure? Ethics begin and end with the individual, the business model in which they chose to provide services for does not matter. Unethical behavior can occur in either a procurement or consulting profession. There are ways to take advantage of clients with any method of compensation, there are bad apples in every industry. It seems more sensible for the forestry board to address the bad apples, than paint a broad brush over most of the industry with the proposed changes.

The proposed changes seem like an attempt to limit competition, reduce the number of foresters, and an attempt to downplay the competency of foresters by using specific licensing titles. It seems to be based upon the highly false assumption that foresters with a purchasing interest in forest products do not act in the best interest of clients and suppliers. It portrays foresters with a purchase interest in forest products to view timber harvests as a one-time event and a method to take advantage of clients. I have provided services for numerous clients with a purchasing interest in their forest products it comes with great pride to command higher prices from mills based on the ability to negotiate with a collective bargaining power. However, this is not to be misinterpreted as entering an agreement to sell forest products to exclusively one mill. It comes with an even greater amount of pride to be able to pass on that added financial value to clients. Most consulting foresters don't even market the wood they manage and sell, they rely on logging contractors to do so for them. How are they assured that they are getting the best price for their clients?

Stumpage/procurement, landowner assistance, and consulting forestry business models are all client-based businesses. A successful client-based business relies on the ability to demonstrate the best interest in clients. No forester wants to have a client talk with a neighbor, friend, colleague, competitor, etc. and find out they have been taken advantage of or could have been more success elsewhere. It is false to assume that because a forester works in a procurement or landowner assistance business model, that they do not care about their client base. At the end of the day, we are all trying to meet landowner objectives, meet state law, and generate maximum revenue for our clients. It is false to say that some categories are better than others in this regard.

Additionally, I do not understand how there is no anticipated fiscal fallout from the proposed regulations as clearly spelled out in the rule making document. The proposed changes are clearly targeting a certain business group in which could face business decline. Competition among all forestry business models is highly welcomed as it pushes us all to be our best and provide the best services and return the highest revenue for all our clients. But to squander a certain group of businesses is inherently wrong. Again, ethics are a personal matter that should be dealt with at an individual level, not at an industry wide level.

Best Regards,

Matt McCaslin
LF #4142

PROPOSED RULES

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 70: QUALIFICATIONS FOR FORESTER LICENSE

Summary: This chapter sets forth the education, experience, and examination requirements for licensure as a forester.

1. **Education**

An applicant is required to either have a forestry degree or 60 contact hours of supplemental forestry education. The requirements for a qualifying forestry degree and the requirements for qualifying supplemental forestry education are set forth in Chapter 40, *Qualifications for Intern Forester License*.

2. **Forestry experience**

An applicant is required to demonstrate experience in the following four subject areas. Each of the four subject areas must be represented in the applicant's work history.

1. **Forest Biology** – including but not limited to tree growth, species identification, forest ecology, wildlife and fish ecology and habitat manipulation, tree disease and insect problems, silviculture, soils and water relationships, and fire ecology.
2. **Forest Resources Measurement** – including but not limited to basic surveying, area determination, sample design and analysis, measurements of trees and forest products, and photo interpretation and mapping.
3. **Forest Resource Management and Harvesting** – including but not limited to multiple-use principles, road design and construction, harvest layout, harvesting methods, environmental protection, marketing and utilization standards, stand analysis and prescriptions, forest and wildlife habitat management, recreation management, urban forestry, fire, insect and disease protection, and financial management.
4. **Forest Resource Policy and Administration** – including but not limited to state environmental and forest practice laws, boundary and trespass laws, contract and sale administration, forest taxation, and forest economics.

3. **Forester examination**

The examination for a forester license is a two-part examination. Part 1 is an examination that tests the applicant's knowledge of Maine forestry practices, laws, rules and policies. Part 2 is an examination approved by the board that tests the applicant's knowledge of forestry principles.

4. **Pathways to forester licensure**

1. **Lawful forestry experience as a licensed intern forester**

A. An applicant must have obtained lawful forestry experience under one of the following methods:

- (1) An applicant with a bachelor's degree or higher and 24 months of forestry experience as a licensed intern forester (including forestry experience of up to 12 months earned as an unlicensed person under the supervision of a forester registered with the board obtained after the applicant's junior year of the degree program and prior to graduation), and who passes Part 1 of the forester examination, may qualify for a forester license. The examination may be taken prior to completion of the internship.
- (2) An applicant with an associate's degree and 48 months of forestry experience as a licensed intern forester (including forestry experience of up to 12 months earned as an unlicensed person under the supervision of a forester registered with the board obtained after the applicant's first year of the degree program and prior to graduation), and who passes Part 1 of the forester examination, may qualify for a forester license. The examination may be taken prior to completion of the internship.
- (3) An applicant who obtained an intern forester license through the variance pathway and earned 48 months of experience as a licensed intern forester, and who passes Parts 1 and 2 of the examination, may qualify for a forester license. Completion of the 48 months of experience as an intern forester is a prerequisite to qualifying for the examination.

B. **Full-time equivalency**

The forestry internship is expected to be a full-time experience. Part-time experience is acceptable, but must accumulate to the full-time equivalent of the 48-month or 24-month internship required by 32 MRS §5515(3)(A) or (B), as the case may be. Full-time equivalency shall also apply to those applicants in a degree program who earn forestry experience toward the internship requirement prior to the issuance of an intern forester license pursuant to 32 MRS §5515(3)(A)(1) and (B)(1).

C. **Log**

The intern forester shall maintain a log during the course of the internship. The log shall record the dates, employer, location, duties and subject area with respect to each assignment performed by the intern forester. The intern forester shall produce the log to the Board for inspection at any time. The log requirement shall also apply to those applicants in a degree program who earn forestry experience toward the internship requirement prior to the issuance of an intern forester license pursuant to 32 MRS § 5515(3)(A)(1) and (B)(1).

D. Completion of internship

Upon completion of the internship and payment of the applicable fee, the intern forester may apply for licensure as a forester on forms provided by the Board.

E. Sponsors

(1) Guidance

All forestry work performed by an intern forester must be performed under the guidance of a forester who has agreed to sponsor the intern forester. Such guidance need not be day-to-day, direct personal supervision. However, the sponsor must have sufficiently detailed, current knowledge of the intern forester's work to enable the sponsor to:

- (a) Adequately evaluate the intern forester's performance on an ongoing basis; and
- (b) Submit the reference at the conclusion of the internship required by 32 MRS §5515(4).

(2) Replacement sponsor

If a forester ceases to serve as sponsor without arranging for a replacement, an intern forester working under the guidance of that forester must arrange for a replacement within 30 days of the sponsor's resignation or unavailability. No work performed by an intern forester after 30 days following the resignation or unavailability of the sponsor will be recognized as part of the internship unless and until a replacement sponsor is obtained. The intern must immediately notify the board of the name and address of the replacement sponsor.

Notwithstanding anything in this subsection to the contrary, the intern forester may not endorse plans, maps and reports unless the document has been actually reviewed by the sponsor of the intern forester prior to endorsement.

2. Lawful forestry experience in another jurisdiction

- A. An applicant with a bachelor's degree or higher and 24 months of lawful forestry experience in another jurisdiction within 6 years preceding the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- B. An applicant with an associate's degree and 48 months of lawful forestry experience in another jurisdiction within 6 years of the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- C. An applicant with 60 hours of supplemental forestry education, 4 years of lawful forestry experience within 10 years preceding the date of application, and

24 months of lawful forestry experience in another jurisdiction within the 6 year period preceding the date of application, may qualify for a forester license. The applicant is required to pass Parts 1 and 2 of the examination. Completion of the forestry experience is a prerequisite to qualifying for the examination.

3. Lawful forestry experience as an employee of the federal government

- A. An applicant with a bachelor's degree or higher and 24 months of lawful forestry experience as an employee of the federal government within 6 years preceding the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- B. An applicant with an associate's degree and 48 months of lawful forestry experience as an employee of the federal government within 6 years of the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- C. An applicant with 60 hours of supplemental forestry education, 4 years of lawful forestry experience within 10 years preceding the date of application, and 24 months of lawful forestry experience as an employee of the federal government within the 6 year period preceding the date of application, may qualify for a forester license. The applicant is required to pass Parts 1 and 2 of the examination. Completion of the forestry experience is a prerequisite to qualifying for the examination.

4. Licensed in another jurisdiction

An applicant licensed in good standing in another jurisdiction is exempted from the education and forestry experience qualifications set forth in this chapter. The applicant is required to pass Parts 1 and 2 of the examination.

STATUTORY AUTHORITY: 32 M.R.S. §§ 5506(2), 5515(3), (5), (5-A), (6), (10) and 5516(2)

EFFECTIVE DATE:

~~January 1, 1991~~ — ~~part of Chapter 5, "General Requirements for Licensure"~~

~~AMENDED:~~

~~February 9, 1991~~
~~May 23, 1994~~
~~May 12, 1996~~

~~EFFECTIVE DATE (ELECTRONIC CONVERSION):~~

~~October 23, 1996~~

~~REPEALED AND REPLACED:~~

~~February 16, 2002~~ — ~~as Chapter 70, "Licensure as Forester"~~

~~REPEALED AND REPLACED:~~

~~April 1, 2015~~ — ~~filing 2015-037, titled "Qualifications for Forester License"~~

Chapter 70-A: LICENSURE BY ENDORSEMENT

Summary: This Chapter outlines the process to issue a license by endorsement to an applicant who presents proof of licensure by another jurisdiction of the United States as long as the other jurisdiction maintains substantially equivalent license requirements.

1. LICENSURE BY ENDORSEMENT

An individual applying for a license by endorsement must meet the following requirements.

1. License From Another U.S. Jurisdiction

An applicant licensed by another U.S. jurisdiction who seeks licensure in Maine pursuant to 10 M.R.S. § 8003-H must:

- A. Hold a valid, active forester license issued by another jurisdiction of the United States that maintains substantially equivalent license requirements for the type of license sought;
- B. Pass the jurisprudence examination as set forth in Section 1(3) of this Chapter;
- C. Submit a completed application form; and
- C. Submit any fee as required by Chapter 10 of the rules of the Office of Professional and Occupational Regulation.

2. Substantially Equivalent License Requirements

“Substantially equivalent license requirements” means that the jurisdiction maintains a pathway for initial licensure that at a minimum requires the education and experience as set forth in Section 2(1)(A)-(B).

1. Forester.

- A. Associate’s Degree and Experience.
 - i. An associate’s degree in forestry or forest technology from an program accredited by the Society of American Foresters or the equivalent curriculum;and

ii. A minimum of four years of full time forestry experience under the supervision of a licensed forester or that otherwise demonstrates the applicant is competent to practice forestry.

B. Bachelor's Degree and Experience.

i. A bachelor's degree or higher in forestry or forest technology from an program accredited by the Society of American Foresters or the equivalent curriculum;

and

ii. A minimum of two years of full time forestry experience under the supervision of a licensed forester or that otherwise demonstrates the applicant is competent to practice forestry.

3. **Jurisprudence Examination**

All applicants seeking licensure by endorsement pursuant to this chapter must pass Part 1 of the forester license examination set forth in Chapter 70, Section 3 of Board rules.

4. **Proof of Good Standing in All Jurisdictions**

An applicant must be in good standing in all jurisdictions in which the applicant holds or has held a license. For purposes of this subsection, "good standing" means that the applicant does not have a complaint, allegation or investigation pending, does not have a license that is suspended or subject to practice restrictions, and has never surrendered a license or had a license revoked.

STATUTORY AUTHORITY: 32 M.R.S. §§ 5506, 5516(D); 10 M.R.S. § 8003-H

EFFECTIVE DATE:

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. “Client” means person or entity who has entered into an agreement for services with a forester or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:
 - A. Procurement, which means purchasing forest products that have commercial value;
 - B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
 - C. Public services, which means providing services to a government entity; or

- D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.
 - 5. Management. “Management” means the planning and implementation of proven and accepted scientific forestry methods, appropriate to the specific forest conditions, to achieve a desired or improved result compared to current conditions.
 - 6. Stumpage. “Stumpage” means the value of standing trees.
 - 7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.
 - 8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.
3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:

- A. To whom the forester owes a fiduciary duty with respect to the agreement;
- B. Whether the forester is procuring or soliciting forest products that have a commercial value;
- C. Any financial or purchase interest the forester or the forester’s employer has in the land or timber including the forester’s or forester’s employer’s interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and

- D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

- A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must

- (1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.

- B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:

- (1) The nature of the conflict;
- (2) The role in which the forester proposes to provide the services (*e.g.*, procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (3) The person or entity paying for the services and how payments are to be made; and
- (4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

- C. Arising from timber appraisals. In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

- (1) Disclosures as described in this chapter as applicable, specifically:
 - (a) To whom the forester owes a fiduciary duty with respect to the agreement;
 - (b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
 - (c) Any financial or purchase interest the forester or the forester's employer has in the land or timber including the forester's or

forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester;

(d) Any contracts to sell forest products exclusively to a particular market, mill, or purchaser;

(e) The extent of work, setting forth with reasonable certainty the scope of the project;

(f) The specific location of the land upon which the work is to be completed;

(g) The estimated cost consistent with the provisions of subsection 8 below; and

(h) An estimated completion schedule.

7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

9. Client Funds

A forester who has custody of client funds must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must

retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

A forester must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

11. Client Objectives

A forester must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

A forester must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action and the forester will work cooperatively with other professionals.

14. Endorsement of Document

A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose "not a legal survey."

15. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event must a forester participate in or condone any violation of any laws.

4. Obligations to the Public

1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester must uphold this Code of Ethics above the demands of employment.

4. Comply with Laws

A forester must at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

5. Advertising

A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but may not include references to past clients served without their prior written consent.

6. Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE: