



# Oregon

Tina Kotek, Governor

## Government Ethics Commission

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November 1, 2024

Sent via email

Lisa Gaines, Director  
Institute for Natural Resources  
Oregon State University  
234 Strand Agricultural Hall  
Corvallis, OR 97331

Re: Commission Advisory Opinion 24-347A

Dear Ms. Gaines:

At its November 1, 2024 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to the request set forth in your request to the Commission dated June 27, 2024. The Commission extended the period for this commission advisory opinion by an additional 60 days, as authorized by ORS 244.280(2).

### **OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 24-347A**

#### **SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:**

The following information is derived from your advisory opinion request, as well as from information conveyed in conversations with Commission staff. Additional information was gathered from the websites for the Oregon Department of Forestry, the Adaptive Management Program Committee, and the Independent Research & Science Team.

The Department of Forestry's Adaptive Management Program has a mission to determine if forestry practices are meeting their goals to protect natural resources through a science-based and transparent process. The Adaptive Management Program provides regulatory certainty by establishing a transparent mechanism for scientific testing of rules, and then changing them if needed. This testing is accomplished by the coordinated efforts of two advisory committees: the Adaptive Management Program Committee (AMPC) and the Independent Research & Science Team (IRST). The AMPC guides the overall policy and process, and the IRST coordinates research in support of policy decisions. The IRST reports the findings of its research to the AMPC and the Board, and the AMPC makes recommendations on any proposed rule changes to the Board which is the approval authority for those proposed changes.

The AMPC guides the adaptive management process. It sets the research agenda for the IRST and develops the preliminary research questions that the IRST must address. When the IRST completes its reports, the AMPC assesses its scientific findings. The AMPC then submits the IRST's reports to the Board and assists the Board in the ongoing process of identifying and modifying resource objectives. [ORS 527.732(7); OAR 629-603-0200 and 629-603-0300].

The IRST is comprised of a group of at least five scientists appointed by the Board to provide science-based recommendations and technical information to address research questions and assist the Board in determining when it is necessary or advisable to adjust rules, guidance, and training programs to achieve the biological goals and objectives. The IRST became operational in December 2023 and is housed in the Institute for Natural Resources at Oregon State University. The IRST meets once per month, following Oregon's Public Meetings Law.

Per ORS 527.733(7), the IRST shall:

- (a) Conduct or oversee research requested by the Adaptive Management Program Committee.
- (b) Report to the Board and the AMPC on the findings of the research, including findings concerning the magnitude of impacts on species of concern, the urgency or needed action and the degree of scientific confidence or uncertainty behind the findings.

Three times a year, the AMPC sends research questions packages to the IRST. The initial research questions packages this year are: roads, Eastern steep slopes, and amphibians. The research questions packages initially ask the IRST to refine the preliminary research questions into finalized research questions, with the intent that those finalized research questions will be addressed via studies. The IRST must then develop scoping proposals, budget, and timeline for addressing the finalized research questions. It then conducts or oversees the research needed to address the finalized research questions and drafts a report to the Board and the AMPC. [ORS 527.733(7); OAR 629-603-0200 and 629-603-0400].

The IRST will pursue its work through various avenues, including but not limited to: literature review, field monitoring, original research, and commissioned studies. In performing its functions, the members of the IRST engage in a great deal of analysis, writing and editing. Given the complexity and breadth of these tasks, the work cannot be completed during the IRST meetings; rather, much of this work takes place between the monthly IRST meetings. You state that without an efficient means for members to communicate and collaborate between monthly meetings, it is unclear how the IRST can function and meet the deadlines for deliverables.

Your opinion request identifies the issue facing the IRST members: how to conduct the IRST's work, with each IRST member contributing their expertise to the written deliverables, while still operating within the requirements of the Public Meetings Law. The IRST understands the Public Meetings Law prevents the members from working collaboratively on documents outside of public meetings, but you point out that this restriction severely limits the ability of the IRST members to produce the many complex documents required to meet IRST mandates.

### **LEGAL BACKGROUND:**

The policy underlying the Public Meetings Law is set forth in ORS 192.620: "The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.705 that decisions of governing bodies be arrived at openly."

ORS 192.610(1) defines "convening" as "gathering in a physical location;" "using electronic, video or telephonic technology to be able to communicate contemporaneously among participants;" "using serial electronic written communication among participants;" or "using an intermediary to communicate among participants."

ORS 192.610(2) defines "decision" as "any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present."

ORS 192.610(3) defines "deliberation" as "discussion or communication that is part of a decision-making process."

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ORS 192.610(5) defines a "governing body" as "the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration."

ORS 192.610(6) defines a "public body" as "the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof."

ORS 192.610(7)(a) defines a "meeting" as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter."

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OAR 199-050-0005 includes the following definitions:

(1) “Communicate” means the act of a person expressing or transmitting information to another person through verbal, non-verbal, written, or electronic means. Non-verbal means include gestures, such as thumbs-up and thumbs-down, as well as sign language.

(2) “Communication” means the expression or transmission of information from one person to another through verbal, non-verbal, written, or electronic means. Non-verbal means include gestures, such as thumbs-up and thumbs-down, as well as sign language.

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(4) “Decision-making process” means the process a governing body engages in to make a decision, such as: (a) identifying or selecting the nature of the decision to be made; (b) gathering information related to the decision to be made; (c) identifying and assessing alternatives; (d) weighing information; and (e) making a decision.

(5) “Deliberate” means to engage in deliberations.

(6) “Discussion” means the consideration or debate of a matter.

(7) “Intermediary” means a person who is used to facilitate communications among members of a governing body about a matter subject to deliberation or decision by the governing body, by sharing information received from a member or members of the governing body with other members of the governing body. The term “intermediary” can include a member of the governing body.

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(9) “Quorum” means the minimum number of members of a governing body required to legally transact business. In the absence of a statute, ordinance, rule, charter, or other enactment specifically establishing the number of members constituting a quorum, a quorum is a majority of the voting members of the governing body.

(10) “Serial electronic written communications” means a series of successive or sequential communications among members of a governing body using written electronic means, including emails, texts, social media, and other electronic applications that communicate the written word.

OAR 199-050-0010(1) clarifies that the Public Meetings Law applies to the following types of governing bodies: (a) Decision-Making Bodies (defined as a body with the authority to make decisions for the public body on policy or administration. A body meetings this standard if its decision-making authority includes the power to exercise governmental power and act on behalf of the public body.) and (b) Advisory Bodies (defined as a body with authority to make recommendations to a public body on policy or administration).

ORS 192.630(1) requires that all meetings of a governing body of a public body “shall be open to the public and all persons shall be permitted to attend any meeting” except as otherwise provided in the Public Meetings Law. ORS 192.630(2) expressly prohibits a quorum of a governing body from meeting in private “for the purpose of deciding on or deliberating toward a decision on any matter” except as otherwise provided in the Public Meetings Law.

OAR 199-050-0020(1) prohibits a quorum of the members of a governing body from, “outside of a meeting conducted in compliance with the Public Meetings Law, us[ing] a series of communications of any kind, directly or through intermediaries, for the purpose of deliberating or deciding on any matter that is within the jurisdiction of the governing body.” Subsection (2) clarifies that the prohibition in subsection (1) applies to “any one or a combination of the following methods of communication: (a) [i]n-person; (b) [t]elephone calls; (c) [v]ideos, videoconferencing, or electronic video applications; (d) [w]ritten communications, including electronic written communications, such as email, texts, and other electronic applications; (e) [u]se of one or more intermediaries to convey information among members; and (f) [a]ny other means of conveying information.”

ORS 192.640 requires that the governing body shall provide for and give public notice to the public, interested persons, and news media who have requested notice, of all meetings. OAR 199-050-0040 provides additional clarification regarding the content and timing of the meeting notices.

ORS 192.650(1) requires that the governing body shall provide for the recording of or taking of written minutes for all its meetings. The minutes or recording must “give a true reflection of the matters discussed at the meeting and the views of the participants.” The minutes or recording must identify: “(a) [a]ll members of the governing body present; (b) [a]ll motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (c) [t]he results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name; (d) [t]he substance of any discussion on any matter; and (e) [s]ubject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.”

## **QUESTIONS ASKED:**

You have requested the Commission's opinion on how the IRST members can contribute to the IRST's written documents and deliverables, during the time between the IRST's monthly meetings, without violating the Public Meetings Law.

You have proposed one possible solution that may achieve the intent of the Public Meetings Law while still giving IRST members the opportunity to collaborate on written documents. This solution would be to allow IRST members to simultaneously edit a document in an online space in which the public can view and observe edits and comments that IRST members make as the document is in a draft stage. In a public online site, the IRST could identify which edits were accepted and which were not, creating space for IRST members to debate and explore, thus strengthening overall IRST products.

You indicate that you welcome the Commission's opinion on this proposed solution and any guidance the Commission might offer that would allow the IRST to honor its commitment to the Public Meetings Law and effectively and efficiently accomplish its important work.

## **ANSWERS AND ANALYSIS:**

Under ORS 527.733, the IRST "is established as an advisory committee to the State Board of Forestry." The IRST is required to "conduct or oversee research" requested by the AMPC and report to the Board of Forestry and AMPC "on the findings of the research, including findings concerning the magnitude of impacts on species of concern, the urgency of needed action and the degree of scientific confidence or uncertainty behind the findings." The IRST is an advisory body with the authority to provide recommendations to the Board on policy or administration, and therefore, is a governing body of a public body under ORS 192.610 and OAR 199-050-0010(1). Accordingly, the IRST must comply with the Public Meetings Law, including the provision in ORS 192.630(2) prohibiting a quorum of the governing body from meeting in private in order to deliberate or decide on any matter.

You state that the IRST holds monthly public meetings in compliance with the Public Meetings Law, but that the work of the IRST cannot be fully completed during those monthly meetings. You state that the written documents on the research questions packages require significant drafting and editing, and benefit from the collaboration and coordination of each of the IRST members. For the IRST to complete the work assigned to it and meet its required deadlines, you state that the IRST members must work on the written documents and deliverables during the time between the IRST's regularly scheduled monthly public meetings.



Before we proceed with your question, we note that if the IRST cannot complete all of its work during its regularly scheduled monthly meetings, the IRST may schedule additional public meetings, in the same manner it conducts its regular monthly meetings, in sufficient numbers for the IRST to complete its work. We also note that if less than a quorum of IRST members are working on editing documents outside of a public meeting, that alone does not constitute a Public Meetings Law violation.

However, if a quorum of the IRST is sharing comments and/or work product either in person, through contemporaneous electronic, video, or telephonic communication, through serial electronic written communication, or through an intermediary, such actions would violate the Public Meetings Law. [ORS 192.610; OAR 199-050-0020]

In other words, if a quorum of the IRST members work on the written documents for the research packages during the period between the IRST's regularly scheduled public meetings, they are convening a meeting, as defined in ORS 192.610, for the purpose of deliberating on matters that are part of the IRST's decision-making process, as defined in OAR 199-050-0005(4), and such meetings must be held in compliance with the Public Meetings Law.

Now, turning to your question, you ask is whether it is lawful under the Public Meetings Law for members of the IRST to hold a meeting in a virtual setting to facilitate collaborative drafting and editing while allowing the public to view and observe the edits and comments that the IRST members make. Under your proposal, you state that IRST members, and members of the public, could identify and track which edits were accepted and which were not, and could follow the comments and responses made by the IRST members as they deliberate on the documents being drafted or edited. In essence, you are asking whether a public meeting could be held through a combination of contemporaneous electronic communication and serial electronic written communication.

The answer to your question is yes that it is possible for the IRST to lawfully hold a public meeting in a virtual setting to facilitate collaborative drafting and editing while allowing the public to view and observe the edits and comments that the IRST members make, provided the IRST complies with the other provisions of the Public Meetings Law.

To do so, you would first have to notice each meeting during which you are virtually collaborating and/or engaging in serial electronic communications, as required by ORS 192.630. [ORS 192.630; OAR 199-050-0040]. Each meeting notice must provide the date, time, location of the meeting, and a list of the principal subjects anticipated to be considered at the virtual meeting. [ORS 192.640; OAR 199-050-0040]. Moreover, ORS 192.630 and OAR 199-050-0050 requires that the IRST allow the public to "attend" such virtual meetings. Similarly, ORS 192.670 requires you to provide at least one place or one electronic means for the public to attend the virtual meeting. [ORS 192.670; OAR

199-050-0050]. You would also have to keep meeting minutes, including the substance of discussions conducted and record the votes of each individual by name, among other requirements. [ORS 192.650; OAR 199-050-0055 and 0060]

Because the Public Meetings Law requires members of the public to be able to “attend” the meeting, any contemporaneous virtual gatherings would need to be available for the public to attend virtually in real-time. Any serial written communications would also need to be available to the public to view in real-time. If the IRST complies with these requirements, as well as OAR 199-050-0040 through 0060 related to notice, public attendance, public votes, and meeting minutes noted above, the IRST may lawfully conduct public meetings held through a combination of contemporaneous electronic communication and serial electronic written communication.

Your question appears to be a general question and not based upon specific facts. If you want additional advice about a specific proposal, we suggest that you work with your legal counsel to hone the details of your proposed public meeting and resubmit with specific details for the Commission to consider.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280 and House Bill 4117 (2024). EXCEPT AS OTHERWISE PROVIDED IN ORS CHAPTER 244, THE COMMISSION MAY NOT IMPOSE A PENALTY UNDER ORS 244.350 OR 244.360 FOR ANY GOOD FAITH ACTION OR TRANSACTION TAKEN IN RELIANCE ON THIS ADVISORY OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE COMMISSION MAY ALSO APPLY.**

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 1st day of November, 2024.

*David M. Fiskum*

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David Fiskum, Acting Chair  
Oregon Government Ethics Commission

*Sean Brady*

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Sean T. Brady, Senior Assistant Attorney General