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## **A Human Rights Assessment of Forest Capital Partners' Proposed Aerial Spray Adjacent to Waldport, Oregon**

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**Matter of Concern:**

Herbicide sprays over areas immediately adjacent to neighborhoods within the Waldport city limits.

**Date:**

April 2, 2009

**Copies:**

Oregon Dept of Agriculture, Katy Coba, Director  
Oregon Attorney General John Kroger  
Gail Shibley, Admin, Environmental Public Health  
Lincoln County Board of Commissioners  
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## Purpose of This Report

The purpose of this Report is to provide Forest Capital Partners (FCP), and Community Rejecting Aerial Spraying of Herbicides (CRASH) with a list of formal human rights norms of concern associated with FCP's proposed aerial herbicide spray near Waldport, Oregon, to outline FCP's potential liabilities and to describe pathways FCP can take to reduce those liabilities.

## Facts

Forest Capital Partners has expressed its intention to aerially apply herbicide formulations to a 120-acre logging site on the east bank of Lint Creek Slough for the purpose of controlling woody brush following a clear cut. The area, designated by FCP as the "Nelson" parcel, is located at Township 13S, Range 11W, Section 29. Spraying is planned for the summer of 2009. Post-spray slash piles would be burned in the fall of 2009. Replanting would occur in the fall of 2009 or winter of 2010, to be followed by another herbicide application in the spring of 2010 for weed control.

FCP does not identify the specific herbicide formulations that will be used but says the formulations will be selected from a list which includes the following products currently in use (though others may be added in the future).

Active Ingredient	Product Name	Use
Glyphosate	Foresters, Accord, Roundup	Site Prep, Dormant Release, Woody Release
Imazapyr	Chopper, Arsenal	Site Prep, Woody Release
Metsulfuron methyl	Patriot, Escort	Site Prep, Roadside Spraying
Sulfometuron	Oust, SFM	Site Prep, Dormant Release
2, 4, D	LV 6	Dormant Release, Woody Release
Hexazinone	Velpar	Dormant Release
Atrazine	Atrazine, AAtrex	Dormant Release
Triclopyr	Garlon	Site Prep, Woody Release, Dormant Release
Clopyralid	Transline	Dormant Release, Woody Release

FCP indicates that "There are quite a few other herbicides with various product names, and the industry is always evolving and adding new products." Herbicides to be used may also be selected from these other unnamed products.

CRASH is concerned about residents of certain Waldport neighborhoods located within 1/3 mile of the Lint Creek valley spray area, three Waldport schools which are located within one mile of the spray site, a number of private properties which

immediately about the spray area, and about impacts on the Waldport water treatment plant which is located immediately adjacent to the spray site.

The Port of Alsea, with assistance from the National Park Service, has designated Lint Slough as part of the Alsea River Water Trail. A portion of this canoe trail and recreation area is located within FCP's proposed spray zone. Waldport High School regularly uses the Lint Slough area as an outdoor classroom for students.

## **Issues**

Community Rejecting Aerial Spraying of Herbicides (CRASH) is concerned about potentially serious adverse acute health effects resulting from exposure to the spray, spray drift and spray residues. They are concerned about potential long-term health effects that may result from acute or prolonged exposures to herbicide spray, drift and subsequent volatilization, as well as other impacts on the lives and property of citizens who live near, work near, visit or travel along routes adjacent to the proposed spray areas. They are also concerned about the proximity of sprays to Waldport schools and potential health impacts on children.

## Human Rights Norms of Concern

Environmental concerns often directly impact human rights, and part of the purpose of this Report is to help FCP and CRASH appreciate the human rights dimensions of FCP's proposed spray program. As Daniel Taillant, Director of the Argentine-based Center for Human Rights and the Environment says, "Everything and anything that influences the environment directly influences our human condition, and a violation of the environment is a violation of our human rights."<sup>1</sup>

Human rights standards are said to apply to individuals, not just to communities or majorities. This means that if even one or two persons' rights are violated, then human rights violations have occurred.<sup>2</sup> Some of the following rights are grounded in legal authority – ADA rights, rights in the Nuremberg Code, protections against chemical trespass, etc. But all of these rights, including those without grounding in domestic law, are recognized as grounded in moral authority.

Human rights standards are normally recognized as trumping other policy considerations; i.e. "right-holders are authorized to make special claims that ordinarily 'trump' utility, social policy, and other moral or political grounds for action."<sup>3</sup> Additionally, human rights norms are considered to represent a moral minimum for behavior of governments and non-state actors, a moral floor beneath which policy and state-regulated behaviors must not go.<sup>4</sup>

Listed below are 23 specific human rights norms that may have direct relevance to FCP's proposed aerial spray program. (This list does not include rights that may be protected by the US or Oregon constitutions or by state statutes.) These norms can be found articulated in several different human rights declarations, conventions, charters and other international instruments, including:

- *Universal Declaration of Human Rights (UDHR)*<sup>5</sup>
- *International Covenant on Civil and Political Rights (CCPR)*<sup>6</sup>
- *International Covenant on Economic, Social and Cultural Rights (CESCR)*<sup>7</sup>
- *Convention on the Rights of the Child (1990) (CRC)*<sup>8</sup>
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*<sup>9</sup>
- *Rio Declaration on Environment and Development*
- *The World Health Organization Declaration of Alma Ata*<sup>10</sup>
- *The Nuremberg Code*<sup>11</sup>

The first three documents above, *UDHR*, *CCPR* and *CESCR*, are usually considered primary and are often referred to as the international bill of human rights, so in the list below they are given a certain pride of place when identifying

documents in which specific rights are articulated.<sup>12</sup>

## 1. Right to life, liberty and security of person.

### **Articulated in**

*UDHR* Article 3

“Everyone has the right to life, liberty and security of person.”

*CCPR* Article 9

“Everyone has the right to liberty and security of person.”

*UDHR* Article 13

“(1) Everyone has the right to freedom of movement and residence within the borders of each State.”

### **What this right entails**

This is the right to be safe and secure in one’s person.

The right to liberty entails the freedom to move about within the boundaries of one’s state.

### **Reasons for concern**

- Documented reports of adverse physical health effects associated with aerial spray exposures.
- Potential adverse health effects attributable to exposures to aerial sprays, drift and residues include respiratory, cardiovascular, dermal and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
- If any citizens consider their freedom of movement to be restricted due to their need to avoid aerial sprays, drift and residues, particularly if those restrictions result in documentable economic loss, that would be a concern.
- If any citizens consider that threat of injury from spray exposures will require them to move out of the area, particularly if that would result in documentable economic loss, that would be a concern.

## 2. Right to privacy and home

### **Articulated in**

*UDHR* Article 12

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence....”

*CCPR* Article 17

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”

### **What this right entails**

This is the right to be secure in one’s home , to be able to enjoy the use of one’s property and to not have one’s property devalued as a result of a state’s failure to adequately

regulate.

“The European Human Rights Court noted that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”<sup>13</sup>

This means that adverse health effects are not the only kind of adverse effects that violate the right to one’s property and home.

#### **Reasons for concern**

- Discomfort experienced at home, or a compromised ability to enjoy one’s home and property due to exposure to aerial sprays, drift or residues, even without adverse health effects.
- Potential adverse physical health effects related to sprays, drift or residues and suffered in the home.

### 3. The family’s right to protection

#### **Articulated in**

*CCPR* Article 23

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

*CESCR* Article 10

“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”

#### **What this right entails**

This means that the health, strength, well-being and social integrity of families must be protected and supported; if these become compromised as a result of sprays or the spray program then this right has been violated.

#### **Reasons for concern**

- Adverse physical or economic effects on families attributable to sprays, drift or residues.
- If the health or well being of families, including economic well being, have been adversely affected as a result of the sprays, that would be a concern.

### 4. Right to property

#### **Articulated in**

*UDHR* Article 17

“No one shall be arbitrarily deprived of his property.”

#### **What this right entails**

See number 2 above regarding the right to privacy and home.

### **Reasons for concern**

- Any adverse physical or economic impacts on property or property values attributable to sprays, drift or residues.
- If individuals, families or businesses have been forced to leave or sell their property due to sprays or the spray program, that would be a concern.
- If individuals' or families' ability to enjoy the use of their property has been compromised due to the spray program, that would be a concern.

## 5. Right to work

### **Articulated in**

#### *CESCR Article 6*

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

### **What this right entails**

This right refers to the right to work and, by extension, the right to be able to transport oneself to work without being made sick along the way.

### **Reasons for concern**

- Citizens who become unable to work because of disabilities resulting from exposure to sprays, drift or residues.
- Citizens who are unable to work because their place of work is located in or near the spray zone.
- Citizens who may be unable to transport themselves to work due to their need to avoid exposure to sprays, drift or residues.
- Workplaces that have been contaminated by the sprays enough that some workers are unable to perform their work or keep their jobs would be a concern.

## 6. Right to safe and healthy working conditions

### **Articulated in**

#### *CESCR Article 7*

"States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure...[s]afe and healthy working conditions"

### **What this right entails**

This entails the right to a safe and healthy work environment.

### **Reasons for concern**

- Adverse physical effects experienced in the workplace that are attributable to aerial sprays, drift or residues.
- Workplaces becoming less safe for some as a result of contamination by aerial sprays, drift or residues.

## 7. Motherhood and childhood's right to special care



### **Articulated in**

#### *UDHR Article 25*

“Motherhood and childhood are entitled to special care and assistance. All children...shall enjoy the same social protection.”

#### *CESCR Article 12 (section 2a)*

establishes the obligation of states party to this Covenant to take steps to make “provision for the reduction of the stillbirth-rate and...infant mortality and for the healthy development of the child.”

#### *CRC Article 27*

“1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

### **What this right entails**

This is the right of children and their mothers to be provided special care, protection and assistance. This means that both state and non-state actors have a positive duty to protect children and mothers from anything, including exposure to environmental toxics, that may compromise the child’s physical, mental, spiritual or social development.

### **Reasons for concern**

- Research indicates that children are at much greater risk than adults because of their increased biological susceptibility to adverse health effects from exposure to environmental toxics.
- Research indicates that fetuses and pregnant mothers are at risk for adverse effects from exposure to pesticides.
- If mothers, and mothers’ ability to be good caregivers for their children, are adversely affected by aerial sprays, that would be a concern.

## 8. Duty to protect the child (i.e., persons under age 18):

### **Articulated in**

#### *CRC Article 19*

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, [or] maltreatment...”

#### *CESCR Article ten (section three)*

“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.”<sup>14</sup>

### **What this right entails**

This is the child’s right to special protections, and the state’s duty to provide special protections, from infliction of harm, including harm that could result from unavoidable exposures to environmental toxics.

### **Reasons for concern**

- See above.

## 9. Right of the child to the highest standard of health

### **Articulated in**

*CRC* Article 24

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health.”

### **What this right entails**

This is the right of children to live in safe and healthy conditions, including safe and healthy environmental conditions, and not to have to undergo exposure to conditions that adversely affect health.

### **Reasons for concern**

- Activities that put children at increased risk of adverse health effects are a concern.
- Adverse health effects attributable to exposures to herbicide sprays, drift or residues can include respiratory, cardiovascular, dermal and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.

## 10. Right of all persons to the highest standard of health

### **Articulated in**

*CESCR* Article 12

“States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

### **What this right entails**

This is the right to live in conditions conducive to the highest standard of health.

### **Reasons for concern**

- Activities that put citizens at increased risk of adverse health effects are a concern.
- Adverse health effects attributable to exposures to sprays, drift or residues can include respiratory, cardiovascular, dermal and neurologic effects, as well as miscarriages and birth anomalies, particularly for pregnancies conceived or carried during periods of exposure.
- Adverse psychological health effects believed to be related to spray exposures are also of concern.

## 11. State’s duty to provide for the health of citizens

### **Articulated in**

The *Declaration of Alma-Ata*, Article V

“Governments have a responsibility for the health of their people which can be fulfilled only by the provision of health and social measures.”

### **What this right entails**

This more clearly reframes the right to health as a duty of a government to its citizens to provide for the health of its citizens.

**Reasons for concern**

- See above

12. State’s duty to provide for the health of citizens demands coordinated efforts of all sectors

**Articulated in**

*Declaration of Alma-Ata* Article VII

[Provision of health measures includes,] “in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors.”

**What this entails**

This article elucidates the meaning of “provision of health and social measures,” saying that a state’s duty to provide the highest standard of health for its citizens extends beyond just the health sectors of governments; it involves all other sectors as well, including the responsibility to see that the industrial, manufacturing and agricultural sectors are regulated in ways that are protective of citizens’ health.

**Reasons for concern**

- This article says that in addition to departments of health, all government departments, including departments of agriculture, forestry, transportation and other agencies that deal with chemicals and other health risks also have a positive duty to protect the health of citizens.

13. Right to a healthy environment

**Articulated in**

*Aarhus Convention* Preamble

“every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”

**What this right entails**

This Convention articulates both a right and a duty. The right is to live in an environment adequate to one’s health and well-being. The duty is to protect the environment so this right is respected.

**Reasons for concern**

- Aerial sprays, drift and residues that compromise the environment or cause conditions injurious to health, even if those conditions affect the health of some people more than others, are a concern.

#### 14. Duty to encourage school attendance

##### **Articulated in**

*CRC* Article 28, 1(e)

"[States Parties shall] Take measures to encourage regular attendance at schools."

##### **What this right entails**

If states are enjoined to take measures "to encourage regular attendance at schools," it follows that they are also required, *a fortiori*, to proscribe measures that make it difficult or impossible for students to attend school.

##### **Reasons for concern**

- Aerial sprays that prevent any students from attending school or being transported to school due to their need to avoid spray exposures are a concern.
- Aerial sprays that expose students to spray, drift or residues while waiting for school buses would be a concern.
- Aerial sprays occurring near enough to schools that some students are unable to attend or remain in school would be a concern.

#### 15. Right to education

##### **Articulated in**

*CESCR* Article 13 (section 1)

"States Parties to the present Covenant recognize the right of everyone to education."

##### **Reasons for concern**

- See #14 above.

#### 16. Right to effective remedy

##### **Articulated in**

*CCPR* Article 2(3)a

"Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity...."

##### **What this right entails**

"The legal obligation to offer restitution for injury is as old as the Code of Hammurabi, the first formal set of laws in history."<sup>15</sup> It is recognized both internationally and domestically that "one of the major, primordial functions of the law is to return the victims of an unjust act to their previous condition."<sup>16</sup>

"Effective remedy" means that by judicial action, monetary compensation or some other means any person whose rights have been unjustly violated will be restored as much as possible to their previous condition.

The right to effective remedy would be violated if, despite attempts to stop the proposed sprays using normal governmental methods and channels, the spray program continued.<sup>17</sup>

#### **Reasons for concern**

- The potential for being required to pay monetary compensation should citizens be adversely impacted by aerial sprays, drift or residues would be a concern.

### 17. Right to compensation

#### **Articulated in**

In 1985 the U.N. General Assembly spelled out the nature of indemnification in the Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power. This declaration insists that “victims are entitled to prompt redress for the harm that they have suffered’ and that offenders should ‘pay fair restitution to victims, their families and dependents.”<sup>18</sup>

#### **What this right entails**

“The basic moral law of every society asserts that a government [or private entity] which wrongly injures its own citizens must make them whole insofar as this is possible.”<sup>19</sup>

#### **Reasons for concern**

- Personal or business economic losses resulting from exposure to aerial sprays, drift or residues would be a concern.
- Any other losses that can be measured in economic terms would be a concern.

### 18. Right to know

#### **Articulated in**

The *Rio Declaration on Environment and Development* establishes citizens’ right to information about environmental toxics to which they may be exposed.

#### *Rio Declaration Principle 10*

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.”

#### *Aarhus Convention Article 1*

“each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters...”

#### **What this right entails**

This is the right of citizens to be provided full information about environmental issues so they can participate knowledgeably in decision-making about those issues. It entails the right to full disclosure of information about ingredients (both active and undisclosed “inert”

ingredients), about details of spray plans, planned effectiveness studies, Health Risk Assessments, Environmental Impact Reports, planned health effects monitoring, etc.

### **Reasons for concern**

- Despite manufacturers' claims that information about undisclosed ingredients is proprietary, precedents are emerging around the world in support of citizens' right to know the ingredients of chemical products to which they are exposed.
- The fact of spray drift can be significant, particularly with aerial applications. The problem of drift, residues and subsequent vaporization exacerbates human rights concerns primarily because of the larger number of persons who are impacted by sprays and who may be uninformed, unwarned and perhaps unconsenting.

## 19. Right to participation in decision-making in environmental issues

### **Articulated in**

*Rio Declaration* Principle 10  
*Aarhus Convention* Article 1  
(see above)

### **Reasons for concern**

- If citizens have not had sufficient opportunity for effective participation in decision-making about proposed sprays which may impact them and their families, that would be a concern.

## 20. Right to equal protection of the law

### **Articulated in**

*CCPR* Article 26  
"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground..."

### **What this right entails**

This means that discrimination against persons and classes is proscribed.

The basic principles of environmental justice require that those communities that are disadvantaged in any way – socially, economically, as a result of discriminatory racial policies, etc, or who simply have less ready access to resources – be accorded the same degree of respect, fair treatment and opportunity for meaningful involvement in decision-making as communities that are more socially or economically advantaged and have greater access to resources. As explained on the Environmental Protection Agency website "Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of...negative environmental consequences."<sup>20</sup>

### **Reasons for concern**

- Are all communities, whether rural or urban treated equally regardless of perceived social privilege or socioeconomic status?

- Does the socio-economic makeup of communities appear to be a factor in any decisions made about the proposed sprays?
- Are disadvantaged communities affected any differently than more privileged communities?
- Are communities with different racial compositions affected differently?

## 21. Right to freedom from discrimination due to disability

### **Articulated in**

The Americans With Disabilities Act (US)

### **What this right entails**

The US Department of Justice maintains a website with detailed information about ADA requirements.<sup>21</sup> In general this law requires that everyone who has, or is perceived to have, a disability not be discriminated against in any way.

A booklet providing an overview of ADA “requirements for ensuring equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation,” etc. is available on the ADA website.<sup>22</sup>

### **Reasons for concern**

- Discrimination occurs when any sub-group is disproportionately impacted by a policy or practice and no sufficient accommodations are made for them. Individuals with asthma or other respiratory conditions, chemically sensitive persons, pesticide sensitive persons, people with certain allergies, immunocompromised people, the elderly, the very young, pregnant women,<sup>23</sup> any place-bound persons (in hospitals or elder care facilities, for example), to name a few vulnerable sub-sets of residents, may be reasonably expected to experience more serious adverse effects from aerial spray exposures than the general population.
- Have reasonable accommodations been developed for persons in those groups to help them avoid being unfairly impacted by the sprays?

## 22. Right of experimental subjects to free and informed consent

### **Articulated in**

*Nuremberg Code* Item 1

“The voluntary consent of the human subject is absolutely essential.”

*Nuremberg Code* Item 9

“the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.”

### **What this right entails**

This is the right to be fully informed about an experiment before agreeing to participate, the freedom to choose whether to participate or not, and the freedom to withdraw from the experiment at any time.

The rights of experimental subjects to informed consent and to protection from possible harms, as they are expressed in *The Nuremberg Code*, are premised on the acknowledgment that aerial sprays and their impacts on exposed humans have not been adequately studied and are thus experimental in nature, i.e., that the aerial application of these herbicide formulations, having not previously been conducted in such close proximity to urban populations, contains important unknowns and is at least partially experimental.

#### **Reasons for concern**

- Have citizens been provided opportunity to consent or not consent to exposure to aerial sprays, drift and residues?
- Have citizens been provided ways to withdraw themselves or their families from the spray and residue exposures if they do not wish to be exposed?
- Have citizens, particularly those with certain disabilities, been notified about details of aerial sprays and provided alternative places to stay during and shortly after sprays to reduce exposures?

### 23. Right of experimental subjects to be protected from injury, disability or death

#### **Articulated in**

*Nuremberg Code* Item 7

“Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.”

#### **What this right entails**

This is the right to be protected from anticipated, remote or unanticipated harms that may possibly result from participation in the experiment.

#### **Reasons for concern**

- Have such protections been provided, particularly for those at increased risk of harm from spray exposure?



## Potential Liabilities

Listed below are some potential liabilities FCP's proposed aerial sprays may incur if FCP were to implement plans to aerially apply herbicides in such close proximity to urban neighborhoods.

1. The potential consequences of corporations or governments ignoring human rights norms are not insignificant. Loss of public respect for a corporation or loss of public confidence in government agencies and their processes is not a small thing, even from the perspective of the corporation or agency, and even when viewed through the lens of basic practicality. When human rights standards are compromised the consequences can be monumental, costly and long lasting.
2. If FCP were to implement plans to aerially apply herbicides in such close proximity to family neighborhoods and urban areas there would be risk of public recognition that, despite awareness of links between herbicide exposure and health impacts, and despite awareness of human rights concerns, FCP did not move to eliminate aerial spray plans and replace them with alternative control measures.
3. Greater involvement of human rights organizations such as Human Rights Watch in pesticide activism.
4. One goal of human rights activism is what they refer to as "the mobilization of shame." Tools human rights organizations use include, among others, videotaping of actions considered to be human rights violations, and of the persons believed responsible for those actions; public, community-led, trial-like Citizens' Tribunals with independent judges who weigh, using human rights norms rather than civil law, the justness of a given situation; and public, community-led, Citizens Inquiries which involve oral and written testimony from affected community members before a panel of commissioners.
5. Potentially costly legal actions brought against FCP for aerial application of herbicides as a violation of human rights; possible legal action re the Americans with Disabilities Act; and possible multiple small claims court actions for economic redress.
6. Potential litigation through the Inter-American Court of Human Rights, a court of the Organization of American States.

## Pathways to Reduce Liabilities

1. The most important first step to reduce liabilities would be for FCP to initiate good faith discussions with Community Rejecting Aerial Spraying of Herbicides, with Concerned Citizens for Clean Air and with other citizen groups concerned about aerial spraying over or near urban areas, and to postpone aerial spraying until satisfactory agreements can be reached in those discussions.
2. Provide evidence of dermal, ocular and inhalation safety, since those would be the primary routes of exposure, for each of the herbicide formulations that may be used in the spray area. That is,
  - a. Provide examples of large scale, large sample, well designed population studies undertaken by third parties (i.e., not pesticide manufacturers or agriculture/forestry interests) published in the peer reviewed scientific literature that demonstrate no adverse effects from dermal, ocular and inhalation exposure of urban populations to the specific pesticide formulation(s) that will be used (i.e., not to just one of the ingredients).
  - b. Absent such studies, provide examples of any studies published in the peer reviewed literature that demonstrate no adverse effects from dermal, ocular and inhalation exposure of urban populations to the specific pesticide formulation(s) that will be used.
  - c. Absent that, provide examples of any studies that show there to be no adverse effects from dermal, ocular and inhalation exposure of urban populations to the specific pesticide formulation(s) that will be used.
3. Rely as much as possible on non-chemical means of vegetation control.
4. If some use of chemical herbicides were to occur:
  - a. Provide notification by multiple means – signage, email lists, websites, phone calls, etc. – especially to those individuals in the vicinity susceptible to or concerned about adverse health impacts.
  - b. Include in all public notification announcements a full disclosure of all precautions included on the labels of each product formulation that may be used.
  - c. Provide to community members the official label for each herbicide product that may be used in the application.
  - d. Provide to community members the complete Material Safety Data Sheet for each herbicide product (not just the ingredient designated as “active”) that may be used in the application.
  - e. Publicly disclose all ingredients, both active and “inert,” of each

formulation that would be applied.

- f. Develop strategies for providing alternative lodging, transportation and services to those who, for reasons of health or health concerns, require that they and their family members not be exposed to the sprays, drift or residues.
- g. Develop strategies for insuring that placebound persons, such as disabled persons living in homes near the spray zone, those in daycare facilities, elder care facilities, hospitals, schools, etc, not be required to endure spray exposures if they wish not to.
- h. Develop strategies for insuring that children, because of their greater biological vulnerability to environmental exposures, not be required to endure exposures to the sprays, drift or residues.
- i. Arrange for health effects monitoring studies to be undertaken by the Department of Health or independent third parties. Active (rather than passive) surveillance methodologies should monitor for a range of adverse health effects, both acute and chronic, associated with spray exposures. Representatives from citizen groups should be involved in design of the studies.
- j. Arrange oversight by an external observer, agreed to by both FCP and citizen environmental organizations, to monitor implementation of herbicide applications.

## Conclusion

This Report provides Forest Capital Partners and Community Rejecting Aerial Spraying of Herbicides a list of formal human rights norms of concern should FCP undertake aerial application of herbicides near neighborhoods and urban areas of Waldport, Oregon. The Report outlines FCP's potential liabilities and describes pathways that could be taken to reduce those liabilities.

## Bibliography

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- Report of the 2006 People's Inquiry into the Impacts and Effects of Aerial Spraying Pesticide over Urban Areas of Auckland*, 2007.  
<http://www.peoplesinquiry.co.nz>

The Center for Human Rights and the Environment is headquartered in Córdoba, Argentina. <http://www.cedha.org.ar>

Information about the Inter-American Commission on Human Rights, the Inter-American Court on Human Rights (seated in San José, Costa Rica) and human rights instruments pertinent to American states can be found at <http://www1.umn.edu/humanrts/inter-americansystem.htm>

## Endnotes

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- <sup>1</sup> Picolotti, Romina and Jorge Daniel Taillant, *Linking Human Rights and the Environment*, University of Arizona Press, 2003, p 123 (emphasis in original).
- <sup>2</sup> “With the exception of the right to self-determination, all the rights in the *Universal Declaration* and the Covenants are the rights of individuals. Enumerations of rights thus typically begin ‘Every human being...,’ ‘Every one has the right...,’ ‘No one shall be...,’ ‘Everyone is entitled...’” Jack Donnelly, Andrew Mellon Professor in the Graduate School of International Studies at the University of Denver, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2002, p23.
- <sup>3</sup> Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2002, p8.
- <sup>4</sup> “Human rights are minimal standards. They are concerned with avoiding the terrible rather than with achieving the best. Their focus is protecting minimally good lives for all people.” James Nickel, “Human Rights” in the *Stanford Encyclopedia of Philosophy*, 2006.
- <sup>5</sup> The *Universal Declaration of Human Rights* was unanimously adopted by the United Nations in 1948.
- <sup>6</sup> Signed by the US in 1977, ratified in 1992 and entered into force in 1992, though with reservations on articles 5-7, 10(2,3), 15(1), 19, 20, 27 and 47, and formal understandings on articles 2(1), 4(1), 7, 9(5), 14(3,6), 26. Ratification means that the provisions of this international instrument, aside from the reservations, do have the force of domestic law in the US.
- <sup>7</sup> Signed by the US in 1977; not ratified.
- <sup>8</sup> Signed by the US in 1995; not ratified. Though the US has not ratified this convention, “One hundred and ninety states have agreed to become parties to the Convention on the Rights of the Child, giving it the distinction of being the most widely ratified treaty in the history of the world.” Lauren, Paul Gordon, *The Evolution of International Human Rights*, University of Pennsylvania Press, Philadelphia, 2d ed, 2003, p 249.
- <sup>9</sup> Signed by the US in 1980; not ratified.
- <sup>10</sup> 1978
- <sup>11</sup> Rights enunciated in the 1947 *Nuremberg Code* are for the protection of individuals being studied in research protocols. If the case can be made that a population is being studied as research subjects – e.g., that persons living and working in the spray zone are being studied for health effects resulting from spray exposures – then provisions of the *Nuremberg Code* would apply to individuals in that population.
- <sup>12</sup> Many of the rights listed below have been articulated in several different human rights declarations, conventions or charters, but for simplicity’s sake this Report lists only one or two instruments for each right.
- <sup>13</sup> This passage continues: “It found that the determination of whether this violation had occurred in *Lopez-Ostra v. Spain* should be tested by striking a fair balance between the interest of the town’s economic well-being and the applicant’s effective enjoyment of her right to respect for her home and her private and family life. In doing this, the Court applied its “margin of appreciation” doctrine, allowing the State a “certain” discretion in determining the appropriate balance, but finding in this case that the margin of appreciation had been exceeded. It awarded Mrs Lopez-Ostra 4,000,000 pesetas [approximately US\$35,600], plus costs and attorneys’ fees.” Shelton, Dinah, “The Environmental Jurisprudence of International Human Rights Tribunals,” in Picolotti, R and Taillant, JD, 2003, p 15.
- <sup>14</sup> See item 21 below on discrimination.
- <sup>15</sup> Drinan, Robert F, *The Mobilization of Shame, A World View of Human Rights*. Yale University Press, 2001 p 186.
- <sup>16</sup> Drinan RF. 2001. p 170.
- <sup>17</sup> In reference to a specific case: “the human right to effective judicial remedy has been violated because despite the riverside communities’ plea to the judicial system, nothing has been done to stop the contamination.” in Picolotti, R and Taillant, JD, 2003, p 146.
- <sup>18</sup> Drinan RF. 2001. p 171.

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<sup>19</sup> Drinan RF. 2001. p 187.

<sup>20</sup> US EPA's definition of environmental justice. See <http://www.epa.gov/compliance/resources/faqs/ej/index.html> Quoted in Robert D Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*, Sierra Club Books, San Francisco, 2005, p. 4.

<sup>21</sup> <http://www.usdoj.gov/crt/ada/>

<sup>22</sup> <http://www.usdoj.gov/crt/ada/publicat.htm#Anchor-ADA-44867>

<sup>23</sup> In this regard, see provisions in the *Convention on the Elimination of All Forms of Discrimination against Women*.