FOREST PRACTICES BOARD

REGULAR BOARD MEETING
May 10, 2011
Natural Resources Building
Olympia, Washington

Members Present

Peter Goldmark, Chair of the Board, Department of Natural Resources
Anna Jackson, Designee for Director, Department of Fish and Wildlife
Bill Little, Timber Products Union Representative
Dave Somers, Snohomish County Commissioner
David Herrera, General Public Member
Doug Stinson, General Public Member/Small Forest Landowner
Mark Calhoon, Designee for Director, Department of Commerce
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Sherry Fox, General Public Member/Independent Logging Contractor
Tom Davis, Department of Agriculture
Tom Laurie, Designee for Director, Department of Ecology

Staff

Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9 a.m. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Bill Little moved to approve the February 8, 2011 meeting minutes.

SECONDED: Norm Schaaf

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Peter Goldmark said the Legislature is still working on the budget but it is clear there will be reductions for the natural resource agencies. He highlighted the following significant legislative accomplishments.

- Forestry Riparian Easement Program: He thanked Board Member Fox for her help and collaboration with his staff in getting this very important reform legislation passed.

- Forest practices application/hydraulic project approval: He noted the exhaustive work staff and others have done on the legislation; passed it will streamline forest practices and hydraulic project approvals so applicants will only need to obtain one approval instead of two.
- Community Forest Trust legislation: This DNR-sponsored bill passed; it creates a new tool for conserving working forest lands.

PUBLIC COMMENT

Ken Miller, Small Forest Landowner Advisory Committee, commented that landowners have not been part of the ongoing discussions about the low impact template for small forest landowners. He said he was concerned about rumors that some of the people who are part of discussions, and who do not have forestry training, are reluctant to agree on the thinning prescriptions in the draft plan. He urged the Board to ensure continued progress and not to lose sight of the significance and promise of this template for small forest landowners.

Cindy Mitchell, Washington Forest Protection Association (WFPA) and on behalf of Rayonier Timberlands, talked about the many activities going on in the forest besides timber harvesting: silivicultural practices which create jobs and tax revenue for state and local governments; access for wildlife species surveys and inventories; access for tribal cedar bark collection; discussions with state agencies to develop better road management practices resulting in better water quality; consistent log deliveries to local mills; and employment for timber workers.

Peter Goldman, Washington Forest Law Center (WFLC), referred to a letter dated May 5 from the Forests and Fish Conservation Caucus to DNR regarding the water typing rules. He said the concern that off-channel fish habitat associated with Type 3 waters is not being protected as fish habitat. He expressed appreciation for DNR's executive management holding meetings on biomass issues, and said it is imperative to know how much biomass can be taken without environmental injury.

Pete Heide, WFPA, explained that in the early 1990s oxbows and other off-channel (or smaller channel) features were incorporated into the rules as fish habitat, and the same language was put into the Forests and Fish rules. He said he believed DNR is interpreting the rules correctly and any further interpretation should be the work of Forests and Fish Policy.

Kara Whitaker, WFLC, warned that time is of the essence for protecting the habitat of the Northern Spotted Owl and urged the Board to direct the Spotted Owl Conservation Advisory Group to report at each Board meeting.

Shawn Cantrell, Seattle Audubon, urged the Board not to let the spotted owl issue slip away while the federal recovery plan is being revised and the modeling for non-federal land is being updated.

STAFF REPORTS

Peter Goldmark asked Board members if they had any questions related to the staff reports they received in their Board packets prior to the meeting. Members asked questions as follows:

<u>Clean Water Act Assurances</u>

Norm Schaaf asked if not meeting the "Mass Wasting Prescription-Scale Monitoring" (2010) milestone is delaying the completion of other necessary milestones. Mark Hicks said the independent science peer review process is now back on track.

Stephen Bernath said the milestones are not only about meeting Forests and Fish commitments, but also are lined up with the Department of Ecology's settlement agreement in the 1998 TMDL (total maximum daily load) lawsuit with the Environmental Protection Agency and plaintiffs. He said he would explain this more thoroughly sometime in the future. Goldmark asked if they planned to provide annual reports in August of each year; Bernath and Hicks indicated they would do so.

Sherry Fox asked about the approach being taken on the 2010 milestone, "Develop a plan for evaluating the risk posed by SFL roads for the delivery of sediment to waters of the state." Hicks said staff reductions are the problem for completing this milestone; the approach is to use available staff resources to collect information on the ground to assess the condition of small forest landowner roads over a period of several years.

Paula Swedeen asked if Clean Water Act assurances are in danger because of budget cuts. Hicks said internal discussions will take place over the summer in preparation for the August report to the Board.

<u>Upland Wildlife</u>

Anna Jackson suggested that David Whipple, WDFW, provide updated information on a portion of the upland wildlife report.

Whipple explained WDFW will no longer manage Bald Eagle management plans due to recent Fish and Wildlife Commission rule changes. However, Washington state law still protects the eagle and WDFW is deferring to the U.S. Fish and Wildlife Service's (USFWS) protection guidelines. Now, instead of creating a bald eagle management plan with the WDFW to avoid a Class IV-special classification under WAC 222-16-080, WDFW is directing landowners to get guidelines or an incidental take permit from the USFWS. This will fulfill WDFW's requirement for a "special wildlife management plan" to keep landowners from triggering a Class IV-special. This process will be an interim measure, while the Wildlife Work Group reconvenes to discuss a rule amendment proposal to the Forest Practices Board, hopefully in August.

Norm Schaaf asked how long it will take to get an incidental take permit from the USFWS. Whipple said he wasn't sure, but a consultation with the USFWS for a particular forest practices proposal should not take nearly as long as an incidental take permit for a habitat conservation plan (HCP).

LEGISLATIVE ACTIVITY

Darin Cramer, DNR, said two bills directly affecting the forest practices program were recently signed into law: House Bill (HB) 1509 concerning the Forestry Riparian Easement Program, and HB 1582 relating to forest practices applications (FPAs) leading to conversion of land for development purposes. A third bill, Senate Bill 5862 relating to the administration of natural resources programs, is still in flux. It integrates hydraulic project approvals into FPAs for all hydraulic projects associated with forest practices, raises FPA fees, and creates a new FPA account used for the sole purpose of implementing chapters 76.09 and 76.13 RCW and chapter 222 WAC. He said all of the legislation he summarized will require rule making by the Forest Practices Board.

LOW IMPACT TEMPLATE (BOARD MANUAL SECTION 21)

Marc Engel, DNR, reported that the state caucus is continuing to work on the low impact template for small forest landowners. He said a draft will be distributed to stakeholders when caucus members

complete it. He acknowledged that the next Small Forest Landowner Advisory Committee meeting is June 8 and said he hoped the template would be ready by then. He said it will be an agenda topic at each Board meeting to keep the Board informed.

Sherri Fox asked how often the state caucus meets, to which Engel answered the next meeting is May 16. Peter Goldmark said he wanted to assure Fox that the state caucus is working hard on it, and told Engel he hoped there would be much more information for the Board at its next meeting.

FOREST PRACTICES COMPLIANCE ACTION PLAN

Darin Cramer, DNR, explained DNR's Compliance Action Plan that describes how DNR will respond to compliance issues needing attention as determined by analyzing the results of the 2008-2009 Forest Practices Compliance Monitoring Report published in 2011. The focus areas relate to:

- Water type classification determinations;
- Riparian non-compliance;
- Riparian 20-acre exempt non-compliance; and
- Type A wetland non-compliance.

Sherry Fox said contract loggers training is a good strategy because they are the ones that actually do the logging. Cramer said those trainings have had good participation – over 75 attended the recent training.

Fox said she has received calls indicating that DNR field foresters are taking their compliance calls to extremes. Cramer said he would appreciate knowing about such situations.

Anna Jackson raised the concern that the reasons for non-compliance in almost all of the focus areas are not known and wondered about addressing this. Cramer answered DNR staff know this is a concern. At present, field staff are making notes on their forms where it looks like there is some indication of a cause, and they're going to do that more in the future. Also in the future there could be follow up with operators or landowners – whether there was lack of understanding or whatever the case might be. The extent of this type of effort will be driven by having the time and people to accomplish that. There is a tradeoff between getting actual compliance work done and determining the cause for non-compliance; the challenge will be how to balance the two.

Norm Schaaf said his company is paying more attention to documenting how certain determinations are made, such as how and where stream width is measured, so compliance monitoring would hopefully get the same result at that location. But documentation does require a lot of extra work.

Schaaf asked if the compliance monitoring stakeholder group has discussed situations where there is compliance with a rule or law, but because it was not proposed in the forest practices application it is found to be non-compliant. He gave an example where an FPA did not include a culvert replacement, but the company replaced the culvert after all. Cramer answered that a very low percentage of all applications fall into this scenario, but it becomes a problem when others misinterpret. DNR has discussed how to note that these situations are not problems if they are compliant with rules. Julie Sackett, DNR, added this has been discussed recently in the stakeholder meetings. In the very beginning of the compliance monitoring program there was a heavier focus on compliance with applications, and now there is a greater emphasis on compliance with the rules. However, it is important to track non-compliance with applications when trying to determine causes of confusion or

challenges either with the application itself or with the rules. She said DNR is trying to do a better job of separating the application non-compliance and the rule non-compliance on the report. Schaaf said an unintended consequence could be that applicants only provide the bare minimum of information. Cramer agreed, which is why DNR is trying to sharpen the distinction between the two.

Sherry Fox asked if there was any way for regions to encourage or list the accredited loggers who have gone through the extensive contract loggers training. Sackett said DNR has made handouts from the Contract Loggers Association, which have lists of accredited contract loggers, available in the region offices.

Peter Goldmark pointed out that a commonality in all of the focus areas is the need for operator, landowner, and staff training.

Paula Swedeen, in reference to, "Ensuring water type classification information/documentation is included as part of a complete FPA", asked how this would be done and how it addresses the issues. Cramer said the division has been communicating with the regions to ensure that each application has water type documentation, which will encourage landowners and staff to focus on that topic. This is a high priority area, where it all begins, and DNR must make sure the water type is correct in order for landowners to carry out the other parts of the rules correctly in a given harvest unit.

In reference to, "Updating the program's website for general water typing information; providing 'how to' and guidance", Swedeen asked if there would be a way to attach that information to the application. Cramer answered he believed it is already in the instructions but DNR will verify that along with other work the program intends to do on the forms and instructions in the next few months.

Doug Stinson asked Cramer to elaborate on, "Develop specific guidance (operational and Board Manual) on how to measure stream length on the ground." Cramer answered people are making this measurement in a variety of ways. It is a high priority because the stream length variable drives riparian management zone width and leave tree counts on Type F streams and buffer length on Type N streams.

PUBLIC COMMENT ON NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP

Shawn Cantrell, Seattle Audubon, spoke in support of the nominees for the Northern Spotted Owl Conservation Advisory Group.

Kara Whittaker, Washington Forest Law Center, said she wanted to formally thank the Conservation Caucus for nominating her to be an advisory group member. She assured the Board she would make science-based decisions and would be pleased to serve.

NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP

Bridget Moran, DNR, explained it was necessary to update DNR's and the Conservation Caucus's designees on the advisory group due to Paula Swedeen becoming a Board member and DNR undergoing a staffing change. She explained the group has not met because its function has not yet been needed.

MOTION: Dave Somers moved that the Forest Practices Board approve Kara Whittaker, Marty Vaughn and Bridget Moran to serve on the Spotted Owl Conservation Advisory Group.

SECONDED: Doug Stinson

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON ROAD MAINTENANCE AND ABANDONMENT PLANNING (RMAP) RULE MAKING

Jim Peters, Northwest Indian Fisheries Commission, said one of the fundamental conditions upon which tribes agreed to go along with the RMAPs recommendation (Policy Committee's RMAP Extension Recommendations, August 10, 2011 Forest Practice Board meeting) was that there had to be a common reporting format in order for the tribes to track progress and ensure RMAP work is being completed on schedule. He indicated that the expectation was to include the conditions set forth in the recommendations were expected to be incorporated into rule and the board manual, and this is not happening to the satisfaction of the tribes.

Pete Heide, Washington Forest Protection Association, urged the Board to continue making progress on the RMAPs rule making. He assured the Board that DNR is working on forms for standardized reporting and putting a Geographic Information System (GIS) in place for tracking accomplishments.

David Whipple, Department of Fish and Wildlife, said the draft rule language should be modified to be clear that all RMAP elements needing to be addressed must be reported in a standardized format, and the board manual and operational plan should provide procedures and guidance to meet the requirements of the rule.

Stephen Bernath, Department of Ecology, said Ecology will withhold approval of the rule proposal going forward for public review until is it clear how all the pieces of the RMAP package fit together. All of the agreed upon recommendations must be met; the purpose is to enable reviewers to determine if worst first and even flow principles are being proposed by each landowner in each of their extension requests.

Miguel Perez Gibson, Conservation Caucus, explained how important the reporting component was to the process of gaining consensus from all of the caucuses, and there is question as to whether the proposed rule reflects the agreed upon recommendations. He said if not, there is no longer consensus.

Adrian Miller, Longview Timber, spoke in support of moving the proposal forward. He emphasized the rule is truly an important demonstration that the adaptive management process can be used to address economic concerns with a reasonable response consistent with science. He said his organization is committed to working with its federal delegation to help secure funding and provide assistance in helping figure out how to make the small forest landowner road assessment and implementation happen. He said landowners are asking for trust from other caucuses in order to move the rule making forward, just as landowners exhibited trust in moving the watershed analysis rule forward for public review in spite the board manual not being drafted at the time.

Kevin Godbout, Weyerhaeuser Company, spoke in support of the rule amendment moving forward. He said Weyerhaeuser's ability to fund work for RMAPs depends on the U.S. domestic housing market, which has improved somewhat but is not resolved. Therefore, Weyerhaeuser has not been able to maintain a uniform schedule to meet its RMAP obligation, and will either take advantage of the extension or not be finished by the 2016 timeline. He asked the Board, when considering data management, to keep in mind the scale of the program – there are tens of thousands of road miles in the forested environment. The board manual correctly identifies the data needed to make decisions on a broad scale. There is a limit to landowners' capacity to provide a high level of detail, and a limit to the government's capacity to deal with it. To a certain extent the stakeholders may need to live with a little uncertainty.

Curt Veldhuisen, Skagit River System Cooperative, said the cooperative provides the Forests and Fish program for the Swinomish and Sauk Suiattle tribes. It views the RMAP program as part of the Skagit Chinook recovery plan, and it has counted on RMAP work being completed by 2016. He said it was difficult for the tribes to support the extension because of the difficulty in being able to track accomplishments, but they want to support the timber managers they work with on a daily basis and support the Timber/Fish/Wildlife (TFW) spirit. So they hope they will see a gain with a more comprehensive tracking system, and will look back on this arrangement as being a win-win for all involved in the watersheds.

RMAP PROCESS

Marc Engel, DNR, summarized progress made since August 2010 on the Policy Committee's RMAP Extension Recommendations. He said it is true there have been inconsistencies in how the regions have been implementing the RMAPs program, but he stressed that all landowners had to meet the requirements in WAC 222-24-051(3) through (6) for their RMAP to be approved. He pointed out if landowners follow the guidance drafted in Board Manual Section 3 they will be meeting the requirements in the rule. He explained for this rule making DNR made an exception to its usual timeline for the development of a related board manual. This was so the Board could have the opportunity to review the rule proposal and the draft board manual at the same time and have confidence that Policy's recommendations are being implemented.

Julie Sackett, DNR, said not having consistent system among regions for collecting information from landowners has caused confusion for stakeholders. She said DNR is working on consistency in data collection and better mechanisms for sharing information. DNR is developing a statewide web-based database that RMAPs specialists will use to track fish passage barrier information rather than each region tracking separately. This will be made available to stakeholders and will identify barrier locations, have query capabilities, and include all lands subject to RMAPs regardless of extensions. In addition, region RMAPs specialists are creating stakeholder outreach plans specific to their region stakeholders.

She said for landowners who request an extension, DNR is developing standardized forms to aid in consistency and help staff, stakeholders, and landowners to make sure the data is easy to track and compare through time. She provided six draft forms for the Board to see, four of which were strictly for extension requests. She pointed out two new data elements are planned to be required in the RMAP Annual Accomplishment and Planning Report:

- Total number of fish passage barriers identified.
- Total number of road miles identified needing improvement to rule standard.

She also explained that Form A, the scheduling worksheet, will be significantly different than in the past with additional data reporting elements, and will be for all landowners whether or not requesting an extension. Latitude and longitude will be requested but not required, and information pertaining to the work schedule and work completion will be required. She said the form will be used for all road work issues.

She added that the forms will be submitted in one of three ways: electronically in Excel, spatially in GIS, or on paper in which case DNR will input the fish passage information into the database by hand. The stakeholders will then be able to utilize an electronic database and copies of the paper reports to review.

Tom Laurie asked if the forms were too new for the people who commented earlier to be able to see them before the Board meeting. Sackett answered the forms were recently distributed to people who were part of the board manual development group and also to the DNR RMAPs specialists, but perhaps those who commented had not seen them before today.

Noting that the information on the forms will be required, Anna Jackson asked why the proposed rule does not state those requirements. Sackett answered she has not sensed any need to put that level of specificity into rule. She said DNR staff, stakeholders, and landowners have all embraced the standardized format for their various purposes.

David Herrera said he felt the rule should have language specifying standardized reporting requirements, and he thought this was part of the direction in Policy's recommendation to the Board.

Peter Goldmark asked Sackett if the forms would address the concern. Sackett said she believed so. She acknowledged that not having consistent reporting requirements has caused confusion, and she believed requiring the additional information (barriers identified and road miles needing improvement) will provide important baseline information to determine how well landowners are doing toward achieving even flow.

Goldmark commented that putting the details into rule language would take a lot of time and effort. Sackett added it would be very difficult to be responsive and timely if changes were needed in the future. Fox mentioned it is now thought that including the Forestry Riparian Easement Program contract in rule was a mistake for that very reason.

Dave Somers asked if adding a reference to the board manual in the rule would address the concerns by creating a linkage.

Darin Cramer said DNR thought designing a standardized tracking system regardless of extension requests, and adding the requirement to provide baseline information, were responsive to Policy's recommendation. He said staff did not interpret that a finer level of detail in the RMAP itself was expected. He added that his priority for program staff is to spend their time dealing with prioritization and details on the ground, rather than handling more paper work and creating data systems.

After considerable discussion among several Board members, Herrera clarified that the tribes are not looking for a standardized RMAP, but are looking for the identification of elements needing to be

accomplished and the ability to compare accomplishments of those elements. He said that linkage does not exist now.

Sackett explained the intent of the proposed RMAP Extension Summary is for those requesting an extension to identify the contents of their entire original RMAP, and to provide information about what has and has not been completed at the time of the request. This will provide a baseline for comparisons in the next years. This is high level information; it will provide fish passage information and numbers of road miles needing to be brought up to forest practices standards, but it won't specifically break out how many cross drains are needed. There will be more specifics in the accomplishment reports and the work proposals. For example if a landowner still has 100 miles to improve, this information will go onto the scheduling worksheet.

ROAD MAINTENANCE AND ABANDONMENT PLANNING RULE MAKING

Marc Engel, DNR, summarized the content of the RMAP rule proposal to allow landowners to request extensions of their RMAP work completion deadlines. He then requested the Board's approval to proceed with initiating rule making.

MOTION: Norm Schaaf moved that the Forest Practices Board approve for public review the draft rule proposal, as amended, which amends WAC 222-24-050 and 222-24-05. This rule proposal provides landowners the opportunity to request an extension of the performance period for their road maintenance and abandonment plans. I further move to direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making.

SECONDED: Doug Stinson

Board Discussion:

Sherry Fox suggested that the language on page 1, line 17 be amended to specify that both large and small landowners may request an extension, because some small forest landowners have developed full RMAPs.

AMENDMENT #1: Sherry Fox moved to amend the motion by adding "large or small forest" to page 1, line 17, to the draft rule proposal.

SECONDED: Anna Jackson

ACTION: Motion on amendment #1 passed unanimously.

David Herrera suggested adding the following language (underlined):

- WAC 222-24-051(5): Road maintenance and abandonment plans must include <u>the following elements, reported using a standardized format as specified in the Board Manual</u>: …
- WAC 222-24-051(5)(a): Ownership maps showing all forest roads, including orphan roads, planned and potential abandonment; all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel road; and inventory of the existing condition<u>, including elements (a) through (e) in subsection (4</u>); and …

Cramer explained that subsection (5) of WAC 222-24-051 applies to plans themselves. He said if the intent of Herrera's suggested amendments was not to apply a standardized format for the plans but for the reporting, then the standardization language should amend subsections (8 and 9) related to the extension and annual reporting.

After some discussion on the intent of Herrera's suggested language, Norm Schaaf made a motion.

AMENDMENT #2: Norm Schaaf moved to amend the motion by adding the following language as a new (10) on page 3, line 41 to the draft rule proposal.

(10) The department shall require the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) and for annual reporting under subsection (9) of this section.

SECONDED: Sherry Fox

Board Discussion:
Paula Swedeen commented that Herrera's original language made specific reference to elements in (4) (a) through (e), and asked why this reference could not be included. Cramer answered those are criteria that landowners are directed to consider in plan development when selecting and scheduling projects, and DNR is not proposing to turn the criteria into reporting elements. Swedeen said she thought the concern was inadequate information for parties to determine if the criteria were followed. Cramer said from an implementation perspective, worst first is somewhat dynamic. It could change from year to year. While planning must generally be worst first and even flow, there can be fluctuations from year to year. However, the annual review should determine if the original worst-first work continues to make sense given accomplishments, or what may have happened in the watershed in the previous year.

Schaaf pointed out that many aspects of the existing rules require landowners to prevent sediment delivery to waters that could result during operations, regardless of priority lists.

Jackson asked for verification that without specifying elements (4) (a) through (e) DNR will be able to assess where all RMAPs are, and be able to track by the standardized annual reporting format instead. Cramer said the annual reporting, and the tracking of that information, are a couple of tools DNR will use to assess worst first. But no amount of paper replaces boots on the ground and observations through time, and that is where the focus needs to be.

Jackson said this is a very big deal for the Department of Fish and Wildlife and Ecology. She said it would have been better to have more dialogue before the Board meeting and more time to look at the forms since the entire process relies heavily on them.

ACTION: Motion on amendment #2 passed. 11 Support / 1 Abstention (Herrera)

ACTION-MAIN MOTION Motion passed. 11 Support / 1 Abstention (Herrera)

Tom Laurie said he wanted to see the rule go forward because of its benefit to landowners, but ultimately the entire package will be judged for its accuracy. He said Ecology will be looking at it closely when the time comes for adoption.

Schaaf, noting that Ecology must agree on rules that pertain to water quality, added it will be important to know if Ecology is leaning toward non-agreement with the rule prior to adoption. Laurie said that was the reason for his comment, and added it is very hard to weigh everything when the Board is given forms for the first time that are critical to the total package.

Herrera said the reason he abstained is that he is not prepared to accept everything at this point and is looking toward the public review process.

REVIEW DRAFT OF BOARD MANUAL SECTION 3 GUIDELINES FOR FOREST ROADS

Marc Engel, DNR, said staff convened a stakeholder group to develop amendments to Board Manual Section 3, Guidelines for Forest Roads. The amendments to the manual include standardization of information gathering, the extension process, reporting and tracking, encouragement for stakeholders to consult with each other prior to the submittal of RMAP extension requests, and guidance on the format for annual meetings. He explained the Board is seeing this manual earlier in the process than usual when considering a related rule making; this was to accommodate the Board's and the stakeholders review of the entire package prior to the public review process.

Sherry Fox suggested that the term "80/20" be explained in the document, to which Engel agreed.

Engel said staff is planning to reconvene the board manual stakeholder group in May to finish up the draft and include guidance on the placement of slash and debris generated during road construction within the 100-year flood level. This was the Board's response to Ron Mally's petition for rule making on February 8, 2011.

PUBLIC COMMENT ON WATERSHED ANALYSIS RULE MAKING AND BOARD MANUAL SECTION 11 STANDARD METHODOLOGY FOR CONDUCTING WATERSHED ANALYSIS

Scott Swanson, West Fork Timber Company LLC, commented that he appreciated and continued to support the rule language changes.

WATERSHED ANALYSIS RULE MAKING

Sherri Felix, DNR, requested that the Board adopt the watershed analysis rules. She reported all comments received during public review were favorable. She explained the intent of the rule is to ensure watershed analysis prescriptions continue to address the potential for adverse effects from forest practices to the greatest extent possible over time. The language:

- strengthens the requirement for departmental review of approved prescriptions;
- implements a process to reanalyze prescriptions the department has reviewed and determined need reanalysis;
- rescinds those prescriptions identified as needing reanalysis if they are not reanalyzed; and
- sunsets old and still draft watershed analyses.

She added that the amendments were written to ensure approved watershed analysis prescriptions continue to be protective enough to warrant exemption from Class IV-special classification. She

proposed several edits to the draft the Board reviewed at its last meeting; they were for clarification in regard to interim and draft prescriptions, and for classifying applications during a reanalysis.

MOTION: Dave Somers moved that the Forest Practices Board adopt the rule proposal that amends portions of Title 222 WAC pertaining to watershed analysis reviews. This rule making amends rules to ensure watershed analysis prescriptions continue to address the potential for adverse effects on resources from forest practices activities to the greatest extent possible over time. I further move to direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser.

SECONDED: Norm Schaaf

ACTION: Motion passed unanimously.

BOARD MANUAL SECTION 11 STANDARD METHODOLOGY FOR CONDUCTING WATERSHED ANALYSIS

Donelle Mahan, DNR, requested the Board's approval of Part 8, "Review and Reanalysis" and Appendix K, "Mass Wasting Reanalysis" to be incorporated into Board Manual Section 11, Standard Methodology for Conducting Watershed Analysis. She explained that Part 8 provides a general overview of the review and reanalysis process, and Appendix K provides guidance for the reanalysis process for mass wasting. She said the documents were developed with the help of external partners as well as DNR region and division staff. She said Forests and Fish Policy has had the opportunity to review them and gave its support at their March meeting.

MOTION: Tom Laurie moved that the Forest Practices Board approve "Part 8, Review and Reanalysis, and Appendix K, Mass Wasting Reanalysis", to be incorporated into the updated Board Manual Section 11, Standard Methodology for Conducting Watershed Analysis. I further move to allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Paula Swedeen

ACTION: Motion passed unanimously

WATERSHED ANALYSIS REVIEW AND PRIORITIZATION PROCESS

Leslie Lingley, DNR, said DNR is tasked with prioritizing 52 watershed analyses under the newly adopted rule. She said DNR sent 115 letters to the owners of 10 percent or more of the non-federal forest land in each watershed administrative unit. The letter asked whether the landowners plan to sponsor a reanalysis, participate in a reanalysis by providing financial or qualified expert assistance, or use standard rules instead of prescriptions. The results are as follows:

- Seven (7) watershed analyses are sponsored by West Fork Timber, and are exempt from prioritization because the company routinely conducts reviews as required in their HCP.
- Two (2) watershed analyses will undergo reanalysis.
- Fourteen (14) will not undergo reanalysis because the landowners are opting to use standard rules.
- Six (6) have very low densities of landslides in the watersheds; this was determined by land area of landslides – 0.025 landslides per square mile.

- DNR does not have responses from all landowners in 23 of the watersheds.

She said the next steps are to contact the landowners who have not replied, schedule the priority list for watershed reanalysis, and notify the landowners with their schedules. DNR will provide training for the qualified experts and help landowners finalize their prescriptions and complete their SEPA process.

PUBLIC COMMENT ON RIPARIAN OPEN SPACE PROGRAM RULE MAKING AND BOARD MANUAL SECTION 18

No public comment.

RIPARIAN OPEN SPACE PROGRAM RULE MAKING

Donelle Mahan, DNR, requested that the Board adopt the rule proposal that amends rules pertaining to the Riparian Habitat Open Space Program. She said the rule is the Board's response to 2009 legislation that amended the Riparian Open Space Program. The proposal includes forest lands containing Board-approved critical habitat for threatened and endangered species, in addition to unconfined avulsing channel migration zones.

MOTION: Anna Jackson moved that the Forest Practices Board adopt the rule proposal that amends portions of Title 222 WAC relating to the expansion of the riparian open space program and direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser.

SECONDED: Dave Somers

ACTION: Motion passed unanimously.

BOARD MANUAL SECTION 18 RIPARIAN OPEN SPACE PROGRAM

Donelle Mahan, DNR, requested that the Board approve Board Manual Section 18, Rivers and Habitat Open Space Program. She said the manual provides guidance for landowners in the application process for the conveyance of conservation easements and explains eligibility and prioritization criteria.

MOTION: Tom Davis moved that the Forest Practices Board approve Board Manual Section 18, Guidelines for Rivers and Habitat Open Space Program and allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Dave Herrera

Board Discussion:

Sherry Fox asked if there has been any legislation or instructions to exclude non-profit organizations from lands that qualify for eligibility. Dan Pomerenk, DNR, answered no. Fox asked how many non-profits have received funds from this program. Pomerenk said he didn't believe any have, but would check to make sure. Fox said she would appreciate that, and added that these funds should be used for forests that are not already being conserved.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON CHARTER FOR TFW/CULTURAL RESOURCES COMMITTEE
No public comment.

CHARTER FOR TFW/CULTURAL RESOURCES COMMITTEE
Pete Heide, Co-chair, provided background on the Timber/Fish/Wildlife (TFW) Cultural Resources Committee and why a charter is important. He said at the time of Forests and Fish the committee continued to work as it had for many previous years under the original TFW agreement, but it no longer seemed to have an entity to report to. So there was an attempt to go to Forests and Fish Policy and CMER, which didn't materialize, and finally they approached the Board, met with Commissioner Goldmark and staff, and decided a charter would be appropriate.

Jeffrey Thomas, Co-chair, explained that cultural and archaeological resources were identified in the original TFW agreement as one of the five primary objectives along with viability of the timber industry, and protecting water, wildlife, and fish resources. Several years ago the committee fulfilled the commitment in Appendix O of the Forests and Fish Report to complete a cultural resources plan. He said both he and Heide look forward to offering their services and energies toward the fulfillment of the original TFW agreement, the subsequent Forests and Fish Report, statutes, and rules pertaining to cultural resources.

Heide pointed out that the group will now be called a "roundtable", and it exists to help and advise the Board. He said the roundtable has a broad membership of landowners, tribes, and agency representatives, and the group process is truly open and makes decisions on a consensus basis. He said the group just finished drafting the "notice to affected Indian tribes" rule proposal, and is currently working on guidance materials for complying with rules and laws that protect cultural resources. He concluded by asking the Board to approve the charter.

Peter Goldmark thanked the group for its hard work. He explained that a Board committee is made up of Board members, thus the reason for the name change to "roundtable."

Tom Laurie said the charter is a good step forward. He said one of the deliverables, "developing educational tools for landowners and land managers", is important because accessible information can ultimately help protect resources. Heide said the current efforts are focused on getting information onto a website; however, the roundtable has no staff to accomplish all the things it would like. Laurie suggested perhaps private funding is available to help.

Dave Somers thanked them for the great work.

MOTION: Dave Somers moved that the Forest Practices Board accept the charter, as presented by the TFW Cultural Resources Committee that renames the committee as the TFW Cultural Resources Roundtable and establishes the roundtable to report to the Board on cultural resources issues.

SECONDED: Anna Jackson

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON NOTICE OF FOREST PRACTICE TO AFFECTED INDIAN TRIBES RULE MAKING

No public comment.

NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN TRIBES RULE MAKING

Sherri Felix, DNR, asked for the Board's approval to conduct a 30-day review pursuant to RCW 76.09.040(2) of language amending WAC 222-20-120 to:

- Clarify ambiguous terminology and resolve issues with the required landowner-tribe meetings; and
- Correct language in the western Washington clumping strategy by replacing old Class IV-special references with the Class IV-special language adopted in the Board's 2008 historic sites rule making.

She described the proposed rule language in detail and emphasized it is a consensus proposal developed by the Timber/Fish/Wildlife (TFW) Cultural Resources Roundtable.

Tom Laurie, in reference to WAC 222-20-120(3)(c)(i), said if a tribe doesn't designate a "designated cultural resources contact for forest practices", the dilemma the rule is attempting to fix would just continue. He suggested making an already identified position accountable, for example a chief executive officer. Felix answered that the roundtable has agreed to contact each tribe to verify there are one or two designated contact persons on the FPARS reviewer profile.

Doug Stinson mentioned in the case of the Cowlitz Indian Tribe that DNR notifies the tribe on FPAs and the designated cultural resource person notifies the landowner. He said they are happy with the process. Felix acknowledged that the Cowlitz and Yakamas have set up satisfactory processes for themselves and landowners, and the language provides a variety of ways for the meeting requirement to be met.

Tom Davis suggested the tribal notification process for hydraulic project approvals (HPAs) may be helpful. Anna Jackson said it differs from FPARS because there is no notice – it is a system where all of the HPAs are stored and anyone can view them.

Anna Jackson, in reference to WAC 222-20-120(3), inquired as to whether the reference to subsection (2) should instead refer to subsection (1) because it refers to the notification requirements. Felix said subsection (1) addresses DNR's responsibility to send applications to the tribes to review, and subsection (2) is what needs to happen when one of the applications involves a cultural resource. She said perhaps it would be clearer if the word "meeting" was inserted into that sentence: "… will consider the <u>meeting</u> requirements in subsection (2)…"

MOTION: Norm Schaaf moved that the Forest Practices Board accept the draft rule proposal for a 30-day review with the counties, Department of Fish and Wildlife and tribes that amends WAC 222-20-120, notice of forest practices to affected Indian tribes, and corrects WAC 222-30-021(1)(c)(ii), Western Washington riparian management zone clumping strategy.

SECONDED: Dave Herrera

Norm Schaaf, in reference to WAC 222-20-120(3)(c)(i) and (ii), said it seemed redundant to require the landowner to provide both written documentation of the attempt to get a response from the tribe and a copy of a certified letter with a signed return receipt. Felix explained that the roundtable's recommendation was to require both because it showed a good faith effort to make contact. Darin Cramer pointed out the language was negotiated long and hard by members of the roundtable. Schaaf said he thought a telephone call or email message should be sufficient, especially with the process laid out in rule language to have a designated contact.

AMENDMENT: Norm Schaaf moved to amend the motion by changing the word "and" to "or" on page 1, line 27 of the draft rule proposal.

SECONDED: Doug Stinson

Board Discussion:
Laurie, Jackson and Dave Somers indicated they would not support the amendment to the motion. Laurie and Jackson said they were in favor of the consensus product going through the 30-day review process, and Somers said he believed the language as written provided flexibility, and allowing landowners to only send an email message seemed a little weak.

ACTION: Motion on amendment failed. 2 Support (Schaaf and Stinson) / 10 Oppose

ACTION – MAIN MOTION: Motion passed unanimously.

PUBLIC COMMENT ON FOREST BIOMASS RULE MAKING
No public comment.

FOREST BIOMASS REVIEW
Bridget Moran, DNR, updated the Board on activities associated with the Forest Practices Biomass Harvest Work Group. She explained the group meets on an ad hoc basis, has met two times, and consists of all who have expressed interest in participating: representatives of the timber and biomass industries, DNR, sister state and federal agencies, and the environmental community. She provided a schedule of planned activities that will include discussions about all of the components of the forest practices rules as they pertain to the harvest of forest biomass, a field tour, research of best management practices nationwide, and the development of a well-informed recommendation for possible further Board action.

Anna Jackson asked how people are being notified and how people can be on the mailing list. Moran answered anyone who wishes may participate and/or be included on the mailing list.

Peter Goldmark reminded the Board that phase I is the current rule making, and the next phase is an attempt to determine what, if anything else, should be done to ensure resource protection.

Norm Schaaf commented in light of the Board's current rule making clarifying biomass harvest is a regulated forest practice, and there being no real evidence that a problem exists, it seemed to him this additional activity is a solution in search of a problem. He asked if perhaps it shouldn't go through the typical adaptive management process if there actually is a water quality or other issue.

Goldmark explained this effort is to look into whether there is a problem or not. Tom Laurie added there have been concerns around the biomass issue. Anna Jackson said the Department of Fish and Wildlife's support of the initial rule making was contingent on some kind of next phase of investigation because there are unknowns about the impacts of biomass removal.

Paula Swedeen mentioned the Board has heard testimony from the public concerned about what could happen in the future, and she appreciated DNR's responsiveness with a process in which everyone can learn more and express their concerns. In some sense it's preemptive, but in some sense it's adaptive, and it may not turn out to be an issue. She added it is one of those rare times when a government body and citizens are getting together to prevent problems and future conflict.

Moran pointed out that the Board members' comments reflect the poles of the perspectives she has heard in the group.

Schaaf acknowledged the Board has heard concerns but no science or facts. Until the Board has something to justify the time and workload, in his opinion it is pretty far down on the priority list.

Moran added that the Department has an additional responsibility. Through the Commissioner's leadership and having biomass as a major initiative within DNR, legislation just passed requiring the Department to ensure the Board's rules are reviewed to see if biomass harvest is sufficiently evaluated.

Dave Somers said he would like to receive notice of a biomass tour and perhaps other board members would be interested. Moran said there is an issue of quorum and the Board would need to arrange a separate tour for itself.

FOREST BIOMASS RULE MAKING

Gretchen Robinson, DNR, requested that the Board adopt the forest biomass rule. She explained the purpose of the rule was to make it clear that forest biomass harvest is subject to the same resource protection measures as timber harvest in the forest practices rules. She said DNR is planning to add a question in the Forest Practices Application (FPA) instructions and data entry field in the FPA forms that will specifically relate to biomass harvest. This will prompt applicants to provide information on their proposed activities, and therefore allow DNR and interested stakeholders to review the applications for any public resource issues that may be associated with their proposed biomass removal activities. She said the Board received several comments during public review and they were all in support of the rule proposal.

MOTION: Anna Jackson moved that the Forest Practices Board adopt the rule proposal that amends WAC 222-16-010 by adding language to the definition of "forest practice" to make it clear that harvest of forest biomass is subject to the same resource protection measures as timber harvest in the forest practices rules. I further move to direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser.

SECONDED: Doug Stinson

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON CMER 2012 WORK PLAN AND BUDGET

Stephen Bernath, Department of Ecology, commented that the Board is being presented with a non-consensus budget proposal, basically due to not having a long-term funding plan for the Adaptive Management Program (AMP). The program has been dealing with this issue for three years in strategic planning and in discussions about Clean Water Act assurances milestones. Importantly, long-term Adaptive Management Program (AMP) funding was part of the RMAPs five-year extension recommendation. The lack of a long-term funding strategy presents uncertainty about the success of the program.

Jim Peters, Northwest Indian Fisheries Commission, said the tribes support the CMER priority list but cannot support the budget. He explained the budget takes a million dollars out of the Forests and Fish Support Account (FFSA), which impacts tribal participation in the AMP process and the implementation of the HCP. He provided a historical overview of AMP funding: At the time of the Forests and Fish agreement, the tribes, the Washington Forest Protection Association, and the state agencies went to the federal delegation requesting financial assistance that would provide startup funding. In part the funding was to be used for the tribes to participate in the program, including the HCP. The state was aware it would be responsible for funding the program after the initial federal help. The FFSA was established specifically for the caucuses' participation, but the funding has not been adequate to allow the tribes to participate fully. He said he wondered if the federal Services would have issued the incidental take permit for the HCP if they had known the state would not fulfill its obligation.

Miguel Perez Gibson, Conservation Caucus, said he could echo Peters' comments as the budget keeps getting smaller and smaller. He said with so many parts of the program having been reduced since the signing of the HCP, one must ask if the program's goals and responsibilities are being met. The AMP is fundamental to the success of the HCP. The budget is deficient and perhaps subject to challenge.

Norm Schaaf asked if the Conservation Caucus supports the priority of the projects, to which Perez-Gibson said yes.

Chris Mendoza, CMER Co-chair, explained there is very little science underlying the rules, which is the reason the AMP is so important to the Forest Practices HCP. The only way everyone would agree to the Forests and Fish rules in the first place was to incorporate adaptive management and list the questions for the science to answer. Schedule L-1 contains those questions and the CMER projects are designed to answer them. The program can only work if there are adequate resources to answer the questions; keeping the machine rolling takes long-term strategic planning and additional funding.

CMER 2012 WORK PLAN AND BUDGET

Darin Cramer, DNR, said while funding has been a challenge he had a different perspective. Even when there was plenty of money for projects they were still not completed in a timely manner. This is due to capacity in the system. He said when he was the Adaptive Management Program Administrator he estimated that the program could only handle about a dozen projects at a time even though there was enough money for two dozen. So while there is a long-term funding issue, pumping money into it will not solve the problem without more people doing the work.

He referred to Jim Hotvedt's memo to the Board dated April 20, 2011 which explains the current situation, and briefly highlighted budget totals for fiscal year 2012-2013:

- $2.179 million for projects
- $2.8 million total CMER budget

He explained this is about the third year with a CMER budget of about $2.8 million. He said a few years ago when Policy was wrestling with the federal assurances priorities, they collectively agreed that the program capacity is about $3.0 to $3.5 million per year. So while this year's budget is below that amount, it is not too far off.

He explained that the picture has changed since Policy's budget planning meeting in April. Based on what is currently known about the Senate version of the state budget, the latest estimate of the funds available will be $3.18 million for the FFSA, plus operating costs. In addition, there is more carry forward (i.e., fund balance) in the FFSA than the amount assumed at the Policy meeting last month. So, given what is known about the budget at this time, DNR believes the program can be funded and there will still be a fund balance at the end of the fiscal year.

Goldmark said he wanted to make it clear that the budget reductions are by the Legislature, not a choice of this Board. He added he had hoped for a comprehensive audit of the AMP by the state auditor because he thought there was an opportunity to make it run more economically and efficiently. The auditor's office made a commitment to do that in the spring, but now has decided not to follow through.

Sherry Fox asked if, in addition to the tribal caucus, funding for the environmental and small landowner caucuses was also reduced. Cramer answered they were reduced by 50 percent.

Paula Swedeen asked Cramer to explain further about additional funding not necessarily affecting the success of the program. Cramer said he was talking about money for projects, not participation.

Schaaf asked about the grant writer item (line 69). Cramer said this was explained in Hotvedt's memo, and is the result of an agreement in Policy to budget some money for hiring someone to help seek grant funding if opportunities presented themselves. He said it is one of several items the money would not be spent on right away.

Fox asked if the "CMER PI Staff at NWIFC" (line 62) is a participation grant, to which Cramer answered no, it is staff scientists who lead several projects.

Fox referred to the "wetlands systematic literature review" (line 37), and noted it was a new project with a cost of $67,000. Stephen Bernath explained that the only protection in rules for forested wetlands is low impact equipment upon harvest, and there is a question about the long-term impacts. The literature review will provide a synthesis of the available information that sheds light on forested wetland recovery after harvest.

Dave Somers asked if there is a mechanism for the Board to let the Legislature know it is concerned about the viability of the program. Goldmark said there is always the opportunity for Board members to work with the Legislature on matters of importance to them, although for this year it is late in the session. Anna Jackson commented there is power in numbers, and in future sessions WDFW would be

willing to work with DNR and other Board members on the long-term adaptive management funding issue. Goldmark added there are two big funding items that it would be appropriate for the Forests and Fish principals, including himself as Board chair, to work on – the long-term funding and the FREP funding.

Swedeen asked if the Board could engage in a more focused discussion on whether there is a particular threshold after which the incidental take permit is in danger. Cramer said this is up to the federal Services. He said so far the program hasn't had to eliminate projects, which is rare right now for programs that are dependent on the state budget. Goldmark said he thought that was an important point – even in an era when the state budget is being reduced by five billion dollars, the AMP has continued to be maintained fairly intact.

Cramer ended by saying despite the fact that Policy members were not in consensus on the budget, the priorities were supported, and Adaptive Management Program Administrator Jim Hotvedt recommends that the Board approve the budget as proposed.

Motion: Tom Laurie moved that the Forest Practices Board approve the 2012 CMER Work Plan and Budget as presented.

SECONDED: Dave Somers

Board Discussion:
Swedeen said she was concerned about participation grants and the future of the program, and implored Board members to work toward sustained and increased funding for the program.

ACTION: Motion passed. 11 Support / 1 Oppose (Herrera)

EXECUTIVE SESSION
No executive session.

Meeting adjourned at 4:00 p.m.