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Small Forest Landowner Westside Template Proposal Policy track eligibility pursuant to the requirements of WAC 222-12-0403 and the Legislative intent of RCW 76.09.368

Submitted August 18, 2018 by Ken Miller and Steve Barnowe-Meyer, Small Forest Landowner Co-representatives, TFW Policy

The Small Forest Land Owner (SFLO) Template Proposal (hereafter SFLO Template) is intended to meet the 1999 Legislative intent of RCW 76.09.368 which in part reads:

“The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs.”

In support of the Legislative intent we provide herein multiple eligibility assessments of our SFLO Template relative to the pertinent language of WAC 222-12-0403 (3):

“Template prescriptions designed to meet resource objectives to address common situations that are repeatedly addressed in alternate plans or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;”

Although the SFLO Template was initiated for the Science track, we posit that it also meets the Policy track requirements based on DNR data on Alternate Plans (AP) which were used as received – i.e. without correcting apparent errors on a few of the data points:

1. Data supplied by DNR for previously approved SFLO alternate plans indicate:
 - a) There have been well over 200 approved AP with a wide range of RMZ management prescriptions, activity in close proximity to BFW, and often along relatively long stream reaches with potential impacts on RMZ functions.
 - b) Summarizing these AP Forest Practices Applications (FPA) generates the following metrics:
 - i. “No Cut Buffers” averaged 44.7’ with a range of 0’ to 146’ (likely error?) on 221 data points - somewhat comparable to the likely average SFLO Template metrics.
 - ii. Length of RMZ affected (one or both sides) averaged 899.5’ with a range of 50’ (likely error?) to 6,000’ on 218 data points.
 - c) Regardless of the specific reason for these individual alternate plans, the RMZ functions associated with the prescriptions met the Alternate Plan Approval Standard in either the short or long term and were approved by DNR. In most, if not all, cases they included the concurrence of Inter-Disciplinary (ID) team members.

d) Data collected for this assessment cover all SFLO western Washington AP that were not templates. Some AP had missing data, but all AP with data for BFW, no cut buffers, and length of RMZ were included in our summary statistics below. There are additional data in the comments that can be used for more exploratory analysis. It appears there are some errors in the data (e.g. conflicting information in comments vs data columns) but our review suggests that they are not likely significant to averages due to compensating errors. Parsing these data by BFW (TYPE F and Np combined) show that for:

i. **Less than 5' BFW:**

- 1) "No Cut Buffers" averaged 43.6' with a range of 0' to 113' with 71 data points.
- 2) Length of RMZ affected (one or both sides) averaged 718' with a range of 85' to 2640' with 67 data points.

ii. **5' to 15' BFW:**

- 1) "No Cut Buffers" averaged 41.8' with a range of 0' to 146' (likely an error as the activity column indicates this data point is actually 30'). We found 92 data points.
- 2) Length of RMZ affected (one or both sides) averaged 946' with a range of 50' (error??) to 3,400'. We found 93 data points.

iii. **Greater than 15' BFW:**

- 1) "No Cut Buffers" averaged 50.7' with a range of 0' to 145' (likely an error as the activity column indicates this data point is actually 25'). We found 54 data points.
- 2) Length of RMZ affected (one or both sides) averaged 1,033' with a range of 200' to 6,000'. We found 58 data points.

iv. **Np Streams** (12 data points pulled out of above data)

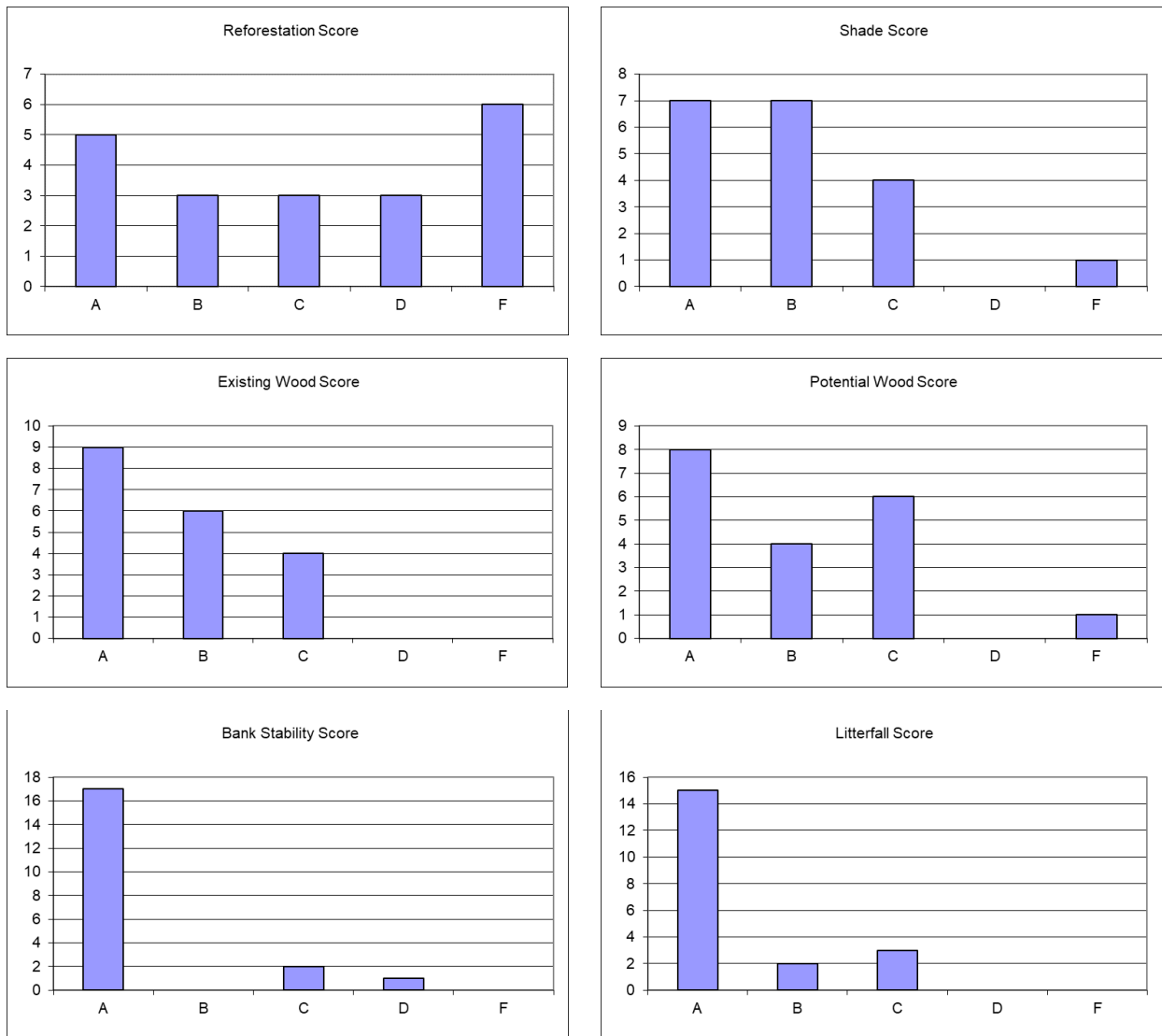
- 1) "No Cut Buffers" averaged 28.3'.
- 2) Length of Stream Reach affected (one or both sides) averaged 605'.
- 3) Weighted "No Cut Buffers" averaged 25.5'

2. The primary purpose/goal of the Forest and Fish regulations and Alternate Plan Guidance is to maintain RMZ functions consistent with the four goals of Forest and Fish. The only known review of prior approved SFLO AP was Galleher (2008) (submitted with this supporting document). This **after harvest** review was conducted by an ID Team that provided very detailed metrics (again similar in many ways to the SFLO Template) along with a **consensus** report card on how well the Functions were being protected after harvest:

- a) The average Bank Full Width "no cut" buffer on 21 stream segments was 50', which is similar to all SFLO APs of 44.7' (above).

- b) Average Stream Reach (including several 2-sided harvests) approved was 1,128', although the actual harvested average reach was 947' which is similar to the average for all 218 stream segments of 899' when looking at all SFLO AP.
- c) Most importantly, are the ID Team consensus score summaries regarding how well the Functions were actually protected as required in Board Manual Guidance for Alternate Plans (Figure 1: Panels 1-6)

Figure 1: Hardwood Conversion Field Assessment Qualitative Score Frequencies (from Galleher 2008)



This field study did uncover some significant reforestation follow-up issues (Figure 1, Panel 1 (upper left)) that can/will be addressed in the SFLO Template. Note the two functions most

related to buffer width requirements (shade & LWD [existing and potential]) scored very well confirming “relatively low impact” as required in RCW and WAC for SFLOs.

3. The WAC language for template eligibility on the Policy track is not limited to why or what was in prior approved Alternate Plans. This WAC also includes “or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;”
 - a) Eliminating the requirement for Site Class and multiple zones within the various Site Classes is intended to “simplify the development of future plans or strategies” as intended by RCW 76.09.368 which in part says: “. . .(3), *but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs.*”
 - b) SFLOs are presumed to have lower impacts due to SFLOs generally “smaller harvests” and SFLOs relatively low percentage ownership of Type F stream reaches (18% according to the Washington State Forestland Database). From a Policy track standpoint the Legislative intent of RCW 76.09.368 (cited above) reaffirmed their clearly intended deference to SFLOs in RCW 76.13.100 (2) partial: *The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources.* Additionally:
 - i) In the absence of actual “criteria” for “low impact” determinations as required in WAC 222-12-0403 (5) we are left to use our collective best professional judgement regarding the legislative intent of “relatively low impact” – a balance that WFFA feels they have achieved with a template proposal utilizing a blend of science and policy.
 - ii) It’s also intuitive that the Legislature believed the harvest restrictions in the Exempt 20-Acre (WAC 222-30-023) were “relatively low impact” otherwise they wouldn’t have exempted them from the full Forest and Fish requirements. The SFLO Template was not modeled after the Exempt 20-Acre rules but coincidentally has prescriptions that are similar in many ways. It is also pertinent to the low impact criteria that:
 - a. DNR provided the Federal Services a 5/13/2004 supportive report: “Exempt 20-Acre Parcel Riparian Management Zones: An assessment of Riparian Function” that was to be “incorporated into an Environmental Impact Statement currently being developed to support the Forests and Fish Habitat Conservation Plan” that was ultimately adopted.
 - b. The Federal Services acknowledged/accepted the Exempt 20-Acre prescriptions conditionally with the caveat that these harvests may not necessarily meet the Clean Water Act, and required DNR to monitor the use of this prescription by stream names to help monitor potential impacts.
 - c) The WFFA Template Proposal also meets this WAC eligibility requirement because it has very “site-specific physical features” tying all prescriptions to three different categories of Bank Full Width measurements, consistent with the RMZ function science as presented in our proposal [and supported by common sense].

- d) The Adaptive Management Program and the Forest Practice Board approval of the only other two templates confirm, and set precedent, that the WAC language for template eligibility was not intended to restrict its use to only when there is a specific pattern of prior approved SFLO Alternate Plans. Neither of these previously approved template options had a history of substantive similar prior approved SFLO Alternate Plans.

The eligibility standards of WAC 222-12-0403 (3) are, we believe, intended to be a holistic interpretation about eligibility, grounded in science and confirmed by practice. As such, eligibility is a separate question than whether or not all the actual template metrics meet all the sometimes conflicting RCWs & WACs which require a balance between competing requirements of science and policy.

Our proposal meets the Legislative intent, and the template eligibility test in a variety of ways: prior alternate plans; simplification; site-specific physical features; and “relatively low impact” (Policy & Science tracks). Early discussions by TFW Policy’s Template Sub-Committee confirmed that at least some of the metrics in the WFFA Proposal met this WAC eligibility requirement, therefore the administrative screening hurdle has been met. The remaining metrics will be informed by the science reviews and further TFW Policy discussions. After nearly 4 years languishing in TFW Policy it is time to sit down and work collaboratively on each other’s needs in search of consensus as intended by our legislature, including multiple regulatory deferences to SFLOs due to a finding of disproportionate impacts of Forest and Fish on SFLOs in the SBEIS submitted January 21, 2001.

While WFFA certainly has a responsibility to work collaboratively to address other stakeholder concerns, denying eligibility for this SFLO Template clearly is not supported by the Legislative intent, WAC language, or past practices.

Appendix A

WAC 222-12-0403

***Cooperative development of guidelines for alternate plans.**

The department will develop the section for alternate plans (WAC **222-12-090(21)**) to submit to the board in cooperation with representatives of the small forest landowner office and advisory committee, the departments of ecology and fish and wildlife, United States Fish and Wildlife Service, National Marine Fisheries Service, and affected Indian tribes.

The manual should include:

- (1) As required by RCW **76.13.110(3)**, the small forest landowner office recommendations for alternate plans or alternate harvest restrictions that meet riparian functions while generally requiring less costly regulatory prescriptions;
- (2) The effectiveness of strategies for meeting resource objectives and protecting public resources;

- (3) Template prescriptions designed to meet resource objectives to address common situations that are repeatedly addressed in alternate plans or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;
- (4) Appropriate recognition or credit for improving the condition of public resources; and
- (5) Criteria to assist the department in determining whether a small forest landowner alternate plan qualifies as a low impact alternate plan.

[Statutory Authority: Chapter **34.05** RCW, RCW **76.09.040**, [76.09.]050, [76.09.]370, **76.13.120**(9). WSR 01-12-042, § 222-12-0403, filed 5/30/01, effective 7/1/01.]