FOREST PRACTICES BOARD

REGULAR BOARD MEETING
February 14, 2012
Natural Resources Building
Olympia, Washington

Members Present

Bridget Moran, Chair of the Board, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Dave Somers, Snohomish County Commissioner
David Herrera, General Public Member
David Whipple, Designee for Director, Department of Fish and Wildlife
Mark Calhoon, Designee for Director, Department of Commerce
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Phil Davis, General Public Member
Jaclyn Ford, Designee for Director, 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

Bridget Moran called the Forest Practices Board (FPB or Board) meeting to order at 9:05 a.m. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

Moran introduced new Board members Carmen Smith, general public member representing independent logging contractor, Bob Guenther, general public member representing small forest landowner who actively manages their land, Philip Davis, general public member, Jaclyn Ford, Director's designee for Department of Agriculture and David Whipple, Director's designee for Department of Fish and Wildlife.

Moran also recognized and expressed appreciation to outgoing members Sherry Fox and Doug Stinson for their service to the Board.

APPROVAL OF MINUTES

MOTION: Tom Laurie moved the Forest Practices Board approve the August 9, 2011 minutes as amended.

SECONDED: Norm Schaaf

Board Discussion:
Tom Laurie recommended that lines 2-8 on page 10 be revised as follows:
Stephen Bernath, Forests and Fish Policy Co-Chair, reported that Policy agreed to ~~three~~ two top priorities for 2012, but is still in the process of developing a charter to describe an approach. The ~~3~~ two priorities are:

- Complete the type N strategy of the clean water assurances. ~~Evaluate how to identify the uppermost point of perennial flow (PIP) in Type N Waters~~
- Develop a recommendation to the Board on type F/N ~~two~~ water typing issues including a permanent water typing rule ~~and updated water typing protocol survey standards; and~~
- ~~Ensure that the Type N effectiveness studies are on track.~~

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Bridget Moran reported on the following subjects:

- Senate Bill 6406 would integrate hydraulic project approvals into the forest practices application review, and would require rule making.
- A well-attended stakeholder meeting took place on February 8 to receive ideas for Forestry Riparian Easement Program (FREP) long-term funding. A recommendation is due to the Legislature by May 31, 2012 as directed in House Bill 1509 (2011).
- A U.S. Fish and Wildlife Service (USFWS) rule effective on November 4, 2011 removed approximately 190,000 acres of critical marbled murrelet habitat in northern California and southern Oregon. Staff will send the Federal Register notice to Board members. This did not affect the Board's critical habitat rule for the marbled murrelet; however, the Board should be aware that the American Forest Resource Council filed suit on January 24, 2012 against the USFWS claiming a violation of the Endangered Species Act.

PUBLIC COMMENT

Robert Meier, Rayonier, acknowledged a number of Board successes related to Washington's forest management regulatory system, including the recovery of the bald eagle, cultural resource protection, reduced landslides, and the Board's role in the largest, most comprehensive habitat conservation plan in the nation.

David Powell, Yakama Nation, urged the Board to adopt the "Notice of Forest Practices to Affected Indian Tribes" rule. He said the proposal was the result of three years of work, including consensus by the TFW Cultural Resources Roundtable.

Jeff Thomas and Andrea George, Puyallup Tribe, commenting on behalf of the Puyallup Tribal Council, referred to their letter dated February 13, 2012 addressed to the Commissioner of Public Lands and Patricia Anderson. They expressed there had been no meaningful government-to-government interaction, insufficient notice to tribes, and no meaningful review of the comments submitted during the CR-101 and CR-102 processes.

Bridget Moran asked Thomas to reconcile these comments with the fact that he is a Roundtable co-chair and the Roundtable presented a consensus recommendation to the Board. Thomas said the

tribal council's comments were brought to the Roundtable's attention, but did not fare well in that process. That is why the comments are being forwarded to the Board separately.

Pete Heide, Washington Forest Protection Association, said WFPA's comments related to the Notice to Affected Indian Tribes rule proposal was in no way meant to question the ability or integrity of Forest Practices Division staff.

Peter Goldman, Washington Forest Law Center, asked the Board to consider creating a task force to develop recommendations to integrate timber certification in the forest practices regulatory system.

Chris Mendoza said certain landforms like break-in-slope are conducive to alternate plans in the outer edge of riparian buffers. He said perhaps fewer landowners will need compensation through FREP if more of them can get financial return through the use of alternate plans in riparian areas.

Rick Dunning, Washington Farm Forestry Association, commented on the importance of the small forest landowner to Washington State and the high level of regulation compared to other states.

STAFF REPORTS

Forests and Fish Policy Work List Priorities

Adrian Miller, Policy co-chair and Mark Hicks, Department of Ecology explained how the Policy Committee is accomplishing its top two priorities for 2012. The priorities are: 1) to complete the Type N strategy of the Clean Water Act Assurances; and 2) to develop a recommendation to the Board on Type F/N water typing issues including a permanent water typing rule.

Clean Water Act Assurances Annual Report

No report provided. An update will be provided at the May meeting.

Dave Whipple explained the Washington State Fish and Wildlife Commission adopted a conservation management plan for the gray wolf in December 2011. He said the Department of Fish and Wildlife is committed to working with stakeholders during 2012 to assess and recommend any changes needed in the forest practices critical habitat rule for the gray wolf, and will provide a plan to the Board later in the year.

Bridget Moran asked if Board members had questions about any of the staff reports they received in their packet. There were no questions.

LEGISLATIVE ACTIVITY UPDATE

Darin Cramer, DNR, summarized the contents of the three bills which could have the most impact to the forest practices program:

- SB 6406. Integrates hydraulic project approvals into the forest practices application, eliminates the 30-day review for forest practices rule making, raises application fees for forest practices, increases duration of a forest practices application from two to three years, and changes SEPA regulations. If passed, rule making and board manual development would be required. Costs of implementation would be offset by the new fees provided in the bill.
- HB 2253/SB 6130. Changes SEPA regulations – potentially increases the gap between requirements of the Forest Practices Act and Growth Management Act. If passed, rule making may be required.

- HB 2238/SB 6983. Directs the Department of Ecology and the Department of Fish and Wildlife to consider allowing required environmental mitigation to be accomplished through FREP, the Family Forest Fish Passage Program, or the Rivers and Habitat Open Space Program.

ADAPTIVE MANAGEMENT REVIEW (LEAN PROCESS) UPDATE

Jim Hotvedt, DNR, reported on the outcome of an opportunity assessment conducted by a LEAN consultant. The result is a recommendation to conduct a LEAN event on the first two steps of the Cooperative Monitoring, Evaluation and Research Committee (CMER) process: 1) Setting policy direction and scoping a project, and 2) Designing a study. He explained the next step is to secure a contractor to conduct the LEAN event, and he expected results to report to the Board by May 2012.

TAYLOR'S CHECKERSPOT BUTTERFLY ANNUAL REPORT

Sherri Felix, DNR, summarized the fourth annual report on the voluntary cooperative protection approach for the Taylor's Checkerspot Butterfly. She reported for the calendar year 2011 there were 14 forest practices applications within one mile of an occupied butterfly site, and since the Board took action in 2007 there have not been any butterfly protection issues associated with any individual forest practices activities.

David Whipple, Department of Fish and Wildlife, said the habitat of this species is in very specific geographic areas which helps make it feasible to employ a non-regulatory approach for protection. He said the landowners' individual efforts to protect the butterfly and its habitat is also a very important component.

PUBLIC COMMENT ON FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Sherry Fox summarized the 2011 FREP reform legislation and suggested inserting language into the proposal regarding landowners' continued use of easement premises.

Ken Miller, Washington Farm Forestry Association, said he supported Fox's suggestion, summarized the positive aspects of the FREP reform legislation, and commented that there must be success on the long-term funding issue.

FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Dan Pomerenk, DNR, summarized activities leading to the current draft language before the Board for action. He reported that no comments were received from the 30-day review for counties, Department of Fish and Wildlife, and tribes. Gretchen Robinson, DNR, explained that staff completed a preliminary cost-benefit analysis and edited the draft language, mostly to clarify the application and valuation processes. She said staff will plan public hearings to take place late in March. She requested that the Board direct staff to file the draft language with the Code Reviser to initiate rule making.

MOTION: Norm Schaaf moved the Forest Practices Board approve for public review the draft rule proposal amending chapter 222-21, Forestry Riparian Easement Program. These changes will reflect the 2011 legislation, House Bill 1509. He further moved the Board direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making.

SECONDED: Dave Somers

Norm Schaaf asked if the language Sherry Fox proposed was considered during rule drafting. Pomerenk answered this was the first he had heard of the proposal. He added there is language in statute regarding landowner use of easement premises.

Darin Cramer suggested an appropriate location may be in the paragraph discussing the easement contract (WAC 222-21-030(4)): "…the easement contract shall explicitly state …", etc.

AMENDMENT TO MOTION: Dave Somers moved to amend the paragraph on page 18 that begins on line 35 to incorporate Sherry Fox's suggested language:
(4) Forestry Riparian easement contract. The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The easement will be for a term of 50 years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office. The FRE contract shall explicitly state that the small landowner is free to use its property as it see fit: provided that the use must be consistent with other rules and statutes, including forest practice, GMA, and Shorelines Management Act, and must protect riparian function.

SECONDED: Tom Laurie

Board Discussion:
Schaaf expressed concern about the proposed language and wanted to make sure it could be amended during the rule making process as long as the intent was maintained.

Moran said staff would exercise some discretion to ensure the appropriate placement of the inserted language and to use proper grammar and language in carrying out the intent. She reminded Board members the proposal is at the public review stage and the inserted language will be available for public comment.

ACTION ON AMENDMENT: Motion passed unanimously.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON CONVERSION ACTIVITIES AND LANDS PLATTED AFTER 1960 RULE MAKING
None.

CONVERSION ACTIVITIES AND LANDS PLATTED AFTER 1960 RULE MAKING
Gretchen Robinson, DNR, requested the Board's approval to begin rule making related to conversions of forest lands for non-forestry uses. She said the rule making would incorporate recent changes to the Forest Practices Act including eliminating all references to lands platted after January 1, 1960, and adding a process related to the Notice of Conversion to a Non-forestry Use. She added that staff would also like to take the opportunity to edit the language in chapter 222-20 WAC to make it more user-friendly, and would monitor current legislation for any additional changes that may be needed on the subject.

She said staff planned to work with the Washington State Association of Counties and other agencies and stakeholders who wish to participate in rule development, and added she expected draft language would be ready for further Board action in August.

MOTION: Dave Somers moved that the Forest Practices Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public that the Board is considering rule making to incorporate Forest Practices Act amendments related to forest land conversion.

SECONDED: Bill Little

Board Discussion:
None.

ACTION: Motion passed unanimously.

NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN TRIBES RULE MAKING

Sherri Felix, DNR, requested adopting with no modifications the rule proposal amending WAC 222-20-120 and WAC 222-30-021(1)(c)(ii) that received public review. She said eight comments were received prior to the close of the comment period on January 6, 2012. The comments were support as proposed, support with a title change, and support with changes to subsection 2. She said the written comments were in the Board materials and the comments were summarized with staff responses in the draft Concise Explanatory Statement.

She said the reasons for the "no change" recommendation are:

1) The language is the long-deliberated, high value consensus recommendation from the TFW Cultural Resources Roundtable.
2) While changing the WAC title is not necessary, it does alert the reader that the rule addresses both notice to tribes and cultural resources. It does not change the underlying requirements in the WAC.
3) Currently, DNR is made aware of cultural resources via data from the Department of Archaeology and Historic Preservation (DAHP), confirms with DAHP, and then requires a landowner-tribe meeting. DNR also requires the meeting when a tribe tells DNR there is a cultural resource. This would not change under the Roundtable's consensus language.

MOTION: Tom Laurie moved that the Forest Practices Board adopt the rule proposal amending WAC 222-20-120 to clarify language relating to landowner-tribe meeting requirement and WAC 222-30-021(1)(c)(ii) to replace old Class IV-special language with the Class IV-special language adopted in 2008. He further moved the Board direct staff to file a CR-103 with the Office of the Code Reviser.

SECONDED: Paula Swedeen

Board Discussion:
Tom Laurie said he appreciated the comments he heard at the hearings and all of the comments the Board received on this rule. He said he knew there could be process details that eventually may

need to be worked out either at the operational level or, if necessary, at the Board level. But all the players put in a good-faith effort to developing the rule, and he supported adoption of the rule as proposed.

David Herrera also expressed support based on the time invested in the consensus approach, and if unanticipated problems come up they can be adaptively managed. He mentioned that government-to-government interaction is still available if a tribe does not get the satisfaction needed from the process in the rule.

Norm Schaaf said he would support adoption, but his concern about the added process for landowners had not been resolved. He said he trusted if his concerns do arise, DNR and the tribes will all act in good faith to resolve the problems. In the event that does not happen, the Board can take it up at that time.

Schaaf asked if the Board could get a report from the Roundtable or DNR staff as to how the rule is working and any issues that do arise from the process in the amended rule. Felix said she would be happy to.

ACTION: Motion passed unanimously.

CRITICAL HABITAT RULE MAKING

Sherri Felix, DNR, requested adoption of the critical habitat rule. The rule 1) makes the Board's critical habitats rule consistent with the changed federal and state status of the bald eagle and the peregrine falcon, and 2) changes the name of the species formerly known as the Western pond turtle to Pacific pond turtle. She said if adopted the rule would take effect in late March.

Marc Engel, DNR, explained that DNR and Department of Fish and Wildlife are developing a fact sheet to inform landowners about federal regulations protecting bald eagles, and DNR is posting website links to the USFWS self-certification system for landowners who propose forest practices within certain distances of bald eagle habitat.

David Whipple said WDFW had a constructive meeting with the USFWS regarding the change in regulatory jurisdiction for bald eagle protection from the state to federal. USFWS is going to make administrative changes to their self-certification process under the Bald Eagle Protection Act and track state forest practices applications proposing activities certain distances from eagle habitat. Between the state and federal processes there will be a good safety net making it possible to go forward with this rule.

MOTION: David Whipple moved the Forest Practices Board adopt the rule proposal amending WAC 222-16-080, critical habitats (state) of threatened and endangered species. These changes reflect the change in federal and state listings of the bald eagle and the peregrine falcon, respectively, and the common and scientific name changes of the Western pond turtle. He further moved the Board direct staff to file a CR-103 with the Office of the Code Reviser.

SECONDED: Norm Schaaf

Board Discussion:

Paula Swedeen thanked the agencies for addressing the issues raised in past Board meetings.

Whipple commented that a lot of outreach and effort by stakeholders went into creating the administrative solutions for continued eagle protection. He thanked DNR for stepping up even in the absence of a rule, and said he appreciated the landowners' contributions that helped make the bald eagle a success story.

Moran said while this is the right thing to do, it is extra work beyond accomplishing the program's mission. It is one more example of why we need to make sure the program is properly funded and stable.

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

Executive session was convened from 11:45 a.m. – 12:20 p.m.

Meeting adjourned at 12:20 p.m.