WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Commissioner of Public Lands

April 17, 2012

MEMORANDUM

TO: Forest Practices Board

FROM: Jim Hotvedt, Adaptive Management Program Administrator

SUBJECT: Pilot Rule Making for the Type N Experimental Buffer Treatment Project for Soft Rock Lithology

On May 8 I will request your approval to file the enclosed CR-101 *Preproposal Statement of Inquiry* for pilot rule making to conduct the Type N Experimental Buffer Treatment Project for Soft Rock Lithology.

This project is important in determining whether the forest practices rules are meeting the performance goals along Type N streams; and it contributes to completion of one of the top priority milestones for Clean Water Act assurances. It is highly supported by the Forests and Fish Adaptive Management Programs Cooperative Monitoring Evaluation and Research (CMER) and Policy committees. It is supported in large part by a five-year grant of $695,000 awarded by the U.S. Environmental Protection Agency, and is expected to take eight years to complete.

The study results will contribute to learning whether the current forest practices rules related to Type N riparian buffers (buffers along non-fish streams) are effective in maintaining important ecological functions provided by riparian forests. A description of the research, and the forest lands on which the research is to be conducted, is included as an attachment to the CR-101.

I will be available at the May 8 meeting to answer any questions you may have about this study, the pilot rule making approach, and the Adaptive Management Program context.

GR/
Enclosure: Proposed CR-101 *Preproposal Statement of Inquiry*

PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Forest Practices Board

Subject of possible rule making: Experimental Research Treatments

Statutes authorizing the agency to adopt rules on this subject: The Forest Practices Board's authority to adopt forest practices rules is granted under RCW 76.09.040, .050, and .370. The pilot project process is authorized by RCW 34.05.313.

Reasons why rules on this subject may be needed and what they might accomplish: Washington State Department of Ecology is implementing headwater research led by the Washington State Forest Practices Cooperative Monitoring Evaluation and Research (CMER) Committee of the Adaptive Management Program. This CMER-funded research, known as the Type N Experimental Buffer Treatment for Soft Rock Lithology Study, is a basin level evaluation of buffer effectiveness that will provide valuable information for the adaptive management of headwater streams.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The study has a peer-reviewed study design, involves the cooperation of multiple landowners (state and private), and has been highly supported by CMER and the Forests and Fish Policy Committee. The study is being supported in large part by a five year grant of $695,000 awarded by the Environmental Protection Agency. This study is a companion to a similar study conducted on hard rock (less erosive) lithology. There is consensus among the CMER Committee and Forests and Fish Policy Committee that conducting this experiment (with its associated harvest treatments) will inform the adaptive management for riparian buffers along non-fish bearing streams in western Washington. Both committees include representatives of federal and state natural resource agencies including: U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration – Fisheries, Department of Fish and Wildlife, Department of Ecology, Department of Natural Resources, and tribes and tribal organizations. Coordination of the project will occur via regularly scheduled CMER meetings, and the Forest Practices Board will be briefed on the progress and results of the study.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☒ Pilot rule making
- ☐ Agency study
- ☐ Other (describe)

See Attachment A for description.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

Mail, fax, or email comments to:
Patricia Anderson, Forest Practices Board Rules Coordinator
Department of Natural Resources
Forest Practices Division
1111 Washington Street E, 4th floor
PO Box 47012
Olympia, WA 98504-7012
Fax: (360) 902-1428; email: forest.practicesboard@dnr.wa.gov

DATE May 8, 2012	**CODE REVISER USE ONLY**
NAME (TYPE OR PRINT) Bridget Moran	
SIGNATURE	
TITLE Chair	

Attachment A

The Type N Experimental Buffer Treatment Project for Soft Rock Lithology tests the effectiveness of the current riparian management rules in providing protection for water quality and providing riparian functions along non-fish bearing streams in western Washington. The research could result in new rules developed through the adaptive management process. See RCW 76.09.370(7) and WAC 222-12-045. This project is a critically important step in determining whether the rules result in meeting the performance goals along Type N streams. This evaluation will be achieved by identifying the effectiveness of the current forest practices RMZ buffers (50 foot wide buffers on both sides of the stream extending along at least 50 percent of the length of the perennial, non-fish bearing stream) in maintaining important ecological functions provided by riparian forests. The ecological functions evaluated in this study include: large woody debris recruitment, shade, stream temperature, sediment storage, invertebrates, and downstream exports (nutrients and suspended sediment).

Pilot riparian management zone (RMZ) and harvesting rules and are needed on a subset of the experimental sites. A pilot RMZ rule will be used to apply the current 50 foot wide forested buffers at the upper end of a Type F (fish-bearing) stream channel. In addition to the pilot RMZ rule, one or more sites requires a pilot even-aged harvest rule [WAC 222-30-025 (4)]. Timber harvest within the treatment basin(s) will result in an area greater than 240 acres harvested within the last five years by even-aged harvest methods on land owned by one landowner. These pilot rules are needed to allow field data collection this summer (2012). Failure to initiate field monitoring in the 2012 summer field season may result in loss of the $695,000 EPA grant needed to fund this important study.

Screening criteria were established as part of the study design to ensure treatment sites will be similar enough in size, geology, and forest age to serve as replicates in the experimental design. Field work was originally to begin in the summer of 2011; however, a sufficient number (20) of basins needed for consistency with the study design could not be located. By April 2012, only the minimum number of sites was found with landowners willing to harvest at the time and to the extent necessary to be included in the study.

Cooperators are now in the process of conducting protocol surveys to verify the last fish point. If the point occurs too far upstream the resulting Type N basin is too small to include in the study unless non-fish bearing buffers can be applied to a small portion of the Type F stream.

Due to the fact that the final step of identifying the uppermost point of fish presence is still ongoing, the specific streams and an absolute number that would be covered under the pilot rules cannot yet be determined. However, there are some factors that help to anticipate the extent to which the pilot rules would be used. The study will use a total of 20 non-fish bearing basins; of these, between 6 to 8 basins will be maintained as unharvested reference basins. Of the 12 to 14 remaining that would be needed for harvest treatment basins, only some will need to be included in either pilot rule group. As of April 12, 2012, six sites had been field verified for fish presence, and of these only two would be included as pilot rule sites. One of these two would have the pilot rule application of the non-fish buffers for a portion of the fish bearing stream, and the other would be assigned to the pilot rule group for application of the modified green up requirement. Based on this general pattern of occurrence it seems likely that no more than 3 or 4 basins would be assigned to a pilot rule group as part of this rulemaking.

All other applicable Forest Practices rules will be adhered to at all treatment sites. Forest practices applications for study sites identified by CMER will only be approved for treatments consistent with the study plan, both Pilot CR-101's. The forest practices applications will be designated as Class III for processing, and will be approved or disapproved within 30 days of submittal of a complete application.

The study has been designed to minimize the potential for damage to public resources while maintaining the quality of design and implementation necessary to address the study objectives. Study sites do not include riparian areas adjacent to any 303d listed waters, nor any areas that are subject to the Class IV-Special provisions of WAC 222-16-050(1). Care will be taken not to damage public resources with the application of treatments, and resources such as water quality and temperature will be regularly monitored. If damage to public resources occurs from the harvest treatments, the project lead will be immediately informed and will consult with the Forest Practices Program, the Adaptive Management Administrator, the Department of Ecology and the cooperating landowner about resource mitigation that supports the research needs while limiting damage. CMER will closely monitor the study sites for at least two years after the application of treatments.