Landowner Eligibility

Sub Issue: SFL

The logic of setting a cut-off date is understandable, but this is still changing the rules retroactively which is unfair, and perhaps not legal? This date should be the date at which these eligibility changes are made, or certainly not before the Forest and Fish HCP was formally signed. The net used to catch “land speculators” should not catch/punish those family forest owners who are intent on managing their forest land.

“Require the applicant to have had majority ownership of the land associated with the (FREP) easement area prior to March 20, 2000, or have inherited…it from a linear ancestor”. This means that the only way to pass on the land to a child or grandchild after 2000 with FREP eligibility is to die. This makes a shambles of tree farm family inheritance and ownership decisions involving FREP. What guarantees does the legislature give me about stable inheritance laws?

“inherited the property” seems unduly limiting in that it appears limited to land transfer to family only upon my/our death. With our “Ties to the Land” efforts we are encouraging/encouraged to do succession planning as a means of keeping the land we love forested. This needs to be broadened to include sale/gifting to lineal ancestors.

The stated problem does not justify such a drastic affect on someone that was eligible for FREP at the time of the application – what is the real problem this change is trying to fix. Without clarification this is a highly objectionable provision that doesn’t seem fair by retroactively changing the rules – what’s the problem, and is it significant enough for such a rule change?
Regarding eligibility. I disagree with your view that lands purchased after Forest and Fish Implementation should not qualify because “landowners knew what they were getting into”. Many forest landowners did not and still don’t know what they were getting into. In fact until a harvest area is recon’d, laid out and DFC’d, and reviewed by DNR, WDFW, Tribal biologists and slope stability experts…….you don’t know the true impact of forest and fish rules. How many small forest landowners (SFLO’s) do you know that go to this extent before purchasing their property? They just don’t. These aren’t like large landowners who may do extensive due diligence. Often the immediate harvest of timber is not the SFLO’s primary concern. They never know the true impact of Forest and Fish until the boundaries are put on the ground often with considerable expense including hiring a forestry consultant and possibly a slope stability specialist.

In addition….. in September 2009 landowners received additional restrictions when the basal area requirement for Fish bearing streams was significantly increased to 325 BA. This increase requires leaving an additional 10-20% more trees in Riparian Management Zones. In fact it often results in the placement of “no cut” rather than “thinning” buffers. This has resulted in additional negative economic impacts on Small Forest landowners.

Using the same logic as the proposed eligibility change…..Landowners could not have predicted this DFC change was coming…..Landowners who purchased land between 2000 (FF Implementation) and 2009 (DFC Rule change)bought land with the thinking that if they followed the FP rules then they could have a viable small forest operation. Then the rules change requiring more trees to be left. Now DNR proposes that they become ineligible altogether even though they followed the rules and conducted forest operations with the promise that FREP would be available at least at some point.

When the economic impacts of the Forest and Fish rules were considered…… the disproportional impact wasn’t only on small forest landowners who bought land before the rules were implemented. The disproportional impact was on future small forest landowner operations. It makes no sense to only look backwards at eligibility when the economic impact study looked forwards…..predicted a difficult outcome for SFLO’s and prescribed a remedy (FREP). The remedy was for post FF implementation. This proposed eligibility restriction places a further burden on small forest landowners and deserves a full economic impact study if you wish to pursue implementing this recommendation.

Sub Issue: Forest certification

As noted above these intended certification systems need to be included for clarity in the Approach I draft also. Additionally I wonder if “Washington Tree Farm Program” should be changed to “American Tree Farm System” from a clarity/consistency standpoint? i.e. FSC is also a national/international certification program that is administered in Washington by a local group. I like the intent of these certification choices, in part because it provides another option for folks not in the current use taxation programs, and confirms intent to actually manage their forestland. Again, not sure it rises to the level of priority of one small over another small forestland owner.

“a certification program recognized by DNR”. Inclusion of some of the intent language regarding acceptable certification programs (see Approach 2. E. c.) would be helpful and reassuring to landowners asked to support this change.

Sub Issue: No FP rule violation

• What if violation is in FREP area- can it be appealed

Sounds reasonable, but I don’t see why DNR can’t deal with bad actors with current tools/punishments that presumably are appropriate for the issue – why should FREP eligibility become part of an enforcement tool. Not easy to defend bad actors, but in principle it simply is not appropriate to mix enforcement activities with FREP. Again, perhaps there is more to the problem that I can’t see in the “Problem Addressed” statement?
**Comment Issue:** Nonprofit group ownership  
**Location:** SFL

**Sub Issue:** Nonprofit group ownership  
- Issue may have been a perception of conservation groups being eligible-wanted clarification

As this program was developed and intended for the benefit of those “small” forest owners who are trying to manage their forest land “for profit” this provision seems to make sense unless I’m missing something? To some extent this may simultaneously at least partially deal with the “non-profits” that some of us object to using/abusing(?) a program intended for active forest managers.

**Sub Issue:** ownership prior to 3/20/2000  
- Person is a new SFL- purchase of their land makes them not eligible for FREP
- Bias to long term family owners and discourages new stewards (owners)
- Excludes new stewards and model tree farmers
- State programs should be all inclusive not exclusive
- FREP is an encouragement to new owners and hence needs to continue the equal playing field for all owner types
- Need to build a program to ensure stewards are supported not unwanted owners-Flag certain purchasers and purchases

This concept has the potential to discriminate against those new folks trying to purchase tree farms today or in the future. These potentially future tree farmers are of great importance because they will have purchased their trees farms with their own dollars (rather than inherit), an important point in recognizing their 'commitment' to tree farming (not all tree farms can be passed down in a family).

**Sub Issue:** SFL determination  
- No comments

**Property Eligibility**

**Sub Issue:** SFL

Again I understand the logic and this may be technically correct regarding steep/unstable slopes outside the RMZ's, but this provision is something landowners fought for and received because steep/unstable slope rules (past, present, and future) can have just as disproportionate impact on smalls as RMZ rules. To the extent that there is a cut-off date approved (your I. B. above) the potential abuse from land speculators is resolved. Again, this net to catch a few, is unduly large and a significant impact on those legitimate forest owners without out the ability to average their rule imposed losses if they happened to have (prior to the cutoff) these kind of lands.

**Sub Issue:** Forest Certification  
- SFL
## DNR-FREP Reform REPORT BY COMMENT-ISSUES

### Comment Issue: Location:
- Do not support using certification for eligibility/priority
- Disincentive for landowners
- Would like to have certification for future applicants
- Make sure all certification organizations are recognized – be inclusive of all forms and meet international standards
- Not sure it is right to make landowner get certified for FREP

### Tax status

**Sub Issue: Tax status SFL**
- FREP is eligible regardless of tax status—should be open to all
- Question DNR reasoning for this as a deterrent. Limits landowners that must keep same protection
- Tax status excludes some ownerships (i.e., 15-acre parcels)

### Prioritization

**Sub Issue: SFL**

The Highest Priority shall be given to FREP applications that include one or more of the following conditions:” statement still needs a lot of clarification from both a process and landowner understanding standpoint. Some examples of how this “highest priority” would actually work would/could make me more, or less, concerned about the 3 stated priority conditions. Never having filed for a FREP and likely only having one potential opportunity in my lifetime makes this enticing to me personally, but I’m not convinced it’s fair to give one small forest owner priority over another small forest owner that has more land/RMZ’s.

The eligibility for FREP was already established. If these eligibilities are to be re-defined, to prioritize by anything other than “first come, first served” opens a slippery slope to whose land does the DNR, the WDFW or the Revenue Department like best (or dislike most)?

**Sub Issue: No FREP ever SFL**
- For funded FREP only
- Can lead to process where landowner put all in at once—drives larger harvest and discourages small impact harvest over time.
- Can put parameters on-% of land in riparian, etc...

### Valuation

**Sub Issue: SFL**
- Give landowner one or two options—DOR or Stumpage
- Landowner should get two choices
- Only use at the time of harvest for value date
- Because there are no other options for landowner should have both
Using the DOR revenue prices only seems an overreaction to the fairness intended with other options. Landowners with lower costs &/or special markets should be given the opportunity to use these – but given specific instructions and a deadline on how & when to present this information if they chose to make this case for prices more site specifically accurate than DOR numbers. I agree using a Market Report may be an option that is not really warranted – probably too subjective. I understand trying to make the process easier to administer, but again we are casting a very big net to solve a problem of the few – when it appears the real problem (voiced at Centralia meeting) about process delays could be solved with a firm deadline – without discriminating against those with legitimate cost/market factors that should be considered.

Unstable Slopes

Sub Issue: SFL

- To disconnect unstable slopes and riparian areas is not logical
- Split off public safety element of unstable harvest-only focus on unstable slope non-harvest and riparian area link for FREP
- Unstable slope (slides) are main input of LWD to stream systems
- Unstable slopes should be eligible-they are directly connected/associated with riparian areas
- Direct tie to riparian function or dysfunction-rule has been on book for a long time-hence should continue to be eligible
- Current FP rules limit harvest-support removal of unstable slopes from FREP

Unstable slopes are protected where they present an impact to water quality and public safety. I would hazard a guess that 90% of unstable features that are protected are water quality related. This required protection is a direct economic hit to small forest landowners and a direct benefit to streams. As pointed out in DNR’s proposed FREP change it has resulted in 7 of the 9 highest dollar FREP acquisitions. DNR goes on to consider how many other “Riparian Easements” could have been purchased with this money.

What about the small landowners who had to leave this large amount of timber? DNR appears to be only concerned about their budget and how many more easements could have been purchased. How about the SFLO who couldn't harvest his timber......primarily to protect water quality. How about the SFLO who spent $5,000 of a georeport......How about the SFLO who counted on harvesting this area...now can’t...and can’t enroll in FREP either. This is a disincentive to own forestland.

Funding

Sub Issue: SFL

Can we also work on how to find dedicated funds for this program, or to find another option for tree farmers to utilize. As analogies go we have asked our Doctor for a new leg to stand on but continue to spend our time and effort just putting a band-aid where a tourniquet is needed.

unless we resolve the funding issue all this is moot. People forget that we (WFFA) has spent a significant portion of our meager resources every year trying to get/keep FREP funded – that wasn’t part of the deal and our need to continually do this speaks to XXXX comments about the vanished (?) Forest and Fish principles we signed on to, despite significant loss of membership by those who were less trusting than our WFFA Leadership at the time Forest and Fish was passed. In the end there are two ways to resolve the funding shortfall: find more money, &/or reduce the demand for FREP (with promised regulatory incentives for “smalls”) – I believe we need to do both, as promised!
I didn’t know them, but I recall a couple sitting towards the front at the Centralia meeting that commented something to the effect that they had sold property elsewhere and used the proceeds to buy replacement timberland. If we don’t find a way to consider these family forest owners as suggests this couple will have extinguished their FREP rights on their old property (assuming it was in Washington State?) and if the replacement forestland was purchased after whatever cut-off date is selected (if we have to have one) they have also lost their rights to FREP on the new forestland.

Additionally, we don’t know if the potential for FREP was factored in, or not, on their particular sale of old timberland, plus on the purchase price of their new property(?) – another reason to not fool with the rules retroactively. If we adopt a cut-off date, any of us selling timberland to someone other than family will take another hit in the pocketbook because the buyer won’t have the FREP option, and therefore the selling price will be less than the full potential for an owner eligible for FREP – this forces us into “fire sale pricing” and further ensures this land will not stay in the preferred forest use.

I do know of other individuals that purchased relatively small parcels they could afford where they considered the probability of FREP eligibility into the purchase price – so they could at least partially compete with the “highest & best use” of development/recreational property. I don’t know whether it was Industrial land or not – and I’m not sure it should matter. In my mind, these folks are doing a service for our environment by keeping this land in active forestry – eligibility for FREP may be a small price to pay for avoiding higher intensity uses.

Seems we need to ask ourselves a couple of questions:

1. If our real concern is speculators buying unharvestable Industrial land and converting that to FREP eligible ownership, perhaps we should just focus on whether the prior land ownership was eligible for FREP (or 20-acre harvest rules) at time of sale (if within __ years?) to determine whether that new ownership is still eligible, or potentially eligible after some holding period?

2. If a lot of non-productive/un-economical Industrial land were sold to “smalls” overtime (as will likely happen with or without FREP), is that something that’s so significant that we really need to “fix” that problem with more complicating rules that always catch unintended victims in the large net?

What about landowners currently on the list? They harvested in good faith. They have made investments in planting, roads, pct, consultants etc. They have followed all the rules with the expectation that FREP would come eventually. They were placed on a list as ELIGIBLE. In the order received as prescribed by law. Is DNR going to revoke this ELIGIBILITY? I understand that the legislature required prioritization for this funding cycle but this was not the understanding of SFLO’s when they were placed on the list. Before any refinements or modifications are made to the program it should be made clear that SFLO’s currently on the list will be a priority for funding.

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**Acquisition Process**

**Sub Issue:**

SFL

“acquisition of Riparian areas” should be changed to something like: “a lease on the timber in the eligible areas”.

* Contingent on if funds available-not acceptable
* Trying to fix problems with new negative (prioritization and eligibility criteria)
* Leave “funding available’ off-w-change to “will determine value at the appropriate time”-make the statement positive
The statement “lost value to landowner through fire, insects, storm, and wind-thrown” that is in both Approaches is a true statement of the problem. But as I understand it exists today, most of the problem is based what sounds like an incorrect interpretation of the rules. Delayed cruises are a problem that clearly needs fixing as proposed, but the reason expedited cruises are needed is so that DNR can do a better job of meeting the intent of the legislation regarding the value (prices and volume) at time of application. It’s my understanding that even delayed cruises should be doing all possible to look at the volume that existed at time of application, not at time of the cruise, as I’m told occurs in the field today and as this statement of the problem seems to say. I.e. the fix is right, but the “problem” statement needs work. If the fix isn’t accomplished, the DNR should still address the intent of the legislation with the subjectivity required in the cruise to account for the volume most likely standing when the FREP application was made.

As of date of “Harvest Status Questionnaire” seems to invite gaming of the system by simply delaying the application submission in a rising market? It seems the date of harvest completion or date of the harvest initiation would be more logical and non-floating dates?

FREP was created in response to the Washington State legislature’s recognition of the unfair impact of the FOREST AND FISH REPORT of April 1999 on the Small Forest Landowner -- SFLO. FREP was to provide incentives for small forest landowners to stay in business, easing some of their unjust burden.

FREP, however, requires bureaucratic, financial and operational commitments that deterred many small forest landowners and generated only limited numbers of applications. Even so, the legislation in 2009 was way behind in funding the program, and this year, 2010, it is again falling behind in funding. As stated in the “DNR Recommendations for FREP Reform”, ... the legislature in the 2010 Supplemental Capital Budget ...directed the DNR to develop recommendations for changes to the FREP...to revise eligibility, prioritization, ... etc.

Comments are being invited on the recommendation. We, XXX are Small Forest Land Owners – tree farmers -- and have our fourth generation involved in tree farming. We understand the legislative intent to ease the unfair and often unbearable burdens of over-restrictive regulations. Our comments are presented below.

GENERAL COMMENTS ON FREP REFORM

As the Supplemental Budget falls further behind on already over-due funding. this, in effect denies compensation for the burdens that FOREST AND FISH legislature and resulting regulations admittedly imposed on the small forest land owners. The nation’s economy may well dictate sacrifices from us all to varying degrees, but if FREP CAN NOT BE FUNDED, let’s own up to it by paying those already applied for and approved and/or lift some of the SFLO’s unfairly imposed costs by changes to the Buffer restrictions for example; some proposals have already been submitted along this line.

This whole FREP Reform/Prioritization process has failed to address what seems to us obvious, that FREP will continue to be underfunded, leaving qualifying applicants unpaid. And now for the first time in 10 years of FREP we are hampered by the RCW wording of FREP being "subject to available funding". This makes it seem to us that support by Commissioner Goldmark (who reminded me of that RCW wording) and support by the Forest and Fish Principles has vanished.
In summary it is my belief that DNR is breaking a negotiated promise to small forest landowners, by adding conditions and restrictions to the FREP program. If DNR feels strongly about this .......then everything including buffer widths and all other aspects of FF should be up for negotiation. The economic impacts should be fully studied as the this represents an additional burden on certain small forest landowners that was not considered. I feel this represents an additional taking of private property value and will result in more conversions of forest land.

It also seems to go against the previous statements of our Land Commissioner and the Legislature who at least previously saw the benefits of retaining and promoting small forest land ownership.

Sub Issue: General 8/30/2010 meeting SFL

| From WFFA-Already prioritized for small forest landowners-therefore no further prioritization or eligibility reform is needed |
| Difficult of getting the Legislature to fully fund is a problem- need to present a uniform front/proposal to the legislature |
| To many options presented forward hurt others |
| A back log of applicant has existed since day one |
| Unified front/proposal is not adequate to secure funding from the Legislature |
| SRF board spends billions on salmon recovery-where is the money to put fish back in the stream-protection versus restocking |
| Need to think about free open markets and how these are affected by regulatory action of the past. |

Sub Issue: Risk of Conversion SFL

“Greatest risk of conversion to a use other than forest land”. We are in Forest Tier I., and can only grow trees. No risk of conversion! Yet dozens of acres of our tree farm may be clearcut for BPA’s new 500 kv power line and rendered non-revenue-producing for ever, somewhat like Riparian Zone acres. Will the DNR come to bat for our trees under the power line over the stream, or look the other way while BPA removes the shade and large woody debris that we, as tree farmers, have to keep?