

As required by  
the Administrative Procedure Act  
Chapter 34.05 RCW

**DRAFT**  
**CONCISE EXPLANATORY STATEMENT**  
AND  
RESPONSIVENESS SUMMARY  
FOR THE ADOPTION OF  
CHAPTER 222-23 WAC, Riparian Open Space Program and  
WACs 222-10-125, 222-12-010, 222-12-090 and 222-16-010

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**1. Introduction**

In April 2009, the Legislature passed Substitute Senate Bill 5401 amending RCW 76.09.040 – Riparian Open Space Program.

This amendment changes the Riparian Open Space Program which acquired only habitat within unconfined avulsing channel migration zones to the Rivers and Habitat Open Space Program. The difference between the programs is the Rivers and Habitat Open Space Program broadens the habitat eligible for acquisition to unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board.

SSB 5401 made four major changes to the existing statutes that establish the Riparian Open Space Program:

1. Expanded the program to include the acquisition of conservation easements on forest land that contains critical habitat for threatened or endangered species as designated by the Board;
2. Changed the type of channel migration lands eligible for acquisition from “unconfined avulsing channel migration zones” to simply “unconfined channel migration zones”;
3. Removed the authority for the Department of Natural Resources to purchase fee title interest in forest land that is eligible under this program and only allows acquisition of permanent conservation easements; and
4. Gave the landowner a choice to enter into a conservation easement that conveys an interest in either the trees only or both land and trees. (This option was previously authorized by the Board in rule in 2001 but SSB 5401 made it a law.)

The rule changes affect the following sections of the Forest Practices Rules, Title 222 WAC:

WAC 222-10-125 Exemption from RCW 43.21C.030 (2)(c).  
WAC 222-12-010 Authority.

WAC 222-12-090 Forest practices board manual.  
WAC 222-16-010 \*General definitions.  
Chapter 222-23 WAC Rivers and Habitat Open Space Program

Adoption date of the rule: May 10, 2011  
Effective date of the rule: (to be determined)

**2. Describe Differences Between Proposed and Final Rule**

On February 8, 2011, the Board directed staff to file a CR-102 *Proposed Rule Making* notice to initiate rule making. The rule making notice was filed on February 11, 2011, and published in WSR #11-05-162. There were no additional changes made to the final rule.

**3. Summarize Comments**

The Board received two comment letters in support of the proposal from Hancock Forest Management and Longview Timberlands, LLC.

**4. Summary of public involvement opportunities**

The Board held hearings in Ellensburg on March 24, 2011, in Olympia on March 30, 2011, and in Sedro Woolley on March 31, 2011; and the comment period ended April 1, 2011. No one attended the hearings in Ellensburg or Sedro Woolley. Six people attended the hearing in Olympia.