FOREST PRACTICES BOARD

REGULAR BOARD MEETING
February 10, 2010
Natural Resources Building
Olympia, Washington

Members Present:
Peter Goldmark, Chair of the Board, Department of Natural Resources
Anna Jackson, Designee for Director, Department of Fish and Wildlife
Brad Avy, Designee for Director, Department of Agriculture
Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development
Bill Little, Timber Products Union Representative
Carolyn Dobbs, General Public Member
Dave Somers, Snohomish County Commissioner
David Hagiwara, General Public Member *(participated from 9 a.m. – 3 p.m.)*
David Herrera, General Public Member
Doug Stinson, General Public Member/Small Forest Landowner *(participated from 9 a.m. – 3 p.m.)*
Norm Schaaf, General Public Member
Sherry Fox, General Public Member/Independent Logging Contractor
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

Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m. Introductions were made by Board members, staff and public. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Doug Stinson moved to approve the November 10, 2009 meeting minutes.

SECONDED: Tom Laurie

ACTION: Motion passed unanimously.

Peter Goldmark presented a plaque of appreciation to Bridget Moran for her past service on the Board.

REPORT FROM THE CHAIR

Peter Goldmark reported the status of several activities:

- Bylaws Committee. He, along with Carolyn Dobbs and Sherry Fox have met to discuss the Board's practices and procedures, and how Board members can be apprised of the laws and rules that guide the Board's conduct. He thanked them and Board counsel for efforts to date, and said they will meet in March and present recommendations to the Board at the May meeting.

- Small forest landowners. He has begun a dialogue with small forest landowner representatives regarding disproportionate impact from Forests and Fish. He said he is working on some of the legislation to follow through on the Legislature's past commitments to this group.

- Strategic plan. DNR is in the process of developing a five-year strategic plan that represents the interests of both the agency and the state. The process has been highly interactive and includes input from staff and the public. Seven public hearings are taking place across the state, and the draft is available on the web for anyone to review and provide comments. A final plan is expected sometime in March or early April.

- Legislation. The major item on everyone's agenda is the budget. There is a $2.7 billion hole which all state agencies must contribute to solving. So far DNR has eliminated 250 positions over the past year while trying to ensure that core business functions are protected.

PUBLIC COMMENT ON GENERAL BOARD TOPICS

Arthur West said the Board needs to look at the legality of its processes, its use of private consultants to guide policy, and doing business with organizations that are not required to follow the Open Public Meetings Act.

Rick Dunning, Washington Farm Forestry Association (WFFA), explained that the reason WFFA is no longer participating in the Forests and Fish Policy meetings is that its members do not agree with the group think. It is not because WFFA doesn't want to collaborate. WFFA does not agree that the Forest Riparian Easement Program (FREP) is not Policy's issue, nor does it agree that FREP must be prioritized differently. Instead, what needs to be addressed is funding given to landowners that are not small forest landowners. He said WFFA thanks Jim Peters for testifying at a recent legislative hearing that the Legislature is making a mistake by not funding FREP, and implied that the tribes consider tree farmers their brothers and sisters. That is the spirit of collaboration.

Ken Miller commented that the conifer restoration template was started in 2003 and still is not finished. This is just one example of a huge effort not completed because the participants are striving for 100 percent consensus and zero risk. This is one of the reasons that small forest landowners are feeling such a high level of overall frustration with the regulatory processes of Forests and Fish.

Kara Whittaker, Washington Forest Law Center, said the parties who wrote the spotted owl Policy Working Group charter called for a balance of science- and policy-based solutions. Unfortunately, all three caucuses of the work group could not reach consensus on the need for a current scientific analysis or rule changes. The Board should convene a spotted owl technical science group and provide interim regulatory protection for occupied owl habitat at risk of harvest. If need be, a petition for rule making can be made toward this end.

Peter Goldman suggested there is a variety of ways to think about the viability of the timber industry without constantly impeding environmental protection. He asked the Board to refer to the document, *An Ecosystem-based Forestry Investment Strategy for the Coastal Temperate Rainforests of North America*.

STAFF REPORTS

Adaptive Management

Jim Hotvedt, DNR, reported that in the next few months nine CMER projects will undergo the independent scientific peer review process.

Compliance Monitoring

Walt Obermeyer, DNR, reported that the fall sampling included 175 forest practices applications. Results will be reported to the Board in the fall. Sampling will begin again the first week in March. The program is also in the process of working on the Clean Water Act assurances milestones.

Rule Making Activity and 2010 Work Plan

Marc Engel, DNR, reported that the Riparian Open Space rule making is proceeding on schedule. He said some 2010 legislation would require rule making. He added that the Board can expect to see the Conifer Restoration alternate plan template and the CMER 2011 work plan and budget in May.

Small Forest Landowner Advisory Committee and Small Forest Landowner Office

Mary McDonald, DNR, reported that Commissioner Goldmark appointed Tammie Perreault to the Small Forest Landowner Advisory Committee to replace Dennis Dart's appointment. She further reported that a total of 278 easements have been purchased through the Forest Riparian Easement Program (FREP), and in the 2009 construction season 29 fish barrier corrections were completed. She added that planning is underway for a joint Washington and Idaho forest landowner field day in the spring in Coeur d' Alene, Idaho.

Peter Goldmark asked how many applications are in the queue for the currently unfunded FREP. McDonald answered 81, with applications continuing to come in.

TFW Cultural Resources Committee

Peter Heide, Co-chair, said the committee's quarterly reports are their task lists and are offered so the Board can see the committee's progress. He also reported that he and co-chair Jeffrey Thomas met with Commissioner Goldmark and Board member Herrera to present the committee's charter, and they look forward to the Board's decision.

Peter Goldmark said he would like to help the committee with funding but the department does not have the resources now. He asked Heide to consider a correction in terminology since "committee" implies Board membership and there are no Board members on this committee. Heide said he would be happy to work with the Board on this notion, and assured Goldmark they fully understand the funding issue.

Taylor's Checkerspot Butterfly

Sherri Felix, DNR, provided a brief background and explained the report in the Board packet is the second annual report. David Whipple, Department of Fish and Wildlife (WDFW), updated the report

by saying that Merrill and Ring and WDFW have completed the first management plan for Taylor's Checkerspot Butterfly protection.

Carolyn Dobbs referred to page 4 of the annual report, "WDFW will attempt to contact a new landowner relative to developing a management plan." She asked how the department will have contact with the landowner at the earliest possible time. Whipple answered that contact had already been made, and although there is little management expected, the department will continue communications.

2010 LEGISLATIVE ACTIVITY

Darin Cramer, DNR, gave an overview of legislation that, if passed, would directly affect the Forest Practices program. Several bills would require rule making. He said he will provide a comprehensive update at the May meeting and an interim update before then.

FISCAL YEAR 2010 ADAPTIVE MANAGEMENT PROGRAM BUDGET UPDATE

Jim Hotvedt, DNR, provided an overview of the status of the FY10 Adaptive Management Program budget. He said the program can cover projected costs, with a balance of $241,000 to carry over to FY11. Assuming the program receives the $2.5 million included in the Governor's supplemental budget, all current projects should be covered. New projects, however, cannot begin unless some of the current projects are completed early, or unless CMER estimates FY11 costs to be substantially lower than projected in last year's budget.

Peter Goldmark commented that attention is now turning to the larger issue of permanent funding. There is good dialogue with federal partners to come up with a more collaborative way to accomplish research that may meet both state and federal needs.

Hotvedt went on to report that actual FY10 contract costs were about $78,000 less than budgeted, and about $800,000 is available for this fiscal year's remaining expenditures. He then explained that the Environmental Protection Agency announced it will award $4.5 million for Puget Sound projects via the Puget Sound Scientific Studies and Technical Investigations Assistance Program. The Department of Ecology, CMER, and DNR, with the help of the Northwest Indian Fisheries Commission, are preparing applications for grants to fund three CMER projects. These projects would contribute to accomplishing Clean Water Act milestones.

NORTHERN SPOTTED OWL POLICY WORKING GROUP FINAL RECOMMENDATIONS

Lois Schwennesen, Facilitator
Shawn Cantrell, Seattle Audubon
David Whipple, Department of Fish and Wildlife
Mark Doumit, Washington Forest Protection Association

Lois Schwennesen said she believed the best minds in the state were brought together to find solutions. She stressed that strong leadership is now called for to maintain momentum and trust.

David Whipple, representing the Government Caucus, said the caucus fully supports the consensus recommendations, and that more work is needed on the incentives that are most beneficial to the species. The caucus stresses that while the Working Group agreed that incentives were a way to

achieve strategic contributions for habitat, there was not agreement on where. The caucus recommends the following "non-consensus" recommendations:

- Charter a small technical group to review the Spotted Owl Special Emphasis Area (SOSEA) concept to determine whether it is still valid, and if so, whether their locations are still appropriate for spotted owl conservation.
- Stay informed about the federal Barred Owl Working Group's process, and seek answers to basic questions regarding spotted/barred owl interactions. Sponsor and endorse a letter to the US Fish and Wildlife Service Recovery Team requesting that the Barred Owl Working Group address Washington's needs in this regard.
- Consider a modeling effort using information from the first two recommendations, to help design a road map of locations to most efficiently achieve strategic contributions and focus incentives.

The incentives approach is very important, and it is important to focus the use of incentives in areas most beneficial to the species and towards achieving the strategic contributions.

Shawn Cantrell, representing the Conservation Caucus, said his caucus also strongly supports the consensus recommendations, and urged the Board to implement them as soon as possible. However, the caucus believes that the Working Group did not fulfill the obligations that the Board charged it with – to recommend measures that result in a strategic contribution from non-federal lands to conserve a viable population of the spotted owl. The caucus recommends the following "non-consensus" recommendations:

- Commission a new scientific analysis of scientific work completed since the 1993 Spotted Owl Scientific Advisory Group's report was issued. Appoint a panel of independent academic and agency scientists to analyze changes since that report was completed.
- Conduct new research. Increase survey efforts to increase the knowledge base of owl presence. There is now a disincentive for landowners to survey their land. New ways are needed to get current information; landowners could be incentivized to conduct more surveys either themselves or by allowing non-governmental entities to do so.
- Institute interim protections until the new paradigm expressed in the consensus recommendations becomes a reality, so that there is no further loss of owls or their habitat.

It is very important that these issues not simply be put on a shelf. The goodwill that has been developed is not likely to last unless there is progress on the ground.

Mark Doumit, Washington Forest Protection Association, presented the industry response to the Government and Conservation caucus's non-consensus recommendations. He stressed that market-based mechanisms are the only sustainable method to conserve or develop habitat on private land. He pointed out current legislation, SHB 2541, which the industry is supporting as a way to maximize the ecosystem services provided by forestry. He suggested that the Board focus on the following market-based opportunities:

- Support the formation of a "forest incentives" work group. The consensus recommendations will only be realized if there is an effective implementation plan with a focus on conservation market development.
- Ensure timely implementation of rule making actions already undertaken - the Riparian Open Space Program and the eastside pilot project.
- Develop a land exchange bank and/or forest-based conservation bank.

- Explore establishing habitat enhancement zones, which would include the use of science, economics, federal permitting mechanisms, technology, and incentives.
- Give more attention to the barred owl problem.

The vision is to move forward with a process in which conservation and economics both win. The Board can now take the lead and direct stakeholders to develop and implement the consensus recommendations and discuss additional market-based systems the Working Group supports.

Schwennesen concluded that the Board could move forward right away to develop habitat- and incentive-based pilot projects on both sides of the state that could reveal regulatory and other lessons. The Board could also develop a flagship incentive project as described on page 12 of the final report, wherein multiple landowners would be brought together to address endangered species habitat. There is surprising consensus on what areas of the state should be high priority lands considered for these purposes, but there needs to be more work on defining the actual parcels. She mentioned the Board could also deal with an underlying issue on new science; there is a fear that additional science will automatically lead to additional regulation.

<u>Board Discussion</u>

Dave Somers asked whether the modeling effort recommended by the Government Caucus would be an existing or new system. Whipple answered it would be new but it could be built with existing data.

Somers asked whether the science from the federal recovery plan will be different than, or will overlap with the information needed for the modeling concept. Doumit said the federal barred owl research will be helpful, but additional research specific to Washington may be necessary. Cantrell said that the type of analysis and modeling the Conservation Caucus would very much like to have, and that the Government Caucus recommended, is not part of the federal planning process. Instead the purpose would be to update the assumptions made in the scientific analysis when the current rules were put into place. The situation has changed, including the fact that barred owls were not considered a significant factor at the time. New data now available could go into a model for recovery projections. Whipple added that this work would be expected to take months, not years.

Peter Goldmark asked Doumit if it wouldn’t be useful to know why the species is declining. Doumit answered there is definitive evidence that the barred owl is a substantial factor; there could be all of the habitat in the world, but if the barred owl is not addressed, the spotted owl could still be lost. Goldmark asked if it wouldn’t be helpful for the Board to know all of the factors responsible for the spotted owl’s decline. Doumit said he believed that is what the federal planners and scientists are trying to do. He added that the habitat is greatly improved with the limits to harvesting on federal land and with the state SOSEA regulatory system, yet there is still spotted owl decline. There are areas with pristine habitat where the barred owl population is exponentially increasing while the spotted owl population is rapidly decreasing.

Schwennesen said the Work Group as a whole understands that these are factors, and agrees not to wait to define them, but to proceed by starting to work on the recommendations in tandem with any studies that are occurring.

Sherry Fox reminded the Board that in 2005 there was a report that habitat had increased since the rules were adopted in the mid-1990s. Goldmark acknowledged that but said there is still no definitive science that reveals the pivotal factor causing the species decline.

Carolyn Dobbs mentioned she was glad to know that the data analysis proposed by the Government Caucus would not take years, and asked if it could proceed concurrently with other initiatives. Cantrell answered yes. Dobbs referred to Doumit's fourth recommendation regarding habitat zoning and noted that science seemed to be an essential part of it. She added that developing conservation markets requires a regulatory framework to at least provide a process and government acknowledgment of its legitimacy. Doumit said he agreed, and the current regulatory system is already a substantial baseline. The concern is the difficulty of developing a market where value has already been taken away by regulation. The industry has been living under the regulation for this listed species for almost two decades. The regulatory framework is in place, and future enhancement should be accomplished in a market place. If the value is continually taken away by regulation then you actually create a deterrent to the development of that market. Dobbs agreed it is difficult for a landowner to step up and take the risk if the benefit is uncertain.

Anna Jackson asked who would be the most effective body to do the flagship incentives work. Cantrell said both strong leadership from the state, and participation from land trust organizations or organizations that have experience with ecosystem service payment issues, are necessary.

Doumit added that to change the paradigm from fear to opportunity, there must be some guarantee that if you enhance the survivability of species you won't be driven out of business. Instead of being punished for having endangered species on your property, you should be rewarded for it because you are providing a public benefit. He said he believed the Forest Practices Board is the best represented body in the state to lead this effort.

Doug Stinson commented there is a broad base of input on the barred owl issue, and some talk about barred owl control. Cantrell said the Audubon groups in this region have come to the conclusion that more barred owl research must be done as soon as possible, including getting answers to questions that experimental removal can provide.

David Hagiwara asked what was envisioned as a new group to continue. Cantrell answered it should be a smaller group focused on a very clear charge, and for a short time period. Doumit added it should include development of incentives and conservation markets by individuals that have expertise in that area.

Norm Schaaf asked what information is expected by a scientific review process in addition to current federal research. Whipple answered that the federal recovery activities are focused on a much larger scale than Washington State, and will not provide the detail needed to address the Board's regulatory outcomes. The additional information should enlighten, for example, whether the SOSEAs are still valid and accurate. Cantrell added that the scientific evaluation would involve collecting all of the current information available on specific factors, and compare it with the assumptions made in the Scientific Advisory Group report completed in the early 1990s. Schaaf asked Cantrell if specific questions could be identified regarding issues that the federal recovery plan will not address. Cantrell answered that he could facilitate that.

Somers said he supported focusing on the nine consensus recommendations. David Hagiwara requested that the team also be tasked with an implementation schedule and include it in a report to the Board in May.

Darin Cramer, DNR, presented a staff recommendation to move forward on the Spotted Owl Working Group's recommendations.

- Accept the consensus recommendations.
- Convene a five member implementation team of representatives of DNR (who would chair the group), WDFW, the industry, conservation, and a land trust or eco-trust organization.
- Direct the implementation team to:
  - Report to the Board in May on an implementation plan and whether they would need to consider obtaining a facilitator.
  - Interact with the U.S. Fish and Wildlife Service on spotted owl/barred owl interactions.
  - Convene and oversee a technical group to answer specific questions about how Washington can make a spatial and temporal strategic contribution to recovery.

David Herrera said he was concerned that the team's purpose was still too broad. Lenny Young suggested that the implementation team could include a complete prioritized schedule in the plan it takes to the Board in May.

MOTION: Dave Somers moved that the Forest Practices Board accept the consensus recommendation of the Spotted Owl Working Group and direct DNR to form an Implementation Working Group of five members: DNR, WDFW, industry, conservation caucus, and a land trust group. He further moved to direct the implementation group to come back to the Board with a work plan including prioritization and direct the work group to coordinate with the federal agencies with regard to the Barred Owl control experiments. DNR will chair the group. The Board directs the work group to convene a technical team to assess spatial and temporal allocation of conservation efforts on nonfederal lands using best available science. DNR will report to the Board in May and include a proposal for how the group will operate and recommend whether the group needs facilitation and will bring a draft charter.

SECONDED: Tom Laurie

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON NORTHERN SPOTTED OWL RULE MAKING

Arthur West commented that the Spotted Owl Policy Working Group is an abuse of the judicial process, and is a waste of a quarter of a million dollars in public funds. It is not appropriate to go to court, destroy the evidence, and enter into an agreement that allows for nothing to be done for years. The new paradigm the group is trying to evolve is not based on empirical evidence or science. It removes the stick from the regulation, and it was done with a private consultant to do the public's business. The owls are still dying and it is because of this breakdown in process. The Board should adopt interim measures to protect the owl and go back to court for a solution to break the log jam, because having people with competing interests sit down and pretend they don't have competing interests is not going to work. You can't train a dog with merely positive incentives. The real problem is they are cutting down the trees and the habitat. This whole process is a waste of public and government time and resources.

Rick Dunning, WFFA (statement read by Doug Stinson on behalf of Rick Dunning): WFFA supports the dedicated efforts of the Spotted Owl Working Group and the seven recommendations.

Tim McBride, Hancock Forest Management, suggested the Board invite Jim Thrailkill of the U.S. Fish and Wildlife Service to present new information from demographic survey efforts and the impacts of barred owls on spotted owl response. This would build on the information provided at the Board's two-day workshop in 2005 with new science now available.

NORTHERN SPOTTED OWL PILOT RULE MAKING

Darin Cramer, DNR, referred to the CR-101 for a pilot rule as one of the Spotted Owl Working Group's consensus recommendations. The purpose is to explore whether thinning in overstocked stands can improve spotted owl habitat quality and be operationally and economically feasible. The project would take place on about 1,200 acres in the Entiat SOSEA. He said he asked the group working on the project to provide reports to the Board before and during implementation.

Tom Laurie asked about project funding. Cramer said he believed that any necessary funding would need to be in place before the project could proceed.

Norm Schaaf recalled that in November 2009 staff had questions about the project and asked if they were resolved. Cramer said there wasn't enough information at that time to adequately inform the public of the actions, but now Appendix A of the CR-101 does that.

MOTION: Norm Schaaf moved that the Forest Practices Board approve the Northern Spotted Owl Habitat Conservation pilot rule making and direct staff to file the CR101 Preproposal Statement of Inquiry with the Office of the Code Reviser to inform the public of the pilot. The pilot will explore whether thinning in overstocked stands to improve spotted owl habitat quality is operationally and economically feasible. Forest practices conducted under this pilot will vary from existing forest practice rules and the Board determines that the pilot rule is in the public interest and necessary to conduct the exploration. Forest practices will be processed and conducted in accordance with the CR101.

SECONDED: Doug Stinson

ACTION: Motion passed unanimously.

NORTHERN SPOTTED OWL RULE MAKING

Gretchen Robinson, DNR, requested the Board's direction to continue the rule making the Board started early in 2009. She referred to the Spotted Owl Working Group's recommendation to continue the current decertification process under an open ended rule with an annual review until the revised federal spotted owl survey protocols are released and the Board resolves outstanding questions. She explained that the Board did not adopt a permanent rule in November 2009 because the Board agreed with this recommendation. According to the Administrative Procedure Act, to adopt a different rule than the rule distributed initially for public review, agencies must file a supplemental notice and hold at least one additional hearing. In addition, the cost-benefit analysis is required to be revised. She requested that the Board direct staff to file a supplemental CR-102 with the Code Reviser to provide the public with the revised language and the revised cost-benefit analysis.

MOTION: Dave Somers moved that the Forest Practices Board approve the draft rule proposal amending WAC's 222-16-010 and 222-16-080 for public review and direct staff to file a supplemental CR-102 Proposed Rule Making to initiate permanent rule making. The rule proposal removes language about the moratorium on northern spotted owl decertification, adds a definition of "spotted owl conservation advisory group", and adds language in critical habitats, which specifies the group's function.

SECONDED: Brent Bahrenburg

ACTION: Motion passed unanimously

Robinson then requested the Board adopt an emergency rule of the same language as the revised draft permanent rule in order to continue the current decertification process through May, until the permanent rule can be adopted.

MOTION: Carolyn Dobbs moved that the Forest Practices Board adopt the emergency rule that amends WAC's 222-16-010 and 222-16-080 and direct staff to file a CR-103E Rule Making Order to be effective upon filing.

SECONDED: Brent Bahrenburg

ACTION: Motion passed unanimously.

LANDSCAPE-LEVEL WILDLIFE ASSESSMENT

David Whipple, Tim Quinn, and George Wilhere, WDFW, presented progress to date on the Washington Landscape-level Wildlife Assessment. Whipple explained it is the second element of four elements in the Wildlife Work Plan that the Board adopted in 2003. The first element is the assessment of the wildlife listed in WAC 222-16-080, critical habitats (state) of threatened and endangered species, and the Board has been assessing the Northern Spotted Owl as the first species under this element. Element 3 is incentives for habitat protection and landscape planning, and Element 4 relates to adaptive management. He said this presentation will help the Board understand how the Landscape-level Wildlife Assessment can help the Board to assess the condition and needs of wildlife on lands subject to the forest practices rules.

Quinn explained that the project goal is to determine the extent that existing forest practices rules and other regulatory and voluntary measures contribute to the conservation of forest-dependent wildlife. He said the results are expected to provide the scientific foundation for a policy discussion and recommendations to the Board on landscape-level approaches to wildlife conservation. The work has been accomplished by consensus by a multi-stakeholder scientific technical group. The technical group developed a process and models for assessing habitat quality, a demonstration using three forest management scenarios for thirteen species guilds, and a custom software package that can be available to others to determine outputs for wildlife.

Wilhere explained the assessment process, species addressed, the types of models developed (Bayesian belief network models and species-habitat matrix models), and information that can be revealed as demonstrated on five nine-square mile landscapes in western Washington.

Quinn explained that this tool can be used to determine the subset of forest-dependent species that might not be doing well and deserve attention. It can also help to refine the discussion regarding wildlife protection issues to specific elements of the forest, rather than only to forest stand age.

Wilhere summarized that this work has produced tools for landscape assessment, and most of the assessment process. He said it allows for species ranking based on habitat quality, simulating real scenarios for real landscapes, assessing which habitat elements have the most impact on habitat quality, exploring how forest practices rules interact with landscape-level characteristics, and investigating the long-term wildlife habitat benefits of the Forests and Fish rules. The next steps are to complete the interim report, obtain approximately $500,000 to complete the assessment tools, and conduct the actual statewide assessment.

Whipple added that the assessment will be helpful in showing which species do well in the managed forest and which do not. This will help the Board to focus its efforts. He reiterated that the funding must be secured to get the models peer reviewed so they will be useable.

Quinn added that one of the things the group discussed is to show, if funding is secured, how the loss of forest land affects wildlife species, and to communicate to the public the impacts of losing our managed forests.

Anna Jackson asked if it could be manipulated to project impacts from a variety of factors, for example, climate change. Quinn answered yes, its use is appropriate for a number of management issues including climate change. It is envisioned that the software can be accessible to forest managers everywhere to help figure out where resources can be spent most wisely. Jackson asked if the group will be able to publish its initial results without additional funding. Quinn answered he thought so; the model has been pushed to a new level, having set up a process to help anyone use existing data to do the same thing, and to share valuable lessons learned.

Schaaf asked how uncertainty is handled in the models. Wilhere answered that the Bayesian approach was chosen because it is designed to capture uncertainty, and the ranges of uncertainty can be graphed for any species when decision makers wish to have that level of understanding. Quinn added that the modeling platform can accept a wide range of input levels, from relatively small to relatively large amounts of data.

Sherry Fox asked what happened to the objective to look specifically at the small forest landowner's contribution to habitat in the urbanizing fringe versus conversion. Quinn said funding didn't allow for the necessary modeling development, but it is possible to do that if funded.

Whipple said he would keep the Board apprised of any grants received or if there is a paper published.

PUBLIC COMMENT FOR WATERSHED ANALYSIS COMMITTEE REPORT

Arthur West, commented that the Board must not approve any actions not fully vetted by the public, especially any rules related to riparian protection. Doing so would be illegal.

Scott Swanson, West Fork Timber, urged to Board to adopt the consensus recommendations as proposed by the Board's watershed analysis committee. He said West Fork has worked closely with the U.S. Fish and Wildlife Service (USFWS) on its habitat conservation plan (HCP) and incidental take permit. The USFWS has indicated to DNR in a letter dated January 8, 2010 that West Fork's mass wasting prescriptions are working well and are protective of the environment.

Jim Lynch, KL Gates, also referred to the USFWS letter, which states that HCPs that include watershed analysis prescriptions are working well. He said this is a process the Board should encourage, and he applauded the committee for its careful consideration when developing the recommendations.

Adrian Miller, WFPA, said WFPA supports the consensus recommendations which effectively support current rules. He emphasized that consideration of new rule making is not warranted until the current mass wasting studies, and the subsequent adaptive management process, are completed.

Peter Goldman, WFLC, said the Conservation Caucus does not support the committee's recommendations as written. The caucus is particularly concerned about recommendation #5 which allows for a "SEPA loophole" by allowing for DNR to condition FPAs during the 5-year review process. He said the caucus is prepared to appeal any FPAs that are given a SEPA exemption based on watershed analysis prescriptions that lack up-to-date, effective prescriptions.

WATERSHED ANALYSIS COMMITTEE REPORT

Chuck Turley, DNR, summarized the status of the existing watershed analyses. There are 52 approved watershed analyses, 47 of which include 252 mass wasting prescriptions. DNR has determined that 61 percent of those prescriptions are deemed "specific." There are six landowner holders of HCPs whose HCPs contain approved mass wasting prescriptions. He reminded the Board that on August 12, 2009, Norm Schaaf made a motion to form a committee of the Board to make recommendations to the full Board. As a result, four Board members have served on that committee: Schaaf, Fox, Herrera, and Laurie. The committee has met five times.

Schaaf said the objective was to find a way to resolve the issues brought forward by DNR staff in recent months. The committee received presentations by staff, two of the HCP holders, and the Conservation Caucus. He summarized the committee's consensus recommendations (shown in their entirety in the document, "Consensus Recommendations of the Forest Practices Board Watershed Analysis Mass Wasting Prescriptions Committee"):

1. Support the continued use of the mass wasting prescriptions.
2. Continue to implement the process described in a Nov. 30, 2009 memo from Julie Sacket to the DNR regions regarding the delineation of "specific" and "non-specific" prescriptions. This recommendation allows for stakeholder participation in that process.
3. Request the presentation of findings from the completed five-year reviews, specifically those that were done by Plum Creek and West Fork Timber. The committee believes companies that have received incidental take permits should be able to utilize the Class IV-special exemption allowed in rule.

4. Consistent with the Jan. 8, 2010 letter from the USFWS to DNR, maintain Class IV-special exemptions for the private holders of incidental take permits.
5. For watershed analyses that have not undergone five-year reviews, but DNR determines reviews are necessary under WAC 222-22-090(4), the committee recommends that DNR work with landowners on voluntary conditioning of forest practices applications where it is determined that additional protection beyond prescriptions may be necessary in particular areas.
6. DNR establish a process and priority system to formally determine when reviews of mass wasting prescriptions are necessary, and schedule those reviews.
7. DNR review the process and qualification for qualified experts as defined in WAC 222-10-030(5).
8. DNR establish a process for landowners to agree to accept the current rule, WAC 222-16-050(1)(d)(i), for their forest practices applications in situations where the mass wasting prescriptions are determined to be "non-specific", or while the prescriptions are in review.
9. Continue to utilize Adaptive Management Program products, including CMER research, other studies, and monitoring efforts to inform the use of mass wasting prescriptions and any future rule making.

Tom Laurie said the committee learned that people who are keeping up with watershed analysis are doing quite a remarkable job. At the same time, as specified in recommendation #5, DNR should use its existing enforcement authority to protect public resources as needed. He said DNR is still questioning its authority to do that without a change in rule, which was not resolved. But for him, having that backstop in place is crucial.

Sherry Fox said the committee basically formalized a process, and recognized that science will be coming to the Board that may or may not result in rule making.

David Herrera said it was valuable to learn about watershed analysis, and also that there are a number of timber companies that have invested a lot of money to develop prescriptions that seem to be working as intended in protecting public resources. Those landowners should be able to continue using those prescriptions, and landowners who have not conducted reviews, should. Recommendation #5 was an attempt to achieve that.

<u>Board Discussion</u>
Carolyn Dobbs asked why the process in recommendation #5 wouldn't just be to default to current rules until the reviews are done. Schaaf answered that rule making would be required, which takes time. The backstop is for landowners to voluntarily accept the standard rules as an alternative to the prescriptions for that specific application. In the event that the landowner decides to go ahead and use the prescriptions, DNR will have the authority to protect public resources. It is a three-step process: Use the prescriptions if they are working, and if it looks like they are not, see if the landowner will voluntarily accept something different, and if that doesn't work, DNR would utilize its existing regulatory authority.

Peter Goldmark said there is a question whether DNR has the authority to step in and require the landowner to do something different if they feel there is an out-of-date analysis. Turley said this still needs to be sorted out.

Herrera said the committee felt that if a five-year review needed to be conducted, DNR could condition the activities as they felt necessary while the review was being done.

Brad Avy asked for clarification about the number of watershed analyses that need to be reviewed. Schaaf and Cramer answered 30 to 40.

Dave Somers said he was concerned about three issues. First, the recommended actions in recommendations 6 and 7 are not within the current rules, and to do them would require rule making. Secondly, the review process was the adaptive management aspect of watershed analysis, and he was troubled if prescriptions are continuing to be used when they haven't undergone a review. Finally, he asked about the status of the rules if the five-year review has not been followed.

Schaaf pointed out that several events can trigger a review, and DNR can also ask for a review. Therefore, it is thought that the authority exists to initiate reviews, and those can be prioritized. Turley referred to an ambiguous phrase in the language; the rule spells out certain occurrences that trigger a review, followed by, ". . . , if necessary."

Phil Ferester said Board members can ask for legal advice, and the advice would be given in writing, not in an open public meeting.

Darin Cramer mentioned that all but two of the committee's recommendations are directed at DNR and suggested that those be directed to the Commissioner, who in turn could direct DNR. He also suggested that staff could return to the Board with a proposal on how all of the recommendations could be implemented. This could happen either at the May regular meeting, or the Board could hold a special meeting to take up that single topic.

Peter Goldmark said it is a complicated topic and the appropriate path forward wasn't yet clear. He suggested the Board could ask staff to look carefully at the recommendations, work with counsel, and present a path forward to the Board in March. (There was general agreement with that approach, and a date late in March could be scheduled online.) Turley pointed out that the committee meetings were conducted as public meetings in a fully transparent manner, and publicized in the same way as are Forest Practices Board meetings.

PUBLIC COMMENT FOR BOARD MANUAL SECTIONS

Arthur West signed up for public comment and was not available when the Chair called upon him twice for comment.

Adrian Miller, WFPA, expressed WFPA's support of the fixed width buffer template in Board Manual Section 21. He said it provides a way for small forest landowners to comply with "desired future condition" process without the complexity inherent in the rules. It eliminates the need to count and measure every tree, to enter data into the DFC program, and to measure stream size, and it only requires identifying one harvest zone rather than three.

Ken Miller, WFFA, also spoke in support of the template because it eliminates much of the complexity which will benefit small forest landowners financially. He added that it addressed portions of WFFA's 2008 Vision for the Future, albeit for the westside only. He expressed thanks particularly to Adrian Miller and Marc Engel for their work in developing the template. He asked that

the Board review the vision document for those portions that remain unfulfilled promises to the small forest landowner community.

Miguel Perez-Gibson, Conservation Caucus, said the caucus supports the Board's approval of the fixed width template. He commented that Adrian Miller should be commended for his ability to help the stakeholder group through the process and for engendering trust among all of the stakeholders. He added that the process for this effort is the way Forests and Fish is supposed to work.

BOARD MANUAL SECTION 7 GUIDELINES FOR RIPARIAN MANAGEMENT ZONES AND SECTION 21 GUIDELINES FOR ALTERNATE PLANS

Gretchen Robinson, DNR, requested approval of the revised Board Manual Section 7, Guidelines for Riparian Management Zones. She explained it became necessary to revise the manual when the Board adopted the DFC rule in August 2009. She said in addition to the necessary changes, staff also saw opportunities for general improvement throughout the manual. She said staff received input from external partners as well as DNR region and division forest practices staff, and believed the end result is an easier to follow document offering more help for landowners in planning their activities. She said Forests and Fish Policy is in support of the revised manual.

MOTION: Tom Laurie moved that the Forest Practices Board approve Board Manual Section 7 and allow staff to make minor editorial changes if necessary.

SECONDED: Dave Somers

ACTION: Motion passed unanimously. (Stinson and Hagiwara not present for vote)

Marc Engel, DNR, requested approval of the revised Board Manual Section 21, Guidelines for Alternate Plans, which adds a "fixed width" template for western Washington small forest landowners. He pointed out that the template is the result of a proposal initiation request from the Board to the Adaptive Management Program in May 2009. As a result, Policy put together a two-step approach. The first was to assemble a subgroup to produce the template for small forest landowners. It was written to be easily understood, with the buffer widths differentiated by site class, but not by stream size. The subgroup established the widths that would achieve riparian function equivalent to function achieved by the RMZ rules. He said that Policy has put the second step on its work plan, which is to develop a fixed-width rule that all landowners can use.

He pointed out that members of the Small Forest Landowner Advisory Committee were invited to attend the subgroup meetings. They were unable to do so, but the subgroup did present the analysis and template to the committee, and included committee members in all communications.

Stephen Bernath, Policy Co-chair, commented that an important factor for this group was the availability of a large data set which was produced for DFC rule making analysis in 2009. Confidence in this data helped group members to be confident in and agree on the end result.

MOTION: Sherry Fox moved that the Forest Practices Board approve the addition of a fixed width template into Board Manual Section 21 and allow staff to make minor editorial changes if necessary.

SECONDED: Anna Jackson

ACTION: Motion passed unanimously. (Stinson and Hagiwara not present for vote)

CLEAN WATER ACT ASSURANCES

Mark Hicks, Department of Ecology, presented a quarterly update on the progress of the Clean Water Act assurances milestones. He explained that although completion of 2009 and 2010 milestones is behind schedule, it is looking like they will be caught up within the next year, largely due to DNR's recent efforts. Areas of concern include particular CMER studies that have been delayed more than a few months, and also the long-term funding for the Adaptive Management Program.

Stephen Bernath gave a presentation on the water quality standards as Commissioner Goldmark had requested at the November 2009 meeting. He explained that the standards lead to water quality goals for water bodies by designating beneficial uses and establishing criteria that protect those uses. The temperature criteria are established generally around fish use, with additional supplemental criteria applied in many rivers to protect early spawning and late emerging salmonid populations. There are three tiers of protection: I) full protection of existing uses; II) ensuring no unnecessary degradation of clean, cool waters; and III) preserving outstanding resource waters. He explained that where the Board is concerned, it is important that methodologies in CMER studies and any rules the Board adopts support the water quality standards.

Peter Goldmark asked how waters can fall under the Tier III standards. Hicks answered that none have been nominated yet. Jackson asked if there is any outreach plan to let people know this is possible. Hicks answered DOE staff are working on long-term plans, but he wasn't sure if this in on the near term agenda.

Brent Bahrenberg asked what happens if waters are not meeting the water temperature requirements. Bernath answered that Total Maximum Daily Loads (TMDLs), i.e., clean up plans, are developed for particular water bodies in need. Hicks added for forest practices, the Clean Water Act assurances take the place of the TMDL process, where the Adaptive Management Program is relied upon to refine the rules until there is confidence that the rules meet water quality standards.

Norm Schaaf asked about turbidity standards. Bernath answered the standard is to keep waters within five NTUs above background, and added that the forest practices rules for roads function around this standard.

EXECUTIVE SESSION

No executive session.

Meeting adjourned at 4:30 p.m.