April 20, 2010

MEMORANDUM

TO: Forest Practices Board

FROM: Marc Engel, Assistant Division Manager, Forest Practices

SUBJECT: Recommendation from the By-Laws Committee

The Forest Practices Board (Board) By-Laws Committee (Committee) has reached consensus on a Forest Practices Board Business Reference Guide. A draft is enclosed for your review and consideration for approval at the May 11, 2010 meeting. In addition, staff requests that the Board consider inserting an additional concept as explained below.

The Committee, consisting of Chairman Peter Goldmark, Carolyn Dobbs and Sherry Fox, met on January 4, 2010 and March 24, 2010. The Committee discussed the Board's practices and procedures, and determined that chapter 222-08 WAC already contains the practices that formal bylaws would have provided to the Board. However, it is only part of the larger set of statutes and rules that regulate the Board.

At the Committee's request, Board counsel Phil Ferester developed the enclosed Forest Practices Board Business Reference Guide (BRG). It includes statutes and rules that govern Board actions, procedures pertaining to public comment at Board meetings, and cut-off dates for the introduction of agenda topics and materials distribution for regular Board meetings. On March 24, the Committee agreed on the draft BRG for consideration by all Board members.

However, staff would like to recommend an additional sentence to the document. At the March 26, 2010 special meeting, an unprecedented number of messages were passed to Board members during the course of the meeting. This created concerns related to open public meetings and public disclosure laws, and also the potential disruptions that such activities create during meetings. To address these concerns, staff requests that the Board consider adding the following sentence between the final two paragraphs in Section B, Meetings:

> *The Board prohibits the passing of written or electronic notes to its members during meetings.*

Time is scheduled on the May 11, 2010 meeting agenda for discussion and action on this subject. If you have any questions, please contact me at (360) 902-1390 or marc.engel@dnr.wa.gov.

ME/
Enclosure

c. Chuck Turley, Darin Cramer, Paddy O'Brien, Phil Ferester, Board Liaisons

DRAFT
Forest Practices Board
Business Reference Guide
April 2010

Purpose:

The Forest Practices Board was established by the 1974 Forest Practices Act (Chapter 76.09 RCW), and is an independent state agency. RCW 76.09.030. Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 and to implement the Forest Practices Act, the Board adopts rules pursuant to the Administrative Procedure Act (Chapter 34.05 RCW). RCW 76.09.040(1). The Board's rules protect public resources (water, fish, wildlife, and capital improvements of the state and its political subdivisions) and maintain a viable timber industry in Washington State by regulating forest practices such as timber harvests, pre-commercial thinning, road construction, reforestation, and forest chemical applications.

The Commissioner of Public Lands or the Commissioner's designee chairs the Forest Practices Board. RCW 76.09.030(3); WAC 222-08-032(4). The Commissioner administers the Washington State Department of Natural Resources. RCW 43.30.105. The Department provides staff to the Forest Practices Board [WAC 222-08-025(2) and WAC 222-08-032(6)], and implements rules promulgated by the Board. RCW 76.09.050(2).

Board rules pertaining to water quality (those that have an asterisk (*) next to them) require the agreement of the Director of the Department of Ecology or the Director's designee on the Board. RCW 76.09.040(1); WAC 222-12-010. Changes to Board rules pertaining to "aquatic resources" (defined by RCW 76.09.020(4)) may only be made "if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board." RCW 76.09.370(6). The adaptive management process is described in RCW 76.09.370(7), WAC 222-12-045, and in Board Manual Section 22.

The Board has an Internet webpage maintained by DNR staff. It can be found at: http://www.dnr.wa.gov/aboutdnr/boardscouncils/fpb/Pages/Home.aspx.

Membership:

RCW 76.09.030(1) controls the Forest Practices Board's membership; the Board has a parallel rule also addressing membership (WAC 222-08-032(2)). The Board presently is composed of 13 members, though that number has changed occasionally since 1974. Five of the members are the heads of state government agencies or their designees (DNR, Ecology, Washington Department of Fish and Wildlife, Agriculture, and Commerce) and one member must be an elected member of the county legislative body who is appointed to the Board by the Governor. The remaining members are "general public" positions appointed by the Governor: one member represents a timber products union; one member must be a small forest landowner; and one must be an independent logging contractor. The other four positions are not obligated by statute to represent particular interests.
The appointed positions serve staggered four-year terms, although each appointed Board member is expected to serve until their successor has been appointed. RCW 76.09.030(3). The elected

member of a county legislative body may only serve as a Board member so long as they remain an elected county official. RCW 76.09.030(1)(f).

Practices and Procedures:

The Board has a series of rules addressing its practices and procedures. Chapter 222-08 WAC.

A. Board Structure, Quorum, and Voting

Generally, the Forest Practices Board meets as a whole Board. A majority of the Board constitutes a quorum for making decisions. WAC 222-08-040(2). In the event the Board lacks a quorum when it assembles to meet, a motion for adjournment can be approved by a majority of those members present, even if a quorum is not present.

All actions of the Board are decided on a majority vote. WAC 222-08-040(2). All Board members are allowed one vote on any action before the Board. *Id*. When there is a quorum and a vote is taken, a majority vote is based upon the number of members participating. *Id*. A Board member who abstains is not "participating" in the vote.

Committees of the Board may be formed to address particular questions or issues. Such committees generally consist of fewer than a quorum of members who typically develop issues for later consideration by the full Board.

B. Meetings

The Board follows the Open Public Meetings Act (Chapter 42.30 RCW) for its meetings. Materials explaining the provisions of this law are available at the Office of the Attorney General's Open Government Internet Manual webpage.

Regular meetings are generally set for the second Wednesday of February, May, August, and November; however, the schedule may be changed. No meetings will occur on a federal or state holiday. Special or emergency meetings can be scheduled by the chair or by a majority of Board members as needed. WAC 222-08-040(1). Special or emergency meetings may be called in accordance with RCW 43.30.080. This provision requires a minimum of 24 hours of notice prior to the meeting, an agenda stating the meeting time, location, and business to be transacted at the meeting, and a prohibition against taking final action on matters not on the special meeting agenda.

Board members may participate in meetings in person, or by teleconference.

RCW 42.30.110 governs when the Board may meet in executive session – i.e., not in public. Typically, executive sessions for the Forest Practices Board would involve the need to discuss active or potential litigation with legal counsel, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the Board. RCW 42.30.110(1)(i). The chair or a majority of the Board may consult with the Board's assigned assistant attorney general, and decide when circumstances warrant an executive session. If the

Board meets in an executive session, the chair will announce the purpose for the executive session listed in RCW 42.30.100(1), and an estimated time for reconvening the original meeting. If more time is required, the chair will indicate an extension with a new estimated time to reconvene the original meeting. RCW 42.30.110(2).

The Board generally provides the opportunity for public comment on rule proposals and board activities at each meeting. The public comment opportunity may be restricted for rule proposals during Board meetings, if separate public hearings for those proposals have occurred or are planned. WAC 222-08-040(1). The Board will typically structure the methods and timing for such public comment to best suit its needs.

Consistent with the Open Public Meetings Act, the Board will not allow individual commenters to disrupt the orderly conduct of its meetings. Such individuals may be removed from the meeting room, and if order cannot be restored by such removal, the chair and the Board may proceed with other options under the law. RCW 42.30.050. This may include ordering the meeting room cleared and continuing in closed session, or the meeting may be adjourned and reconvened at another location selected by majority vote of the members. If a closed session is necessary, members of the press other than those participating in the disturbance shall be allowed to attend any session held pursuant to this section. Members of the public who were not responsible for disturbing the orderly conduct of the meeting may also be allowed to attend, space permitting. *Id.*

C. Board Agendas, Meeting Materials, and Minutes

Board agendas for regular meetings are generally developed in advance of the Board's meetings. Staff will prepare the relevant meeting materials and work with the Board chair to prepare the agenda. These will be sent to the Board in accordance with the timeline set forth in *Attachment A*, and the public will be notified of the availability of these materials on the Board's Internet webpage.

Board agendas for special meetings or emergency meetings will be developed in accordance with the provisions of the Open Public Meetings Act. *See* RCW 43.30.080 (special meetings); RCW 43.30.070 (emergency meetings). The Open Public Meetings Act limits the final actions that can be taken at special meetings to those matters on the agenda.

Public requests for meeting topics to be added to the agenda of a regular meeting must be received by the Board 14 days prior to the scheduled meeting. WAC 222-08-040(4). Any associated materials applicable to the meeting topic should be submitted to the Board at the time of the meeting request.

Minutes of the proceedings must be taken at each Board meeting. WAC 222-08-040(1); RCW 43.32.030. The minutes shall be available for public inspection. Prior to the Board's approval of the minutes, they will be denominated "Draft Meeting Minutes" by staff.

The Board posts agendas, minutes, and materials associated with its meetings within the Board's Internet site, at:

http://www.dnr.wa.gov/BusinessPermits/Topics/OtherInteragencyInformation/Pages/bc_fp_agendas_minutes.aspx.

D. Parliamentary Procedures

The Board's practice and process is not overly formal, and is generally established by the provisions set forth above and in the Board's procedural rules. Where not inconsistent with governing statutes or the Board's practice and procedural rules, the Board will consult *Robert's Rules of Order* as needed for guidance regarding its parliamentary procedures.

E. Role of the Board Chair

The Board's statutes and procedural rules provide only minimal guidance regarding the chair's responsibilities. The chair may call special or emergency meetings within the notice requirements of the Open Public Meetings Act. RCW 76.09.030(4); WAC 222-08-040(1). This may also be accomplished by a majority of the Board. *Id.* The Board chair may set the agenda for meetings. WAC 222-08-040(4). This, too, is a power that a majority of the Board may exercise.

Under the Open Public Meetings Act, the chair must announce the purpose for excluding the public from the meeting place when the Board has an executive session, and the anticipated time when the executive session will be concluded. RCW 42.30.110(2). Should additional time in executive session be needed, the chair shall announce when the extended executive session shall end. *Id.* Should any public interruptions of Board meetings occur, the chair may take several steps to address that. RCW 42.30.050 (discussed on page 3, above).

The chair, designee, or a majority of the Board may hold hearings and receive public comment on specific issues, including proposed rules, that the Board is considering. WAC 222-08-040(2). The Board has also designated the chair or his or her designee to serve as its State Environmental Policy Act responsible official, pursuant to WAC 222-10-090.

While not set forth by statute or rule, the chair fulfills several other important roles on behalf of the Board by tradition and practice. These include:

- Ensuring the presence of a quorum prior to conducting Board business;
- Keeping meetings "on track" so that agenda items may be completed;
- Facilitating the discussion of issues before the Board, and, maintaining order;
- Ensuring that any motions pending before the Board are clear, and that amendments to motions proceed in an orderly process;
- Deciding, with Board input, which members should serve on Board Committees; and
- Acting as the spokesperson for the Board.

Ethical Responsibilities:

Board members are personally subject to the Ethics in Public Service Act, Chapter 42.52 RCW. The Board has a detailed rule implementing the requirements of this Act, and setting forth the ethical expectations of Board members. WAC 222-08-130. The rule particularly addresses subjects such as the limitations on gifts that apply to Board members, the instances when Board members would need to recuse themselves from voting, and the requirement that Board members safeguard proprietary or attorney-client privileged information, among other things.

Maintenance of Public Records:

The Board is subject to the Public Records Act, Chapter 42.56 RCW. Records of the Board are available for inspection and copying by the public. WAC 222-08-050; WAC 222-08-090. Board members have an obligation to work with the Board's Public Records Officer (WAC 222-08-060) to respond in a thorough and timely manner to requests for the Board's public records.

Attachment A. Preparatory Timeline for Regular Meetings of the Forest Practices Board

TIMING	ACTION ITEM
Eight weeks prior to the meeting	Draft minutes from previous Board meeting posted on website
Five weeks prior to the meeting	Draft agenda for meeting sent to Board members for review and comment
Three weeks prior to the meeting	Draft agenda for Board meeting posted on website
Three weeks prior to the meeting	ALL materials to be used in the meeting – including staff reports – are due to FP Division
Two weeks prior to the meeting	DRAFT agenda and ALL materials to be used in the meeting are made available to Board members and Board staff
Three days prior to the meeting	DRAFT agenda and ALL materials to be used in the meeting are posted on website