

1 **FOREST PRACTICES BOARD**
2 **SPECIAL MEETING**

3 February 21, 2001
4 Natural Resources Building
5 Olympia, Washington
6

7 **Members Present:**

8 Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board
9 Judy Turpin, General Public Member
10 Keith Johnson, General Public Member/Independent Logging Contractor
11 Joel Rupley, Cowlitz County Commissioner
12 Toby Murray, General Public Member
13 Lloyd Anderson, General Public Member/Independent Logging Contractor
14 John Mankowski, Designee for Director, Dept. of Fish and Wildlife
15 Steve Wells, Designee for Director, Dept. of Community, Trade and Economic
16 Development
17 Dick Wallace, Designee for Director, Dept. of Ecology
18 Dave Somers, Snohomish County Council
19

20 **Members Absent:**

21 Lee Faulconer, Designee for Director, Dept. of Agriculture
22

23 **Staff:** Lloyd Handlos, Paddy O'Brien, Patricia Anderson, Shari Kincy
24

25 **CALL TO ORDER**

26 The Chair called the meeting to order at 9:00 a.m. The Board members, staff and audience
27 introduced themselves.
28

29 **PUBLIC COMMENT**

30 **Dave Sweitzer:** Washington Hardwoods Commission. The Board has patiently listened to the
31 commission for the last few years but the commission feels that the Board may not have heard
32 everything that they have said. Hardwood conversion is necessary to maintain the forested
33 ecosystem to reverting to a vegetation type that is not likely to produce the aquatic habitat
34 associated with a well functioning forested ecosystem. The current hardwood conversion rule
35 before the Board severally restricts hardwood conversion, especially the requirement that "the
36 landowner owns 500 feet above and below the harvest unit." This would cut out the small
37 landowner and the small mills from hardwood conversion and it would also severally limit all
38 other landowners from conducting hardwood conversions. Without hardwood conversion the
39 desired future condition will not be met. Certain critics on the Board say the CBA does not
40 answer all of the questions, Mr. Sweitzer submits that it clearly answers the questions pertinent to
41 hardwood conversion. Hardwood conversion is needed for DFC and it can only be achieved by

1 eliminating the 500-foot above and below the harvest unit requirement. Those insisting on the
2 500-foot rule have no scientific evidence that it will help the fish and habitat. The Steven West
3 study out of the University of Washington shows no evidence of the reduction of habitat when
4 riparian zone harvesting has been done, in fact some species increased. The Marilyn Ring
5 application shows no significant fish loss because of riparian zone harvesting. Therefore, the
6 commission requests that the Board adopt the rule agreed to in November 2000 before the
7 insertion of the 500-foot rule. The commission also supports starting adaptive trials as soon as
8 possible using existing research data and they also support including alternative plans to meet
9 riparian requirements.

10
11 **Nels Hanson:** Washington Farm Forestry Association. Mr. Hanson is speaking on behalf of
12 small landowners and will be particularly focusing on the alternate plan part of the rules. The
13 Forests and Fish Report recognized that past rules are a severely eroded economic viability for
14 small forest landowners and included in their recommendation to the legislature and in the Forests
15 and Fish Report that the Forest Riparian Easement Program be established. The legislature did
16 that but they added one other significant concept focused to small landowners to preserve some of
17 their economic viability by adding a special kind of alternate plan for small landowners. House
18 Bill 2091, in describing what the focus of alternate plans for small landowners should be, said that
19 alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less
20 costly regulatory prescriptions. House Bill 2091 also requires an assessment of small forest
21 landowners harvest to determine whether essential functions were in any way diminished when the
22 watershed or sub-basin failed. All alternate plans require an ID team to review the impact and
23 proposal and determine if it has any significance. The rules this Board adopts for alternate plans
24 determines the criteria the ID teams use when they make their determinations. The key concept in
25 traditional alternate plans has been that the alternate plan meet or exceed the protection afforded
26 by the rules and meet or exceed usually means to take out the trees and if they took 100 trees
27 under the rules then they would still need 100 trees or more under the alternate plan but they might
28 redistribute them differently. The small landowner alternate plan has an entirely different focus.
29 Instead of dealing with meeting functions with less cost to prescriptions it says that the alternate
30 plan must at least equal the protection provided by the rules. The legislative intent is very clear;
31 the purpose of this alternate plan is to contribute to the economic viability of small landowners.
32 The legislature has given this Board the authority to protect aquatic resources while protecting the
33 economic viability of small landowners and it is the WFFA's recommendation to the Board that
34 the Board send the rules back to committee with instructions to draft rules that carry out the
35 legislative intent. The rules should encourage state agencies and ID teams to minimize the
36 economic impact on stream segments where conditions make aquatic protection possible with less

1 costly restrictions. Such rules would protect aquatic resources while making it possible for small
2 landowners to stay in business. One other thing Mr. Hanson would like to go over is the Small
3 Landowner Advisory Committee. House Bill 2091 also created a seven-member landowner
4 advisory committee. This committee was set up as an avenue for small landowners to
5 communicate with the department and various agencies and yet if it is going to be affective, there
6 needs to be evidence that what this committee produces carries some weight. So far, the small
7 landowners have noticed that what comes out of this committee seems to get overridden by others
8 and futility services when others in these participating agencies seem to override the agreements
9 by those who were there.

10
11 **Peter Heide**, Washington Forest Protection Association. It is Mr. Heide's understanding that the
12 Board will be deciding whether to ask the legislature for an extension for the rule adoption
13 process. The WFPA is committed to helping the Board and the department to meet the June 30,
14 2001 statutory date if that becomes necessary. The WFPA understands that the stakeholders group
15 has not reviewed all the comments that were sent to the stakeholders group on the December 20
16 version of the rules and the stakeholders feel that they ought to continue to meet to do that. The
17 stakeholders feel that the draft that the Board has before them with the changes that have been
18 made so far essentially meets the requirements of 2091 and sticks to Forests and Fish. The
19 stakeholders are willing to continue to meet and work on the draft and present consensus
20 comments to the Board as the process continues. There is another issue that Mr. Heide is sure the
21 Board is aware of and that is the development of the Board manual and that has to be ready at the
22 same time that the rules are adopted. He recommends that the stakeholders continue to meet and
23 work on the rules and board manual.

24
25 **Allen Pleus**, Northwest Indian Fisheries Commission. Mr. Pleus handed out a sheet to the Board
26 that contained some of the facts that he has put together about what he has been doing and what he
27 thinks needs to go on further with the stakeholder group. Mr. Pleus wanted to remind the Board
28 that the rule package that was negotiated in the Forests and Fish Report is very complex and the
29 stakeholder group is doing an excellent job of working through this on a technical level, taking all
30 those comments and trying to interpret them into technical language so that problems will be
31 reduced when implementing this in the field. The remaining issues in this are not simply word
32 smithing. The stakeholders have been working very hard on this and the consensus process takes
33 time when you have a number of people that are trying to work on rule language. It is going to
34 take time and the Board cannot govern this process like they would a normal hierarchical system.
35 It is important to the tribes and stakeholders that we have clear and enforceable language in these
36 rules. One of the concerns that Mr. Pleus hears all the time from the tribal people when going out

1 into the field is having language that you can interpret in several ways, and that allows practices
2 that the tribes are very uncomfortable with to happen in the field. As the stakeholders work
3 through this process these issues get resolved before they hit the field and what we are doing now
4 may take time but in saves a huge amount of time in the field for the problems that could ensue.

5
6 **Alan Soicher**, Small forest landowner and scientist. Mr. Soicher is glad to see that the Board is
7 finally ready to make some decisions about what will be in the new permanent rules. There have
8 been enough stakeholder meetings and there has been a noticeable absence from these stakeholder
9 meetings. Mr. Soicher urges the Board to act decisively and to make the important decisions that
10 they need to make so they can get on to dealing with cultural resources, wildlife and other pressing
11 issues before this Board. As the Board goes through this process Mr. Soicher would like the
12 Board to remember that the legislation that they are working under is not called the Forests and
13 Fish Report, it is not called The Timber Act, House Bill 2091 is the Salmon Recovery Act. Mr.
14 Soicher asked the Board to please keep the interest of salmon recovery in the forefront of their
15 minds.

16
17 **PERMANENT RULE WRITING**

18 **MOTION:** Pat McElroy moved that the Department staff, the Board attorney and the
19 Code Reviser have the authority to make such changes to the rules as are
20 necessary to give meaning to the intent of the Board. Such changes include
21 correcting spelling errors, errors in punctuation and syntax that do not
22 change the intended meaning of the rule, and further have the authority to
23 correct WAC and RCW references, and do such renumbering of the rules as
24 are necessary. Staff will bring such changes to the Board's attention in
25 subsequent drafts.

26 **SECONDED:** Dick Wallace

27
28 **ACTION:** Motion passed unanimously.

29
30 Terry Ruff and the stakeholder committee (Sherry Fox, WFFA, Dave Price, WDFW, Peter Heide,
31 WFPA, Helen Bresler, Ecology, and Allen Pleus, NWIFC) gave a presentation on the proposed
32 permanent rules.

33
34 Pat McElroy feels that the Board should take action March 6 on the rule package and stated that
35 public comments are very valuable and the Board should take the time to look at them. Judy
36 Turpin wants the public comments and the new changes before the March 6 meeting. John does

1 not think the Board should spend a lot of time on these unresolved issues. Dick Wallace endorses
2 both Judy and John’s comments. Dick feels that Paddy can help the stakeholders. Pat stated that
3 if the stakeholders cannot come to consensus then they should let the Board know so they can
4 chose from alternative language.

5
6 Steve Wells would like to make the change historic “sites”. It is consistent with what is already
7 defined.

8
9 Pat McElroy suggested that the Board go through the draft permanent rule package section by
10 section. Terry Ruff and stakeholder representatives were present to explain changes made to the
11 previous draft, which were included in this draft. –The board proceeded to first discuss sections
12 with minor recommended changes (222-08, 22-10, 222-20, 222-22, 222-34, 222-38, 222-42, and
13 222-50) and then move to the sections with more substantial changes or unresolved issues.

14
15 [NOTE: line and page numbers below refer to Draft Permanent Rule bound volume dated
16 February 14, 2001.]

17
18 Chapter 222-08.

19 Peter Heide mentioned that the adaptive management program was introduced in this chapter but
20 the meat of it is in chapter 222-12-045.

21
22 Allen Pleus mentioned that the tribes were very concerned about the adaptive management
23 program. He wants to make sure that it is going to function, that it is going to have some teeth and
24 that it is going to work. The stakeholders are not at a point where the language fits the tribes
25 needs. Paddy O’Brien said that she had some suggestions about the language here. She will not
26 know if they are minor until the stakeholders have a chance to look at them.

27
28 Chapter 222-10.

29 Allen Pleus brought up a DNR handout that came out at the last stakeholder meeting the
30 stakeholders have not had a chance to review it. The stakeholders need some time to go over this
31 document. Terry said that he did a brief summary of it at the last stakeholder meeting but that they
32 never really went over it.

33
34 Chapter 222-20.

1 WAC 222-20-015, page 53, line 20. The Forests and Fish report included three ways someone can
2 qualify for a multi year permit and only two of them were in the rules, so the stakeholder added a
3 third one which applies to the alternate plan.

4
5 WAC 222-20-100, page 57 line 29 a change to the draft was made to add 'sites' was added after
6 "historic".

7
8 On Page 51, lines 33 through page 52, line 7 regarding WAC 222-20-010(3), applications and
9 notifications, there have been some language changes that the stakeholders have not gone through
10 and in subsection 4 of that same sub chapter there has been new language inserted that the
11 stakeholders have not had the chance to look at.

12
13 There are tribal comments on WAC 222-20-120, "Notice of the- forest practices to affected Indian
14 tribes", on page 57 that the stakeholders have not looked at yet.

15
16 John Mankowski wanted to clarify that there are three ways to get to the comments made by the
17 tribes. One is with the next round of stakeholder revisions, another is would be by amendments
18 made by Board members and the last would be during the public hearings. Keith Johnson wanted
19 to know what the procedure would be after public comment, John answered him by saying that
20 then there would be amendments by the Board. Pat McElroy wanted to make sure that the Board
21 understood the options, there are three more opportunities for change, one is if the stakeholders
22 meet and reach agreement and bring something forward or they bring option forward to the Board
23 on March 6th at the next meeting, the second possibility is individual Board member amendments
24 or the third possibility is the issues are raised in the public hearing public comment process and
25 then the Board deals with those at that time.

26
27 Chapter 222-22.

28 Terry is not sure if the stakeholders will make the change on Page 84, line 21 pending completion
29 of watershed analysis, he is in discussion with Paddy O'Brien.

30
31 Judy Turpin stated that there was a section that basically deals with interim measures that were put
32 in place when the Board was establishing watershed analysis and at that point the Board did some
33 things about roads and she is not sure if they are still relevant. Paddy O'Brien informed here that
34 it might be in WAC 222-22-100. Subsection 100(1) talks about that interim program with regard
35 to road maintenance. Judy said that it was just to describe an interim program that has been
36 replaced with a general program of road maintenance and abandonment plans. When Judy read

1 through she was not sure if it really contradicts it but knowing its etiology she thought it was
2 worth people taking a look at to make sure that it is still consistent with what we do. Pat said that
3 he would have staff take a look at it and examine it in the context of road maintenance and
4 abandonment issue. Judy stated that it requires a quarterly report and she does not know if
5 whether given the new requirements the Board needs it quarterly. Terry said that he noticed when
6 he was in the field that the road maintenance plan does not usually work because they were done
7 quite a while ago and were very specific about maybe one road system so Forests and Fish was
8 usually defaulted to. Judy said that this section was really where a watershed analysis had not
9 been done. Pat McElroy said that as he understands the question it is given the new required rules
10 does this still make sense to be here, not that it is a bad thing but does it add confusion and
11 unnecessary verbiage in the rules.

12
13 Dick Wallace made the following change to WAC 222-22-070(3)(e), page 82, line 52. It speaks to
14 the Forests and Fish riparian emergency rules and he assumes that the Board will want to strike
15 “emergency” so that permanent rules would take its place.

16
17 Chapter 222-34.
18 WAC 222-34-040(3), page 143, line 51-2. Terry Ruff indicated the stakeholders added,
19 “hydraulic project approval is always required.”

20
21 Allen Pleus noted the following changes to WAC 222-34-040(1), page 143 line 40 the line
22 “equipment limitation zone” was added.

23
24 Fran Abel stated that on line 50 one of the tribal recommendations was that “alignment” be
25 changed to “realignment”.

26
27 Chapter 222-38.
28 Terry Ruff said that one of the biggest changes in this chapter is that sensitive sites was not
29 addressed it was silent in Forests and Fish and the stakeholders have not addressed it in the rules.

30
31 Dave Price, Department of Fish and Wildlife made the following changes:
32 WAC 222-38-020, pages 145-148, Mr. Price added that he attempted to make the changes as
33 simple as possible by adding simply the words sensitive sites where appropriate. In some cases
34 the buffer surrounding the sensitive site was appropriate.

35

1 WAC 222-38-010, page 145, “significantly” is added to “damaged” at line 15. Keith Johnson
2 wanted to know if there was a definition of “significantly damaged”. Mr. Price clarified that no
3 there is not a definition but when you talk about damaged in the literal sense, without the modifier
4 it is literally any damage that could occur to any vegetation and so the word significantly soft
5 pedals that in an undefined way.

6
7 Keith Johnson wanted to know if it was by way of a loophole and Peter Heide said he did not
8 believe so, this is a policy statement and the policy is supposed to describe the intent of the rule.
9 The rule specifies buffer to keep pesticides out of surface water and there is also an interest in
10 maintaining vegetation in the riparian zones since that vegetation functions both in ecological
11 sense and cultural sense the idea is not to destroy that vegetation but in the process of aerial
12 spraying there aren’t any exactly clear lines on the ground that can be drawn because there is some
13 movement of these chemicals through the atmosphere there may be cases where leaf damage may
14 occur.

15
16 Judy wanted to know if Mr. Heide’s interpretation was to the fact that the vegetation would not be
17 damaged so as to affect their function. Mr. Heide said that basically yes, it can be come down to a
18 judgment call and in the field application it is not a difficult decision to make.

19
20 John Mankowski wanted to make the statement that he agreed with what Mr. Heide was saying
21 that this has been worked through in Forest and Fish. The word damaged was used frequently
22 with significant or insignificant. This is not a big mystery word and that there are not many
23 people who do not know what the words mean. The Board looks at the words, as meaning is it no
24 longer providing the functions that it is designed to do on this sensitive site.

25
26 Fran Abel mentioned that there were some tribal caucus changes that she knew the stakeholders
27 have not had a chance to look at yet but she wanted to talk about them. The changes are as
28 follows:

29
30 WAC 222-38-010, page 145, line 19 the best management practices recommendation by the tribal
31 caucus is that we do not minimize the entry of forest chemicals but that we eliminate them.

32
33 Pat McElroy said that was a tall order and several Board members agreed. Fran said that it would
34 be the best management practice. Keith Johnson agreed. Pat defined best management practices
35 as being basically not the ideal situation that you would have in a perfect world but rather that it
36 refers to those things that technology and the current practices are allowed to do, it is the best way

1 to use the current technology, the current knowledge base and the current science to do it. It does
2 not mean the perfect world, BMP, the concept of best management practices really means to the
3 very best of your ability given the technology and the circumstances that are there. Dick Wallace
4 said that the reason they went back to minimize and not eliminate was because eliminate means
5 zero and that is a tight standard to try and meet. Keith Johnson said that it is particularly difficult
6 when coupled with the on-going scientific review process to determine what is happening to the
7 fish.

8
9 WAC 222-38-010, page 145, lines 21 & 22. Judy Turpin wanted to discuss the word
10 “significantly”, in the paragraph that the Board is now looking at it basically says what damage
11 means in this section. Which is consistent with what the Board just talked about. So Judy is not
12 sure if “significantly” if in fact in this section damage is limited to that which is defined. Keith
13 Johnson says that there is a definition that answers the question that was just discussed. Pat
14 McElroy says that it then does not matter whether it is there or not. John Mankowski says that it
15 has been covered. Judy would like to strike the word “significantly”

16
17 Page 145, line 21 Paddy O’Brien suggested that the Board insert the word “significant” before the
18 word “damage”.

19
20 Dave Somers wanted to know what the language “from protecting public resources as required
21 under the rules,” means in WAC 222-38-010(2). Dave Price stated that he thinks it is referring to
22 the rules that follow; again this is a policy statement so we are talking about the rules that follow
23 that statement. Dave said that it seemed like it might be getting a bit circular. That if you are
24 following the rules and damage occurs it is okay. Pat McElroy thinks that what it is really saying
25 is that for the purposes of this section “significant damage” includes any damage that would
26 inhibit or preclude the existing vegetation that is there from protecting public resources as required
27 under the rules, the rules require protection of public resources.

28
29 Dave suggested that it would be made clearer by striking “as required under the rules”. The Board
30 agreed.

31
32 WAC 222-38-020(3), page 145, line 40 the stakeholders have defined RMZ in the definition pages
33 so they have crossed out riparian management zone to save space.

1 WAC 222-38-010(4), page 145, line 50 the stakeholders have added Type Np RMZ's to this
2 section recognizing that Type Np waters approximately 50% of the time will have riparian
3 management zones and they want those areas protected.

4
5 WAC 222-38-020, page 146, lines 11 & 12 the spelling of the word coarse. Page 147, lines 2 & 3
6 and 9 & 10 have the same change.

7
8 WAC 222-38-020, page 147, line 6 again replacing Type 4 & 5 with Np & Ns waters the Board
9 will find that has been done throughout the document. The stakeholders have also added "with
10 surface water" recognizing that there are off channel habitats that are also protected and they
11 wanted to make sure that they captured those. The stakeholders just wanted to recognize that if
12 there is surface water associated with Np or Ns waters they need to be kept free of pesticides.

13
14 Judy had a question about the chart on line 7 it is unclear to her whether there is a change that is
15 new on the buffers on wetlands. Terry Ruff stated that it is a new change. Dave Price said that it
16 was an incorrect statement because it also applies to Np and Ns waters, which are not wetlands the
17 stakeholders wanted to make sure to include the wetland areas as well as the stream types so they
18 just said buffer.

19
20 WAC 222-38-020(6), page 148, line 12 the stakeholders crossed out "or hardwood conversion"
21 this was a change added by DNR but it is an incorrect application so the stakeholder group
22 scratched it because there is not hardwood conversion in the core zone as currently defined.

23
24 Lloyd Anderson has a question about the change on WAC 222-38-020(4)(a)(iii), page 147, line 6
25 in now reads: "buffers on Type Np or Ns waters with surface water" so basically it is saying a
26 non-fish bearing seasonal water with surface water. Dave Price stated that fish-bearing waters are
27 covered under a previous chart, this sentence is not talking about fish-bearing waters what it is
28 talking about is those areas in Np or Ns waters without fish that go occasionally go dry. Either in
29 the case of Np water intermediately or in the case of Ns waters seasonally those are not prohibited
30 from spraying currently. Judy Turpin clarified that it is when the water is present that this applies.
31 Mr. Price said that was correct.

32
33 Lloyd Anderson wanted to add the word "present" so it would read: "waters with surface water
34 present". Peter Heide said that the stakeholders would need to go through and see where else it
35 was used. The Board agreed to the change.

36

1 Chapter 222-42.

2 Terry Ruff said that this chapter is not used anymore. Pat McElroy asked that Terry speak with
3 Board council to see about removing this entire section if the department is not using it.

4

5 Chapter 222-50.

6 WAC 222-50-030, page 164, line 43. Dick Wallace noticed that the stakeholders struck out
7 “regulations” and did not insert “rules”. The board added “rules” to the draft.

8

9 Pat McElroy suggested that if the stakeholders have, in the remaining chapters, reached consensus
10 to please let the Board know so that the Board can move as expeditiously as possible. Pat
11 understands that there are still to be resolved issues and there are still comments, particularly tribal
12 comments that still have not been factored in. Pat wanted to acknowledge that and indicate that
13 there are still the three opportunities, either to work it through the stakeholders and have it brought
14 to the Board at the March 6th meeting or have amendments specifically prepared for Board
15 members or through the public review process. The most desirable situation would be for the
16 issues to be worked out through the stakeholders and then have it come before the Board as a
17 complete package but the Board acknowledges the fact that not all the comments have been
18 reviewed.

19

20 Pete Heide asked the Board if it would be appropriate for the stakeholders to continue to meet
21 after the 6th and then use the public comment period for input if they reach consensus. Mr. Heide
22 is not sure when they will get through the tribal comments. Pat Mc Elroy said that the preferred
23 alternative would be to work it through for the meeting on the 6th, if the stakeholders cannot reach
24 consensus but they understand where they are or where the differences are to the extent they can
25 bring the Board options and failing either of those Pat would say to the stakeholders to continue to
26 work and work them out. Judy Turpin suggested that the Board make amendments themselves
27 just in case the stakeholders are unable to meet consensus. Pat said that was a very important
28 detail. Any changes to the rules or major changes to the ones that the Board has reviewed or
29 looked at creates a wrinkle in the APA process.

30

31 Chapter 222-12.

32 Terry Ruff stated that WAC 222-12-038 was a policy section for alternate plans, Small Landowner
33 and Large Landowner both qualify for this. WAC 222-12-039 bottom of page 10 goes into the
34 Small Forest Landowner alternate plan option, the reason these two items were separated was
35 because one of the issues was that the foundation for the regular alternate plan and the Small
36 Forest Landowner alternate plan come from different places. The Forests and Fish Report

1 mentions the regular alternate plan but does not cover the Small Forest Landowner alternate plan
2 that is only covered in the statute. There was a lot of difficulty marrying these two plans so the
3 decision was to separate them. There are now two policy sections to cover each plan and also a
4 new Chapter 222-40, which we will cover later.

5
6 The stakeholders have reached consensus with this, but Paddy O'Brien has major concerns and the
7 Small Forest Landowner Committee still has concerns. Paddy suggested that she meet with the
8 Small Landowners Committee to try to explain her concerns, which are primarily focused on her
9 interpretation of the statute. Pat asked Steve Stinson to call the committee together so that the
10 Board can have this work done on time. Steve agreed to do that.

11
12 Terry said that one of the other issues was that Forests and Fish talked about public resources.
13 Even though Forests and Fish is dealing with aquatic resources it is a subset of public resources
14 because public resources covers other wildlife that is not covered in aquatic resources. Aquatic
15 resources covers the salamanders, fish and water quality. Public resources go beyond that. There
16 is a reference made in the statute for small landowners that talks about aquatic resources. This is
17 another reason why they were separated out. The stakeholders were not going to come to an
18 agreement on this until it was separated out, each group did not want to be tied to what was in
19 Forests and Fish or versus what was in the statute, so this is what the stakeholders came up with.

20
21 Judy Turpin stated that when she reviewed for the standard she could find it in the subsequent
22 sections but could not find it here, she wanted to know if that was correct. The stakeholders said
23 that was correct. Paddy O'Brien suggested that there is a lot of duplication in the way that the
24 alternate plan rules were set up and she does not think there is a need to create another chapter.
25 She thinks that all the pieces belong in WAC 222-12.

26
27 Peter Heide wanted to make sure the Board understands that when they are talking about these two
28 different kind of alternate plans that the alternate plan is for all landowners and there is a small
29 forest landowner optional alternate plan that is available only to small landowners but the primary
30 alternate plan rule is available to all applicants in forest practices. John Mankowski asked whether
31 the standard differs between the two processes and Mr. Heide said that he believes it does. Paddy
32 O'Brien indicates she believes the standard for alternate plans is the same. Peter Heide said that
33 he has not delved into the legalities of the small landowner plan that is only his impression. Paddy
34 said that the current proposal was crafted believing the standards are different, and she is
35 concerned it does not meet the statutory standard.

1 Steve Stinson had a comment stating that the document started out in one piece and they split it
2 apart and put it back together and split it apart again because they were not able to reconcile the
3 differences. Paddy and Steve have talked and there is a very strong difference of opinion on
4 whether there are two different standards or not and the Small Landowner Committee strongly
5 believes that there is and thinks the legislation supports that. Dick Wallace strongly encourages
6 that discussion with Paddy. One thing to keep in mind is that one of the things that House Bill
7 2091 says that if the Board adopts rules that are not consistent with Forests and Fish that they need
8 to be flagged. Dick is curious as to whether the federal agencies have commented particularly on
9 this standard of approval. Paddy O'Brien says that the federal agencies have reserved their ability
10 to comment later because the actual application for the small landowner alternate plan involves
11 looking at criteria that gets put into the Manual. The federal agencies comment was that they did
12 not really know because they would have to look at the manual. Terry Ruff said that it was a
13 Board manual reference and he asked Steve if the federal agencies attended his meeting. Steve
14 responded by saying yes they did have a meeting with the federal agencies regarding alternate
15 plans and the committee never gets a conclusive "yes we are all behind that" from the federal
16 agencies but it was Steve's impression from that meeting was that the federal agencies were
17 willing to go along with the process but the committee has different interpretation on how the
18 federal agencies feel.

19
20 Pat McElroy said that the Board will discuss this issue later and what the Board needed now was
21 for the Small Forest Landowner Committee to meet with Paddy and then report the results back to
22 the Board. Pat wanted to point out that if you read the statute that talks about implementation
23 dates, anything that is not consistent with Forests and Fish has a period of time when that rule does
24 not go into effect until after the legislature meets. Pat wants everyone to keep that in mind that if
25 the Board is making choices that are divergent from Forests and Fish that those rules are on a
26 different life cycle.

27
28 Sherry Fox wanted to make a note on the division of large and small landowners. This is
29 something that the advisory committee has worked very hard on over the past seven or eight
30 months and it was the committees intent to stay focused on the separation between large and small
31 so as the discussions are continued and as Paddy comes into them, Sherry wants the Board to
32 realize that this is the number one issue for small forest landowners in this package as it goes
33 forward. The easement is an important portion of the document also but the alternate plan is really
34 were the committee is hanging their hat for the future of small forests landowners and if these two
35 items are not kept separated with their own statute there will be some huge issues with small
36 landowners in the state of Washington.

1
2 Peter Heide asked the Board if they had any questions regarding alternate plans. Mr. Heide said
3 that the piece for all landowners follows Forests and Fish..
4

5 Terry Ruff spoke about WAC 222-12-041, the HCP exemption section and the group struggled
6 with this for several months and finally had to take it to Forests and Fish policy and they said
7 follow Forests and Fish. The stakeholders attempted to do that but unfortunately part of Forests
8 and Fish is not in rule language. When the stakeholders met with the federal agencies the federal
9 agencies gave the stakeholders some input that the stakeholders adopted on page 11. Not all the
10 stakeholders were totally happy and Ecology has some concerns. One thing about this section is
11 the HCP exemption works relatively well on the ground, in the regions and with the companies,
12 there are five HCP's in the state and it works real well. One of the problems is that there is
13 sometimes a lack of trust trying to write this rule and there are some legitimate concerns, there are
14 litigation concerns by third parties because of this rule and that is a concern that both Paddy and
15 the WFPA have. This is probably as far as we can go with the stakeholders.
16

17 Helen Bresler had some concerns regarding this rule. The concerns that Ecology has are not with
18 the content of habitat conservation plans, Ecology believes that the HCP's being produced are
19 good documents and are probably more protective then the rules because they are site specific and
20 they are produced by landowners who know about their property. However, Ecology has some
21 real serious procedural concerns that have not been addressed in this language; in fact in Ms.
22 Bresler's opinion the emergency rule language worked better. The overall major concern that
23 Ecology has is that the Forests Practices rules themselves have a broader purpose than just dealing
24 with threatened and endangered species and so when a habitat conservation plan is done which
25 focuses on those that is not the same focus. One of the responsibilities of the state therefore is to
26 make sure that the entire focus of the rules is addressed when a HCP is substituted for a forest
27 practices rules. Ecology thinks there are a couple of things that the Board needs to add to the rule
28 to make it logical and predictable to administer. One of those is to be specific about which
29 chapters in the forest practices rules can be addressed through a HCP. Ecology thinks those
30 chapters are 222-22 through 222-38. There are some others chapters that Ecology thinks are not
31 logical to be included in that list and so Ecology thinks that this needs to have some sideboards
32 placed on it as to which chapters people can be expect to be exempted from. The second thing that
33 Ecology thinks that it is very important since landowners are the experts on the contents of their
34 HCP that they are able to tell the Board which parts of those chapters of the rules their HCP will
35 substitute for. Ecology thinks that is a critical thing, it is never Ecology's intent to go in and
36 review a HCP to see if it is good enough, their assumption is that it is good enough but HCP's are

1 not written like rules and so in order to make a substitution they need to tell us logically which
2 parts of the rules are they going to substitute for. There is also language in the draft and in the
3 Forests and Fish Report that says if you are doing a new HCP, if you do not have one that is
4 already in place then you need to produce those in consultation with the tribes and state agencies.
5 That language does appear in the draft and is exactly like the Forests and Fish Report. Ecology's
6 final concern is about NEPA compliance. The Forests and Fish Report says that when you are
7 going to substitute one of these documents, which are essentially federal documents that you have
8 to have gone through review under NEPA. That means that the public gets the opportunity to
9 comment on these and it is particularly important here in Washington where we have our own
10 SEPA that the public gets to understand and comment on rules that someone is going to substitute
11 for state law. The federal agencies when they came into the stakeholders meeting proposed that
12 they wanted to use the term NEPA compliance and that makes their process easier because that
13 means you don't have to do a full fledged public review. Unfortunately, Ms. Bresler does not
14 believe that accomplishes the stakeholder's purposes here for forest practices so the language
15 needs to be clear, that you have to have gone through a NEPA review and that if a NEPA review is
16 not required then you need to go through SEPA.

17
18 Judy Turpin stated when looking at WAC 222-12-041 in the draft before the Board, that one of the
19 issues would be solved by restoring the language that is crossed out on page 11, line 19 and
20 another is line 57 where it says "which has been reviewed under that" stricken and then "provided
21 in compliance" is added.

22
23 Paddy O'Brien said that she has had an extensive conversation with one of the attorneys that has
24 been working with the landowners on this language and she now has a clearer understanding of
25 what his issues were, although he cannot speak for all the landowners. Paddy thought it was
26 possible to come to an agreement given a little bit more time.

27
28 Dick Wallace wanted to say that he feels that Helen Bresler did a good job of summarizing what
29 Ecology is thinking about and Ecology thinks the Board can get there too. He also wanted to
30 emphasize that Ecology is not trying to second guess what is in the HCP, if fact they want a
31 straight forward on the ground approach that will work. Dick said that he would be happy to work
32 with Paddy and anyone else to see if they can come up with something or have this be one of the
33 ones where there are a couple of options that go out for public review. Judy feels that options
34 would be clear. Pat asked the Board if they agreed to turn this over to Paddy and the people
35 directly involved to continue working on this issue and bring it forward to the Board, rather than
36 trying to deal with this issue at this time. John Mankowski said that he agreed and he wanted to

1 go on record and say that it is not just Ecology that has these concerns, that Fish and Wildlife
2 share them and would like to join Dick and work with the group to save the Board from having to
3 go through the details at this meeting.

4
5 Peter Heide said that the stakeholders would be very happy to see this issue solved. It has been
6 difficult and if the Board cannot solve it the stakeholders would like to see the two options in the
7 draft rule rather than a change.

8
9 Sherry Fox would like to add herself to that list as a small forest landowner.

10
11 Terry Ruff then began with WAC 222-12-045, adaptive management page 12.

12
13 Peter Heide said that this replacement piece was put together with the very good work of Debora
14 Brown-Munguia. It is a good start, the stakeholders have not had a chance to review it with the
15 tribal comments and this is a very important piece to the tribes. What Debora tried to do was to
16 take the part of the adaptive management process that needed to be put into rule and then refer to
17 the Board Manual. The Manual will contain the cookbook on how to get it done and the specific
18 resource objectives and a specific list of individuals who will work with CMER.

19
20 The first piece of the rule is to set the policy. The main point is that adaptive management will
21 establish a certainty of change when there is some scientific reason to change the rules, there is a
22 process available for the Board to receive that information and make that change. There is
23 predictability in that everyone will know when these things are going on, that science will be
24 initiated and there will be some discussions and things will move forward and then there will be
25 quality control associated with the science and peer review. The rule goes on to describe the
26 elements of the program and that includes standards, the research and monitoring that goes on,
27 independent peer review and scientific evaluations of the effectiveness of the rules. Resource
28 objectives is the next item. Resource objectives are the measurable criteria that are set that the
29 research will look to see if the rules are meeting those measurable criteria. The rule goes on to
30 describe who the participants are and this rule will establish CMER and provide the framework for
31 the scientist to do their jobs. It gives TFW policy or similar consensus group a role in the process
32 as advisory to the Board. There will be a program administrator and the department has put an
33 interim person in place and probably more important than anything else is the independent
34 scientific review process. Finally the rule has a brief description of what the process is, how
35 questions are initiated, either by the public or through the loop and scientific process specifies that
36 the Board will prioritize those questions and it also talks about that fact that there will need to be

1 timely recommendations from TFW policy and then these things will arrive on the Boards table
2 for decision. The tribes may want more meat in this section and Mr. Heide feels that may be
3 appropriate.

4
5 Judy Turpin stated that she had made a request a couple of meetings ago that the Board supported.
6 The Board needs to be assured that when a recommendation comes from policy for a change that it
7 is actually accompanied by the scientific documents that come from CMER, in other words the
8 Board needs to get the CMER scientific work directly even though the Board gets a
9 recommendation on policy from somebody else.

10
11 Dick Wallace had a minor comment on WAC 222-12-045(4), page 13, line 39 when the draft talks
12 about recognizing CMER members, Dick thinks that ended up not being in the manual but it
13 would be by motion of the Board. So strike “and named in the Board manual”. Also when the
14 stakeholder go through the tribal comments another thought to keep in mind would be that in the
15 CMER section it needs to be made clear that these are recommendations to the Board. Peter Heide
16 asked if there was a point of reference. Dick responded by saying that the recommendations to the
17 Board is talked about in independent science peer review process and it isn’t in the CMER section
18 so it could be simply one of the things that CMER will do is forward recommendations to the
19 Board and that may be a place with accompanying scientific documents and the Board can get
20 both of them at the same time.

21
22 John Mankowski had a comments on WAC 222-12-045(7), page 14, line 7 the language indicates
23 that the independent scientific review process will “judge the scientific basis.” His concern is that
24 they are too independent in issuing judgments as the language says and would prefer that the
25 Board strike the word “judge” and insert the words that they “provide advice on” the scientific
26 basis of the studies. The Board agreed.

27
28 Allen Pleus had a comment regard this issue. One of the other elements that the tribes are very
29 concerned about is that is the adaptive management process is supposed to streamline the rule
30 making. Even though the stakeholder have talked about this issue and different scenarios it is not
31 really clear what streamline and timely mean for adaptive management as far as rules and
32 guidance by the Board. That is language that the tribes would like to see put in. That would go
33 back to WAC 222-08-035 and that would also apply to chapter 222-12. It is on page 2, line 9 it
34 reads definition “in a streamlined and timely manner”.

1 Dick Wallace suggested that Mr. Pleus look to Forests and Fish, which did include some specific
2 timelines for some of the elements. Everyone needs to recognize that the Board has to work under
3 the Administrative Procedures Act and obviously the Board can try to be as streamlined and
4 timely as we can but according to the APA there is a limit to how much streamlining the Board
5 can do.

6
7 Pat McElroy stated that there is a whole set of proposed legislation before the legislature that
8 would extend it out forever.

9
10 Judy Turpin had another concern that can be handled in the manual but she felt that it needed to be
11 voiced and it was that the Board has already dealt with what happens when there is not consensus
12 on bringing recommendations from policy to the Board. It has been indicated that CMER will
13 strive to operate by consensus and Judy thinks the understanding is that if that fails
14 recommendations will be forwarded to policy for alternative either here or later it should probably
15 do that because it is the intent not to let anything be permanently blocked by the lack of consensus.

16
17 John Mankowski had another suggestion for WAC 222-12-045(7), page 14, line 8, the list of items
18 that must be reviewed by this independent science board it reads "CMER recommendations" John
19 would like to insert the word "certain CMER recommendations". The Board will be getting things
20 from CMER that are significant and big in nature and those should go through the science panel
21 but CMER might also do work on whether the Board should use a convex polygon to measure
22 shade or some other technique and because that independent science panel appears to be expensive
23 and fairly process laden, John would like to make it clear that certain CMER recommendations
24 should go through there but there are others that can just come to the Board.

25
26 Dick Wallace suggested putting "certain" in the draft and then in the Board manual the Board will
27 come up with criteria or some way to prioritize those CMER recommendations that do deserve
28 independent scientific review committee.

29
30 Terry Ruff had changes to WAC 222-12-090, page 16; the tribe recommended that several Board
31 manuals be added to the list. They are on line 23 through 26. Line 23 is the guidelines for field
32 protocol to locate map divisions between stream type and perennial stream identification and line
33 26 is placement strategy. The stakeholders did come to consensus on these lists.

34
35 Steve Wells had a question regarding WAC 222-12-090(11), page 16, line 9. As he reads that
36 paragraph it presumes that watershed analysis will be used primarily for biological kinds of issues

1 and concerns. Should the Board choose to use watershed analysis for addressing cultural
2 resources, does this language require those considerations about cultural resources to go through
3 CMER and is CMER set up to deal with them.

4
5 Peter Heide addressed that issue. The short answer is no, CMER is not equipped to deal with
6 cultural resource issues. The process of developing a manual or piece for watershed analysis
7 would mean adding someone to CMER or CMER would have to contract someone to do that. The
8 process that CMER uses to review things could be used, but the people are not necessarily
9 qualified to make that judgment.

10
11 Steve Wells noted that now the language that the Board is considering requires consultation with
12 CMER and he is not sure whether it should be modified now in anticipation of a change in the use
13 of watershed analysis consistent with Forests and Fish or whether the Board should bookmark it
14 and come back in the future if the Board needs to. Steve feels that CMER is not the right vehicle
15 for reviewing cultural resource issues.

16
17 Judy Turpin reads it differently. It reads, “the department, in consultation with CMER may make
18 minor modifications to the standard methodology”. The way that Judy reads that is that without
19 having the Board adopt them they can make minor changes, however, substantial changes would
20 have to come to the Board to be approved. Judy does not read it to say that the Board cannot
21 make changes to the watershed analysis without them coming through CMER. Dick Wallace
22 agreed. The language on line 12 requires approval by the Board so substantial changes could
23 include cultural resources.

24
25 Steve Wells appreciates the answer to his initial question which was does this say that if the Board
26 uses watershed analysis to get at cultural resources they must go through CMER. Right now the
27 Board is saying “no” but earlier Steve heard someone say “yes”.

28
29 Paddy O’Brien stated that in her opinion the language states that for minor modifications there
30 needs to be a consultation with CMER but it simply does not address how the standard
31 methodology will be dealt with. There is no mandate that it goes to CMER.

32
33 Pat McElroy asked the Board if there was a need to make it more evident to even someone who
34 knows what they are reading. He asked Terry Ruff to think about it and possibly talk to Steve
35 Wells and Judy Turpin to get suggestions on how to make it clearer.

1 Pat said that now it was time for the Board to deal with this entire section, to discuss it and decide
2 how to proceed. There is substantial work left to be done, the Board has given instructions to
3 Paddy, the Small Landowner Advisory Committee and the stakeholders to continue to work on
4 areas where there are concerns or disagreement or have not yet come to consensus and to come
5 back to the Board.

6
7 Steve Wells has a concern on WAC 222-12-038, page 10, line 6 the addition of the standard of
8 “when judged in its totality”, he does not have a problem with the language, it is when it gets into
9 the ambiguous realm of cumulative effects on an undefined scale. Steve then referred to the
10 guidance on how this stuff is to be done in WAC 222-40-020(6) on page 151 and as he looked he
11 found guidance between line 27 & 37 that says everything works well where a consensus
12 recommendation by the people who are looking at the effects in there totality is forwarded. But
13 there is no guidance when that consensus is not reached and Steve thinks the looseness of the term
14 “when considered in its totality” invites the possibility that consensus will not be reached. Steve
15 would like to note that the Board has not provided much guidance to the poor people in the field
16 who are told to think in totality but are not given guidance when no consensus is reached.

17
18 Paddy recommends that the phrase be removed. The statute provides specific standards for
19 alternate plans, she is not sure what “in its totality” means but it is not in the statutory language.
20 Perhaps that is concept that the department can use when it is trying to apply the statutory
21 language but Paddy would recommend that it not be put in rule language. Keith Johnson wanted
22 to know why was it put in and who wanted it in? Peter Heide indicated the attempt with this
23 alternate plan was to make the language as similar as possible to Forests and Fish. Paddy’s
24 comments reminded Mr. Heide that when the legislation was written, they specifically looked at
25 how alternate plans would be judged and did not include that term. On the other hand the
26 legislation says that we were to do Forests and Fish. Judy said that Mr. Heide did not specify
27 where the alternate plan standard was. Paddy said that if the Board wants to address this concept
28 of totality that the Board needs to do it in the process for alternate plans, not the standard they
29 must meet. The Board cannot change the legislative direction. Dick Wallace thinks that the
30 phrase “ in totality” means that you wouldn’t have to the equal protection for every little slice that
31 could apply, that you have an ability to step back and look at all the rules that would have applied
32 in totality. In some places it may be a little more restrictive and in other places less restrictive but
33 in totality the alternate plan has equal protection for the functions. Steve Wells agrees with that
34 interpretation and that is why he said that it was good language to have here but Steve’s problem
35 is with the possibility that there would be disagreement and the Board has not provided guidance
36 for what to do when there is disagreement.

1 Judy Turpin stated that the RCW is 76.09.370(3) now reads “the rules adopted under the section
2 should be as specific as reasonably possible while also allowing an applicant to propose alternate
3 plans in response to site specific physical features. Alternate plans should provide protection to
4 public resources at least equal in overall effectiveness by alternate means.” The law that the
5 Board operates under now has a standard in it.

6
7 Pat would like the Board to make a decision regarding this issue. Does the Board want to include
8 this language here or should it be taken out. Dave Somers said that the language does not bother
9 him but it does sound redundant because it does say, “the plan must provide protection:” the plan
10 is the plan, you would not judge ½ the plan or 1/10 of the plan, you would judge the plan.

11
12 **MOTION:** Judy Turpin moved that the Board insert the standard that is specifically
13 stated in RCW 76.09.370(3).

14 **SECONDED:** Dave Somers

15
16 **Board Discussion**

17 Dick Wallace stated that he was fine with that as long as it was not lost somewhere else. Pat
18 McElroy suggested that there might be a place that it can go in the Board manual. Terry Ruff
19 clarified that the Board recommended to drop “when judged in its totality” and Pat said to insert
20 the standard language that is in the statute instead.

21
22 **ACTION:** Motion passed unanimously.

23
24 Steve Wells had a question on WAC 222-12-039, page 10, line 52. He wanted to know why the
25 definition of a small forest landowner was not in the definition section, either on page 28 or
26 perhaps at 21 under the definition of forest landowner as a sub-routine of the forest landowner
27 definition. Terry Ruff stated that there were several definitions of a small landowner and the
28 definition that the stakeholders are using is in the riparian easement program, the stakeholders also
29 have a definition for road maintenance on 500 acres or less so there is a difficulty with different
30 definitions.

31
32 Sherry Fox clarified that clearly in House Bill 2091 the definition was going to apply to the
33 aquatic resources, the draft package rule that is being sent forward that applies to small forest
34 landowners and aquatic resources. It was noted in two different places to refer back to that
35 definition for the alternate plan so as the small forest landowner reads the definition it will follow
36 through this package. The stakeholders did discuss in the road maintenance and abandonment

1 plans portion of the over and under 500 acres if the small forest landowner definition should not
2 be included there and the argument was made from one of the eastside folks that sat on the
3 stakeholders group that over on the eastside they can fit into that definition of 2 million board feet
4 but in many circumstances they would have 4 to 5 thousand or even more acres and so that would
5 not be appropriate for that type of situation where the acreage is larger. So the Small Forest
6 Landowner Advisory Group agreed that for RMAPS the 500 over and 500 less would go forward,
7 but for the easement and alternate plan the 2 million board feet definition is very important to the
8 small landowner because it defines them by their management practice and the fact that they only
9 log a certain amount of timber each year. Pat McElroy asked if it made sense to, in the definition
10 section say, “small landowner for the purposed of this section means this and for the purpose of
11 that section means that so there is one definition in one place. Terry Ruff said that it was a
12 possibility or it could be put in the definition section. Helen Bresler stated that by putting it in the
13 definition would solve the issue. Ms. Bresler’s recollection of how the stakeholder wrote the road
14 maintenance and abandonment section was that if you had 500 acres more or less was the
15 definition of a small landowner. It should be all right in the definitions. Paddy O’Brien said that
16 if the Board wanted to put it in the definition section they could, but there was a conscience
17 decision when the Forest Riparian Easement rules were written to put the definition in that chapter
18 and make it just apply to that chapter. What you see here is a reference to the definition in that
19 chapter; it is a policy determination that the small forest landowner concept for alternate plans
20 should use the definition from the Forest Riparian Easement Program. If the Board wants to ship
21 it to the definition section there will need to be a search of the entire rules for every place that
22 word is used to make sure the right definition applies.

23
24 Steve Wells said that is sounds like it is tidy in other places in the rules but not here and that
25 perhaps Pat McElroy’s suggestion of a modifier would work just as well on page 10 as to move
26 the whole definition to WAC 222-16-010, just to say here for purposes of this section a small
27 forest landowner is (insert definition).

28
29 John Mankowski had a question on WAC 222-12-038, page 10, line 11. John wants to know why
30 the line was stricken and can the department still approve or disapprove of all or any portions of
31 alternate plans? Paddy answered that the authority is retained but it is addressed differently in her
32 re-writes. Terry Ruff said that an alternate plan is just a part of the application, it is attached to the
33 application. Dave Price added the language was dropped because the alternate plan is attached to
34 an application and it was the application that was accepted, conditioned, or denied not the alternate
35 plan.

36

1 Dick Wallace stated that in WAC 222-40-040, page 154, line 27 it talks about auditing compliance
2 with the terms of alternate plans. It says, “the department will specifically review and approve
3 each landowners scheduled performance reports”. Dick’s question is this broad enough to allow
4 denial? Pat McElroy said that if the department has the ability to approve then by implication they
5 also have the ability to deny.

6
7 Pat McElroy wanted to remind the Board members that the entire next section about small
8 landowners and alternate plans will be reviewed by the landowner office and that Paddy has some
9 work to do there. The Board conversations will relate to issues other than whether this should be
10 here or separate or that sort of thing because that does not need to be worked out at this time. Pat
11 asked if there were other areas of concern other than that that Board members wanted to address in
12 the WAC 222-12-039, beginning on page 10, line 45.

13
14 Judy observed that in the draft, the alternate plans for small landowners may only cover aquatic
15 resources in chapters 222-24 through 222-38 whereas the alternate plan for larger landowners is
16 allowed to deal with the entirety of those sections.

17
18 Sherry Fox said that one of the distinct differences between the first alternate plan and the second
19 is the fact that legislation specifically stated that the small landowners portion was for aquatic
20 resources only. Judy stated said that the Board is directed in RCW 76.09.370 with a single
21 standard. RCW 76.13 does not give the Board direction for rules and a different standard unless
22 the bill you have offered were to be passed and signed. The Boards rule-making authority comes
23 from 76.09. RCW 76.13 directs the small landowner office to make recommendations for the
24 manual that the Board adopts and does not provided direction for the rules.

25
26 Pat McElroy said that WAC 222-12-041 is one of the cases where the Board has asked the
27 stakeholder committee to work. Is there anything beyond those observations that needs to be
28 brought to the stakeholder’s attention? The Board was ready to move on.

29
30 The next part is adaptive management in WAC 222-12-045. The Board discussed that briefly
31 earlier. Judy Turpin had a question about WAC 222-12-044 and whether the reference to Timber
32 Fish and Wildlife was correct? Dick Wallace suggested that the Board include TFW “or similar
33 forum.” The environmental community and maybe some of the tribal governments are absent from
34 Forest and Fish and that is the only real difference with Timber Fish and Wildlife.

35
36 Cumulative effects—WAC 222-12-046. Judy Turpin had some amendments.

1 Page 14, line 38 of the February 14th draft.

2
3 **MOTION:** Judy Turpin moved that on page 14, line 38 of the February 14 draft that the
4 Board insert a period after “plans” and delete the remainder of that
5 sentence.

6 **SECONDED:** John Mankowski

7
8 **Board Discussion**

9 Sherry Felix was concerned this would impact the ability of the department to require a small
10 landowner to develop a road maintenance and abandonment plan. Judy said that this rule simply
11 cites and describes certain sections. The description of WAC 222-24-051 is no longer correct and
12 should be deleted. She suggested examining the referenced section if there was a specific question
13 on authority.

14
15 **ACTION:** Motion passed unanimously.

16
17 Steve Wells believes WAC 222-12-046 is good guidance but it is not appropriate rule language
18 because it is time limited, at least he hopes the committee does not go on forever. If the Board
19 wants to keep that as rule language Steve feels it should be modified so OAHF is consulted. John
20 Mankowski said that it is a workplan issue not a rule.

21
22 **MOTION:** Steve Wells moved that WAC 222-12-046(4), page 16, beginning on line 44
23 be stricken from rule language with the understanding that it is still
24 guidance to the Board and to the department.

25 **SECONDED:** John Mankowski

26
27 **ACTION:** Motion passed unanimously.

28
29 WAC 222-16-030 water typing, page 30. Terry Ruff indicated that since the model is not ready
30 and will not be ready until September or the end of the year the stakeholders had to come up with
31 two water-typing systems. The interim is WAC 222-16-031 and on page 33, line 16 you will see
32 the crossover between SF, NP & NS and Type 1, 2, 3, 4 and 5 waters. The stakeholders
33 recommend keeping the basic emergency system in place until the new fish habitat water type
34 maps up and running. Pat McElroy asked if there was consensus in the group and Terry said yes
35 there was. Dave Price said that he agreed with Terry’s latter statement. The concept is not ideal
36 however it is agreeable. Some content needs to be clarified to more precisely reflect what it is the

1 stakeholders would like to see on the ground. The table, for example, is slightly inaccurate and
2 will need to be adjusted.

3
4 Judy had a question regarding WAC 222-16-041, the interim rule. Judy noticed that that on page
5 30 there were changes to the definition of Type S waters, particularly with reference to the nature
6 of the included wetlands that do not occur in a Type 1 water on page 33. Terry indicated that the
7 stakeholders made a change to Type S regarding bankfull width because they were having trouble
8 with the wetlands and lakes, ponds and saltwater were not lining up with stream channels.

9
10 Dave Price indicated that the stakeholders tried to minimize changes to the interim rule because it
11 largely reflects what was done previously since 1996. The stakeholders did not want to disrupt
12 things too much before they got into the new water-typing model. So the stakeholders did not
13 make those adjustments to Type 1 water and that was a problem with some folks among the group
14 but was something they elected to do as a group. One of the changes that was requested in Forest
15 and Fish and is also reflected in the issue that Judy brought up, the difference in Type 1 versus
16 Type S water, is the difference between ordinary high water mark and bankfull width. Forest and
17 Fish uses bankfull width, the only place where ordinary high water mark appears is in Type 1
18 water as reference in the interim rules. When the stakeholders made the leap from ordinary high
19 water mark to bankfull width they did so with the understanding that bankfull width has
20 geomorphic indicators that are useful to find on the ground. This deviates slightly from Forest and
21 Fish , which uses the 1.5-year event. The stakeholders agreed that scientist could not agree where
22 the 1.5-year event was on the ground and stakeholders thought that foresters might have an even
23 more difficult time. Instead, the stakeholders went with what they thought was the intent and that
24 is the geomorphic mark that might be reflected on the ground. Judy wanted to know if there was
25 agreement on that now and Terry answered that the stakeholders are close. Allen Pleus still has
26 some concerns but he has not had a chance to take it back to the tribes and review it with them.

27
28 Pat McElroy said that he has heard from field foresters that the current definition is nearly
29 impossible, they go out with four different scientist and get four different answers and that in a
30 rule is unacceptable. Does this as it is written make it easier for an ordinary forester in the
31 ordinary course of business to find this? Dave Price answered that he believes that this definition
32 will be very clear when used with the Board manual methodology. This is someplace that can be
33 found on the ground and that with a little training folks can do that. Terry Ruff agreed that
34 training is going to be the key. Allen Pleus said that he used to train bankfull width for the tribes
35 and the TFW monitoring program and this is mixing apples and oranges: where does the edge of
36 the RMZ start? where is the bankfull width measured for things such as noting what is your

1 stream size, channel width, and culvert size? Taking out the 1.5-year event will not provide a lot
2 of guidance for all aspects of using bankfull width and that is what the tribes are having trouble
3 with.

4
5 Helen Bresler indicated bankfull width is sometimes used for culvert sizing but what the
6 stakeholders have been struggling with is how to describe the point at which the RMZ begins.
7 The stakeholders have changed the bankfull width definition so people can understand where that
8 point is on the ground and it is much more complicated now, it is a four part explanation. Judy
9 Turpin asked if it still worked for culvert size or have the stakeholders caused a problem for its
10 other application. Ms. Bresler answered by saying that she is not sure yet. Dave Price stated that
11 for culvert applications the Department of Fish & Wildlife still uses the term ordinary high water
12 mark but there should not be a substantial difference between the two when done correctly and
13 with training they should be the same thing, although there will be some disagreement. Pat
14 McElroy asked whether it was the stakeholders' assessment that with the new language and with
15 the delineation in the manual and with training that this definition will work. Dave Price said yes
16 and that some of the difficulty that the foresters are seeing now is that they do not have this
17 guidance, they have known all along what ordinary high water mark is and suddenly a term has
18 been changed. When the foresters receive this training and see it in the Board manual, then it will
19 become very clear. This is more complicated because the stakeholders have added some things to
20 it. Pat wanted to clarify that his comments were not that the foresters could not find but the
21 scientist could not agree upon where it was.

22
23 Paddy O'Brien wanted to point out that Cheryl Nielson from the Attorney General's Office had
24 some concerns about the definitions. She did not know if they are substantial changes.

25
26 John Mankowski had a question regarding the interim water typing. The Board is living with one
27 and transitioning to another. Interim typing is basically the current emergency rule, but with that
28 comes some embedded issues such as electro-shocking and whether or not that is currently
29 allowed under the federal take prohibition. There has been some discussion between NMFS and
30 the WDFW about whether a WDFW permit for collection is enough or whether a NMFS permit is
31 required. Secondly there is an issue about whether the current shock-back is being applied
32 correctly. WDFW has identified in the field some examples of where it is being applied
33 inappropriately: people are shocking-back streams that were always Type 3, 2 or 1 and they are
34 using it beyond the policy set by the Board. John wants to know to what extent the stakeholders
35 have addressed these issues.

1 Dave Price indicated that the electro-shocking protocol is identified in the water typing indirectly
2 in WAC 222-16-031(3)(b) on page 34, line 10 & 11 which says if fish use has not been
3 determined in the Board manual then the following physical criteria apply. The physical criteria is
4 what the stakeholders think of as defining a Type 3 stream but in 1996 the Board recognized a
5 water typing system which changed. The shocking protocol is meant to be applied to those
6 streams that fall between that gap, between the 1996 and previous rules. If the landowners were
7 unjustly burdened they could shock those streams, find no fish and then they would be classified
8 as a Type 4. The difficulty is this is the only reference in WAC; the rest of the issue is entirely a
9 Board manual, section 13. The stakeholders brought this issue up to the Board six months ago as
10 one of the issues with the emergency rules that the stakeholders were hoping to fix. The
11 stakeholders are currently at a point where they would like to host a meeting in the stakeholder
12 group. It was agreed that Mr. Price would arrange this meeting to resolve this issue probably
13 through the Board manual but a WAC fix may be needed on these two lines.

14
15 Keith Johnson suggested that starting on page 17 that shocking back be put into the definitions.
16 Pat McElroy indicated this was a temporary situation and the stakeholders said that once the new
17 model is developed it would disappear. Pat then suggested that it not be put into the definitions.
18 Bob Kelly asked how soon the model will be ready. Lloyd Handlos stated that it will be December
19 of 2001 before there is something in place for the westside, the eastside is a little less certain, but
20 DNR's project needs to be done in 18 months. John Mankowski said that the question is how
21 does the Board just get through this next year or two with an understanding of how you secure
22 work permits. Peter Heide said that both WDFW and some of the industry folks think that there is
23 way to limit the amount of electro-fishing that is done. It may require a line in a WAC.

24
25 Judy Turpin had a question regarding WAC 222-16-050(5)(i) on page 39 lines 18 & 19. It says
26 that it is a placeholder for the RCW, but is language needed? . Terry Ruff indicated this was a
27 reminder to address statutory changes regarding landowner signature. The Attorney General's
28 Office has language to go in there but it has to go through the stakeholder process before it is
29 added.

30
31 John Mankowski asked about part of the site class definition on page 28, line 10. This is
32 important in determining what kind of a buffer is required. If there is no data on a site index, why
33 would the lowest site be used? Terry said that the group is going to meet to decide. John asked if
34 the stakeholders were going to bring back an amendment. Terry said yes.

35
36 Steve Wells recommended adding the word "sites" after "historic" on page 57, line 29.

1 Chapter 222-21, page 58, The Small Forest Landowner Forestry Riparian Easement. Terry Ruff
2 turned this over to Steve Stinson and Sherry Fox.

3
4 The stakeholders group did not discuss this topic because Steve Stinson and his group were
5 working on it. John Mankowski was confused about the process between the small landowners
6 and the stakeholders. Steve Stinson stated that before the Small Forest Landowner Office was
7 established the advisory committee to the office was in place and so for the forest riparian
8 easement, which was created primarily before the office was established, there was no link
9 between the advisory committee and the Forest and Fish policy group. When the alternative
10 planning process was started this group had been established and so the advisory was then
11 submitting things to this group and then back to policy. That has been a little confusing to most
12 everybody including the members of the advisory committee.

13
14 Steve stated that the easement is ready to go, he just had a few comments and the department did
15 make a policy call on the riparian function mitigation section within the easement contract itself,
16 that was a sticker for Steve and for landowners. He could not explain to them how he was going
17 to measure riparian function or how he was going to value it, so when the landowners were
18 signing a 50-year contract it was a big unknown for them so the department made a policy call to
19 delete that section. The bottom line is this guarantees that the trees will be there for another 50
20 years. Forest practices alone does not guarantee that and in a majority of the counties you can take
21 your land out of forestry, convert it to other uses and then you lose the trees, so from the states
22 prospective you will have the trees for 50 years and that seems like a good deal.

23
24 Judy Turpin wanted to clarify that the sheet she had in front of her was an amendment sheet or
25 what. Terry Ruff said that what Steve Stinson had handed out was just an explanation of what he
26 just spoke about and that the amendment sheet that the Board was looking at was for the one
27 change that the stakeholders had made. Terry stated that when the stakeholders defined riparian
28 function, they took it right out of Forest and Fish, the stakeholders thought it should be consistent
29 with all the definitions in this document so they did change that to be in line with the rest of the
30 definitions. That is the only change that the stakeholders have made.

31
32 Steve Wells thought it was funny that after Nels Hanson spoke at the last Board meeting about not
33 being able to measure riparian function the Board had a discussion about resource objectives,
34 which included measurements of riparian function. Steve does not understand why if they can be
35 measured under Schedule L1 the Board repeatedly hears from small landowners that you cannot
36 measure it. Steve Stinson then said to assume that we could, how do we value them so that a

1 landowner knows what he is going to be mitigated for at some point 50 years into the future.
2 Steve Wells then asked if Steve Stinson was willing to assume that we can measure riparian
3 function. Steve Stinson said yes, but that it is a two-pronged issue. Sherry Fox stated that it was
4 the intent of the legislation that the state was going to buy the qualifying timber that provides for
5 the riparian function so what the state is going to buy is the qualifying timber period and with that
6 the state will also get the riparian function.

7
8 John Mankowski asked where this need to qualify damage to function come into play. Steve
9 Stinson said that it was in the mitigation section. Judy wanted to know where the amendments to
10 this document are located. Sherry Fox said they were on page 66. Judy also wanted to know
11 where they were laid out specifically. Terry Ruff said that the changes were not new. Pat
12 McElroy wanted to clarify that the only change between the draft dated February 14th and the one
13 currently in front of the Board is that the stakeholders are recommending a change of desired
14 functions, other than that what the Board has before them is the same. The Board has seen all the
15 language except for the one exception on page 59, line 34 and it takes out the words “without
16 limitation”.

17
18 Dick Wallace wanted to clarify that where the value for riparian function comes in is on page 66
19 under remedies and it is down on the bottom of the page. It strikes “or mitigate for riparian
20 functions”. If for example, you had qualifying timber out there and you cut it later on, so you got
21 your riparian easement between now and when the 50 years are up, what this says is that you can
22 get remedies to restore qualifying timber cut. Steve Stinson stated that was called treble damages
23 and that is why they pay three times the value of the trees they cut. Dick asked if what Steve felt
24 with that that was enough remedy that he did not necessarily need the tool or had a way to value
25 the riparian function to receive remedy there. Steve said that was correct.

26
27 John Mankowski asked where the treble damages go and who gets the money. Steve Stinson said
28 that he believed it goes back to the state. Lloyd Handlos said that the department has asked that
29 question and the department has not gotten a definitive answer exactly but the department believes
30 that it would go back into the forest riparian easement program. Judy Turpin says that there needs
31 to be legislation to do that.

32
33 John Mankowski said that given what the Board has just learned if the remedy is simply that the
34 landowner gets punished by having to pay three times the value of the trees and send it to the
35 general fund that does not mitigate the damage to the public resource. Steve Stinson said that the
36 landowner would also have to replant the trees or put other qualifying timber in if it was available

1 and they would also, even though it is not the states direct jurisdiction it is applicable that forest
2 practice rules and fines can be applied to things that violate forest practices in the easement area,
3 so it is more than just treble damage.

4
5 Paddy O'Brien said that Cheryl Nielson in the Attorney General's Office has been working with
6 the department in drafting this. The easement agreement is required by statute to be put into rule.
7 Property law governs interpretation of the remedy section. Paddy personally has not looked at that
8 issue but she thinks that it is not necessarily treated the same way that civil penalty money is
9 treated.

10
11 Pat McElroy wanted to make sure that if there was a change in language that it was captured so he
12 went back to page 59, line 34, definition 10 riparian functions. The stakeholders committee has
13 suggested to remove the words "without limitation" from that. Pat asked the Board if there were
14 any objections to that. There were none.

15
16 Keith Johnson had a question about the process. If a landowner gets a cutting permit what is the
17 time period, in other words, the landowner can't log and then two or three years later ask for a
18 riparian easement program for an area that the landowner has not logged. Steve Stinson answered
19 that the landowner has to check the forest practices application saying that the landowner is
20 interested in the program. The landowner has to provide some documentation, one piece is a post
21 harvest questionnaire, the landowner has to fill that out when the current harvest is completed and
22 turn it in to start the process from the Small Forest Landowner Office. Keith wanted to clarify if
23 the landowner sends it in with the forest practice application. Steve responded by saying that it is
24 sent in after the application. The Small Forest Landowner Office is looking at legislation that
25 would allow landowners that cannot get an approved forest practice application to still qualify for
26 the program.

27
28 Dick Wallace raised a typo in WAC 222-21-050(3) on page 74, line 23. It talks about a post
29 harvest "questioner" rather than "questionnaire", but it seems to Dick that if the Board would like
30 to put a limit it could go here and it would go on to say "the post harvest questionnaire needs to be
31 completed within _____" some reasonable period of time. Steve Wells found another typo in
32 WAC 222-21-035(3) on page 72, line 20 there are references to either "1 legal land survey point or
33 2." Steve thinks they need to be letters not numbers and that they need to be in parenthesis.

34
35 Fran Abel stated that there was nothing in the draft about tracking easements and asked if that was
36 part of the Board manual thing. Pat McElroy stated that they were filed and Steve Stinson said

1 that the Small Forest Landowner Office is responsible for tracking and monitoring the easements.
2 Fran wanted to know where that would be spelled out. Steve responded by saying that it was in
3 the RCW. Pat said that it is also filed in the county office.

4
5 Riparian open space program, WAC 222-23. Terry Ruff gave a brief overview. This is a situation
6 where a landowner cannot harvest their timber because it is in a channel migration zone, or islands
7 in the lower basin on the large rivers. The landowner signs up for this program and the
8 department either buys the property or the landowner donates the property or the landowner grants
9 an easement. The only issue the stakeholders have with this section is where it talks about how to
10 set the priority. The stakeholders debated whether it should be first come first serve or on a
11 biological basis because the purpose of this acquisition is to provide for ecological protection and
12 fisheries enhancement. In WAC 222-23-025, on page 90 the stakeholders came up with the first
13 come first serve and Dave Price came up with an alternative. The Department of Fish and
14 Wildlife has maintained that the priority section should be based on resource protection as the
15 WDFW feels is outlined in House Bill 2091 and that is to provide for fisheries enhancement and
16 biological protection and this proposal is based on that premise. The stakeholders did not have an
17 opportunity to review this section in totality, because other issues took precedence. Peter Heide
18 said that the stakeholders disagree with that notion that these purchase groups could be lined up in
19 order of their biological need. The Forest and Fish Report was based on the fact that for these
20 large areas that were encompassed by these channel migration zones where harvest is prohibited
21 that landowners would be able to apply assuming the money were available and they met all the
22 qualifications that their land would either be purchased or they would get an easement or they
23 would make a partial donation. In any case the stakeholders do not believe that it was intended of
24 either Forest and Fish or the legislation, which does mention priorities but does not say
25 specifically what sort of priority other than the fact that it goes on to say this was to compensate
26 the landowner for loss of use of his land. Pat McElroy asked Terry to bring to the Board the
27 specific language of the law and the two alternatives. Dick Wallace would like Cheryl Nielson to
28 give the Board her idea of what she thinks.

29
30 John Mankowski asked about the status of funding for DNR. Terry Ruff heard that \$1 million
31 dollars had been allocated in the Governors budget. Dick Wallace said that raised an interesting
32 question, the riparian and the open space program both come out of the same pot of money and the
33 optimist in Dick says that there will be more demand for both of them then the Board can meet so
34 Dick wants to know if there is some proportional share that is going to be earmarked for either one
35 or the other.

1 Dave Somers asked if this was a key place that the definition was critical and he still knows that
2 the definition is being worked on, and whether the Board was going to have a definition before
3 them at the next meeting. Lloyd Handlos clarified that it was the definition for unconfined
4 channel migration zones. Paddy O'Brien said that the terms are defined in the statute so there is
5 not much room for movement. Peter Heide said that the definition is in the rule as well. There
6 was a similar definition to identify channel migration zones for regulatory purposes and that was
7 taken out because it is not longer applicable. Mr. Heide says that he now sees that one is
8 embedded in the rule.

9
10 Road construction and maintenance, page 92, chapter 222-24.

11 Terry Ruff introduced Peter Heide who would take the lead. Mr. Heide said that he did not
12 believe that there had been any significant changes since the earlier drafts. Dave Price said that on
13 page 96 was a federal and a Fish and Wildlife comment essentially eliminating organic debris
14 from permanent roads. Pat McElroy wanted to know if all the stakeholders were in consensus
15 with the stricken language on page 96, line 38, 40 & 42. Dave Price said that is was the same
16 language.

17
18 Peter Heide asked the Board to go to page 98 in the addendum on the top there was some
19 correction in the rules regarding locating landings. It was overlooked in other drafts. Pat McElroy
20 asked if all the stakeholders agreed that it was to update things.

21
22 Pat McElroy asked the Board if there were any objections to the corrections that the stakeholders
23 have all agreed to and there were no objections.

24
25 Peter Heide said that he did not believe there were any other changes in the draft before the Board
26 but he was asked to point out the notion of "worst first" principal in planning road maintenance
27 scheduling. This was a concern about basins with forest roads in them. There are two planning
28 processes, the first is to look at all the places where there are forest roads and decide what place
29 should be fixed first, which basin or road system. Then once the decision has been made then the
30 road system needs to be looked to decide what work needs to be done. It is very difficult to decide
31 on priorities because priorities vary depending on where you are and what is going on. The idea
32 was to put in the notion of worst first so that all this prioritization would be based on looking for
33 the places that are contributing most to the degradation of the resource. Those would be
34 prioritized first and it would be up to the reviewers of the plans to be sure that was being done.

1 Judy Turpin had a concern that was expressed to her that has to deal with WAC 222-24-010(1),
2 the policy section, page 92. Prior language was more specific and there was a concern whether the
3 new language was specific enough to provide guidance to staff as they determine whether the
4 goals are achieved. Pat McElroy asked the stakeholders if when they made the change if that was
5 a consideration. Peter Heide said that it had been awhile since the stakeholders had worked on this
6 section but he thinks the idea of taking the piece out of the middle of the policy section on page
7 92, lines 22-28 then reinserting it under the new number 4 page 93, lines 8-18 was for clarity and
8 there was a couple of issues that were left off. The idea was to make it more clear not less
9 specific. Dave Price said it was WAC type language and the stakeholders wanted to put it into
10 rule not policy.

11
12 Timber Harvesting, chapter 222-30 starting on page 108.
13 Terry Ruff said that one of the things he felt the Board should talk about was Hardwood
14 Conversion on page 114, line 8. Terry said that this was a tough issue and that there was a lot of
15 negotiation on this prior to the stakeholders receiving it and it is pretty conservative and the
16 stakeholders recognize this. The federal agencies have reviewed it and bought in on it. The
17 stakeholders wrestled with this a few meetings ago and basically it stayed that way for quite
18 awhile. Now it is a little more user friendly but the stakeholders did not want to pass the line on it
19 and have the federal agencies say no we are not going to give assurances on this. The Board has
20 heard testimony WAC 222-30-21(1)(b)(i) on line 25 (e) about the 500 above and below so the
21 landowner basically has to own 1500 feet and that limits the small landowner possibility on this
22 although there is still the possibility of an alternate plan on this. John Mankowski was wondering
23 if there was a reason why the Board could not address small landowners desire to do hardwood
24 conversions when they do not own the 500 feet above or below. Terry responded by saying that
25 the stakeholders think there is. John said that in his discussions with NMFS that they were very
26 firm in their belief that this is the best they can support so if the Board needs to deviate from this
27 he would rather do it from an alternate plan process where everybody can see what is going on and
28 look at the functions and make sure they are in check. John's perception is that this is at a point
29 where NMFS is going to throw up a red flag and there is a lot of risk here. Pat McElroy asked if
30 that was because it is a lot more site specific rather than a general rule? Judy said that is because
31 they are consulted. Peter Heide said that the stakeholders think that if these practices are tracked,
32 the federal agencies think that there are going to be a whole lot more hardwood conversions then
33 there actually are going to be and the stakeholders think that after the federal agencies see what is
34 not occurring at the rate which would concern them that they may become a little less restrictive
35 on the hardwood rule.

36

1 Pat McElroy asked if it would make more sense to put the words “or through the application of the
2 alternate plan process”. Terry Ruff said that the stakeholders have wrestled with this for a while
3 and they finally resolved it by stating that a landowner can apply for an alternate plan with any
4 part of the rule. Pat McElroy asked if this was an education process for the small landowner and
5 Terry answered yes it was.

6 Terry Ruff wanted to talk about tracking on page 115, line 42. The stakeholders added that there
7 was a mechanism to track people applying for an application but there was no mechanism for
8 seeing if they conduct a hardwood conversion. So the stakeholders placed in (C) that the
9 landowner report back to the department in three years that they have completed a hardwood
10 conversion. It will be tracked on an application basis and on a watershed scale basis using
11 adaptive management. Pat McElroy asked that given there are concerns among others including
12 the Hardwood Commission, if there was consensus among the stakeholder group. Peter Heide
13 stated that large and small landowners never agreed to the changes that were made from an earlier
14 draft, the stakeholders thought they had agreement at the policy level and that was not the case and
15 the rules were made more restrictive and the large and small landowners never agreed to those
16 restrictions but they understand the position that the federal agencies are in and they will not hold
17 this up. Pat asked if the default problem is federal assurances.

18
19 Dick Wallace wanted to respond to the Hardwoods Commission comment about the lack of
20 scientific basis, in their opinion. Dick’s understanding that it is a very temperature related
21 distance that comes out of the literature and that it is important that people understand that is
22 partly why the federal agencies feel that they have to stick with the 500 feet. Pat McElroy stated
23 that the Board is making it very clear that the alternate plan approach does provide an alternative
24 also. Terry Ruff said that what needed to be made clear is that the landowner cannot convert the
25 core zone so there is a 50 foot no cut buffer existing before the hardwood conversion takes place.

26
27 Pat McElroy said that it appeared that there were changes to WAC 222-30-010 on page 108 &
28 WAC 222-30-021 on page 113. Terry Ruff said that on page 108 the stakeholders worked on the
29 riparian function definition and made that consistent through the document and there was
30 consensus on that. On page 113, line 55 this is something that was omitted and agreed to in the
31 past, it should read “adjacent core zone” between the strikeouts, it got unintentionally struck out
32 and never added back in.

33
34 Dave Price spoke about WAC 222-30-020(11), Wildlife Reserve Trees on page 112, line 35. It
35 was an inadvertent result as to wildlife reserve trees, when the east/west line was moved from its

1 previous line to the crest of the Cascades. In the difference between those two lines wildlife
2 reserve trees were cut from 3 per acre to 2 per acre. The Department of Fish and Wildlife feels
3 that was an inadvertent effect and it has gotten some signals from some of the tribes that this is a
4 significant issue for them as well as one of the SAG groups of CMER. The fix is not that easy,
5 WDFW has proposed a number of alternatives most of them originating from the Yakimas and
6 others on the eastside to try and resolve this. The one alternative that WDFW proposed that has
7 no inadvertent effect on landowners would be if the stakeholders took the old definition from a
8 previous rule and included it for the purposes of this section only and cut it and paste in the
9 wildlife preserve section. The other alternative as far as the stakeholders could tell, all resulted in
10 some unintended impact to some landowner that otherwise would not have been affected. So
11 although there is a cumbersome fix, it is the only alternative that the stakeholders could come up
12 with that would not inadvertently affect landowners. Pat McElroy had a question, when the
13 comments came in he was not familiar with the change of the boundary definition and after
14 looking at a map what he sees is that an overwhelming majority of the land that is included in that
15 change is U.S. Forest Service land where these rules do not apply and it looks like a relatively
16 small amount of land that would be covered under these rules is included there. Dave Price had
17 two comments the first one was that there is a substantial amount of Forest Service land
18 unquestionably and the second point is that he believes that the map that Pat was looking at is
19 incorrect. One additional comment DNR staff member Sherri Felix has said that she has another
20 alternative that the stakeholders have not had the opportunity to review. Pat suggested that Ms.
21 Felix take her alternative to the stakeholders and bring the Board the better of the two. Keith
22 Johnson suggested that the Board go back to the other pattern which is to have the stakeholders
23 bring both forward to the Board, Pat said that was great and Terry Ruff said that it was on the
24 agenda. John Mankowski wanted to go on the record and say that it is important that through
25 implementing Forest and Fish that they don't go backwards on some important wildlife
26 protections that are in the rules, they weren't analyzed in the EIS, they weren't negotiated in
27 Forest and Fish and he feels strongly about that. John is looking for some kind of solution that
28 does not move the mark either to increase or decrease wildlife protection and also have a no
29 unintended consequences on the landowners side and if that means an extra paragraph or two of
30 descriptions in the WAC, they have been there for years and if the Board is going to deal with
31 wildlife more comprehensibly soon then it can be cleaned up.

32
33 Peter Heide stated that maybe for the sake of time then if that is the case why doesn't the Board
34 insert the east/west definition in the rule here, this is not a big issue for the stakeholders they agree
35 100%. If someone comes up with a better idea then it can be changed during the public comment.
36 Sherri Felix stated that if someone can come up with a better idea and then it can be changed she is

1 all for it but she would like to have the department to have the opportunity to bring forth to the
2 stakeholders group another option.

3
4 The next issue is the Eastside RMZ, WAC 222-30-022 page 122. Sherri Felix addressed the
5 Board. She presented the Board with a handout. She began by saying that the handout starts in
6 the February document and when it is reviewed it is easier to compare the two. Two things were
7 done, nothing substantially changed. These changes came about because of obvious duplications
8 when the stakeholder group tried to clarify with some help from the eastside negotiating group and
9 also the federal comments that have been turned in already said either go back to where you started
10 from or do something with this because it is too confusing. Ms. Felix took a stab at it having been
11 one of the instructors that went statewide and taught the eastside rules and this retains a lot of the
12 language that the stakeholders have already agreed upon with a couple of the representatives of the
13 eastside negotiating committee but it also takes into account some of the clarifications that in
14 general the federal agencies were wanting. There are some complete deletions out of what the
15 Board sees in the February 14th document versus what Ms. Felix just handed out.

16
17 Judy Turpin asked Ms. Felix what convention she was using for the strikeouts and underlines. Ms.
18 Felix stated that the strikeouts and underlines remained the same except in cases where language
19 was simply added. Pat McElroy suggested that this be moved forward to the stakeholders so it can
20 come forward to the Board in conventional language. Terry Ruff said that the stakeholders would
21 like to take a look at this.

22
23 Terry Ruff had one other thing. Sherry Fox and Dawn Pucci had comments on Riparian
24 Management Zone Exemption, 20-acre parcel, WAC 222-30-023, page 129, line 3. Ms. Pucci
25 said that this was a really big deal for the tribes because it is a direct contradiction to Forest and
26 Fish and Ms. Pucci is aware that the statute says from House Bill 2091 that “total parcel
27 ownership of less than 80 acres shall not be required to leave riparian buffers adjacent to streams
28 according to forest practice rules adopted under the Forest and Fish Report.” That does not sit
29 well because it is going against negotiated report. Ms. Pucci suggested that the regulations can
30 remain silent and because this whole section is in a document that when landowners use the rules
31 within they are assuming they are going to get assurances and there is this one small chapter that is
32 setting them up for failure with the federal agencies. Despite the fact that it reduces protection and
33 nobody likes it and no one has even touched the language in it because nobody wants to.

34
35 Pat McElroy said that for Ms. Pucci to say that nobody likes it is not a fair assessment of the
36 situation, this is a piece of legislation that passed both houses of the legislature and were signed by

1 the Governor, somebody likes it. Paddy O'Brien stated that the statute fixes what applies in the
2 rules at a point in time. She does not think the Board has the authority to strike those rules
3 because it would be a violation of the statute.

4
5 Dick Wallace wanted to know if the federal agencies commented about the 20-acre exemption.
6 Ms. Pucci said that the federal agencies do not want to give assurances against it and are
7 withholding comments on it. Terry Ruff said that he is sure that the federal agencies did not like
8 it. Dick suggested that the stakeholders work with Paddy on this issue and he agrees that the
9 Board does not have the authority to strike it. The one thing that Dick would suggest would be to
10 look at language that might at the beginning of the WAC reference the RCW and then you could
11 also add language which notes that this may not be in compliance with the endangered species act
12 so then the small landowner knows that it is an option but also knows that following it may put
13 them out of compliance. Keith Johnson said that Dick is right, the stronger the language the
14 better. Ms. Pucci said that the Small Forest Landowners are proposing legislation to encourage
15 them not to use in this section and to use an alternate method.

16
17 Bob Kelly said that this really speaks to the need for a gap analysis that the Board should have in
18 front of them that goes back and forth with Forest and Fish. Peter Heide said that one was almost
19 complete; his concern is that it is built off the old draft, which is already changed.

20
21 Sherry Fox said that the Small Forest Landowners agree with the tribes that the 20-acre exemption
22 is not one that the Small Forest Landowners negotiated in House Bill 2091.

23
24 Terry referred the Board to WAC 222-30-030, page 132, lines 5-10 for further changes. The
25 stakeholders struck out "stream bank integrity" that was a consensus. Judy Turpin wanted to
26 clarify that it was because it should not be done in the core zone anyway and the stakeholders
27 agreed.

28
29 WAC 222-30-050, page 133, line 22 the stakeholder's added "sensitive sites". Pat McElroy asked
30 the Board if they were in agreement with the changes.

31
32 WAC 222-30-070(7), page 136, line 21 this is one of the issues that the stakeholders brought
33 before the Board about skid trails within 30 feet, this was a conflict on the westside so the
34 stakeholders cleaned it up and there was consensus.

35
36 WAC 222-30-100, page 137, line 37 this was another "sensitive sites".

1
2 That was all the stakeholders' changes now what Pat McElroy would like to do is clean up this
3 chapter and then go into the rest of the program.
4

5 Judy had two related amendments on page 113. The first one is to WAC 222-30-020(12), channel
6 migration zone. Insert "or" after harvest and strike "or salvage" and the reason for that is if you
7 were to look at WAC 222-30-045(2) it says "No salvage may take place within the RMZ core
8 zone or a channel migration zone, including any portion of those trees that may have fallen outside
9 of these zones."

10
11 The second amendment was on page 113, line 24. WAC 222-30-020(13): insert "or" after
12 "harvest" and strike "or salvage". The rationale for this can be found in WAC 222-30-045 (1)
13 where it states, "No salvage may take place within the outer edge of bankfull width of any typed
14 water." These provisions should be consistent. Judy said that one thing that might be done is to
15 insert the line "No salvage may take place within the bankfull width of any typed water (see WAC
16 222-30-045)." Judy thought that would make it clearer and then do the same for the one above,
17 quote the later section because otherwise you end up with one section inferring that you can do
18 salvage and another directly telling you that you can't. Keith Johnson said that the Board should
19 follow Judy's lead and cite the WAC.

20
21 Terry Ruff wanted to make sure that the Board knew that this issue went to policy and what policy
22 told the stakeholders was that they were correct there is no salvage allowed within the bankfull
23 width of any stream but policy did allow harvest within the bankfull width of unbuffered 4's
24 (Np's) and 5's (Np's), and that was a policy call. Judy said that the language comes straight from
25 Forest and Fish.

26
27 Lloyd Anderson had some minor changes WAC 222-30-060, on page 134, line 1. His suggestion
28 was to either strike "a" or make "waters" singular. His second suggestion was on line 8. The
29 statement "should be located no closer than 150 feet" the Board had this discussion a long time
30 ago and Lloyd still feels that is to far apart, not only from a safety issue but from a residual stand
31 damage issue. His company specializes in thinning natural stands not necessarily RMZ's and their
32 corridors are typically 80 to 120 feet maximum apart. Later in the paragraph it talks about
33 generally uphill yarding is preferred, if you are thinning from a RMZ and your corridors are 150
34 apart and you are yarding up to presumably a road, you are going to be dragging those logs on the
35 ground parallel to a stream for a long ways if you go 150 feet and the chance for residual stand
36 damage is pretty significant. When the Board had this discussion before they decided to leave it

1 this way because it says “generally yading corridors should be located” it is not a specific do not
2 but typically when people start reading these things they read this is what we do. Pat McElroy
3 suggested that a way to get around that is to talk to the folks who are writing the manual and raise
4 the issue that one of the exceptions might be where there are long yarding distances close to
5 streams and that might be one of the areas that an exception might apply. Lloyd said that would
6 be acceptable to him.

7
8 Fran Abel referred to WAC 222-30-050 on page 133, line 27 (b) and she does not understand it.
9 The line reads “you shall fall trees favorable to the lead away from the water”. Pat McElroy said
10 that it is all right but he did ask the stakeholders to take a look at it and make it clear if it needs it.

11
12 Pat asked for rule language and alternative language for the Board to review by the next meeting
13 scheduled for March 6, 2001.

14
15 **PRELIMINARY FINAL EIS**

16 Kim Sellers introduced Randy Fairbanks and Allen Olson with Foster Wheeler

17
18 Dave Somers had a question regarding a problem with some of the maps and where the east/west
19 line was and he wanted to know if that was going to be reflected in the EIS. Lloyd Handlos
20 answered by saying that he does not believe that it is but he cannot be sure. Pat McElroy asked if
21 there was a map that delineates between eastern and western Washington. John Mankowski said
22 that this EIS addressed it correctly, they analyzed the new east/west split for the riparian rules, the
23 inadvertent change really was the different wildlife rules and so it should not be relevant for the
24 purpose of this EIS other than the fact the they did not analyze the effects of moving the east/west
25 split towards the crest on wildlife.

26
27 **MOTION:** John Mankowski moved that the Board recommend to the Commissioner
28 that he move forward in issuing the Final Environmental Impact Statement

29 **SECONDED:** Toby Murray

30
31 **ACTION:** Motion passed unanimously

32
33 **FINAL SMALL BUSINESS ECONOMIC IMPACT STATEMENT**

34 John Perez-Garcia with the University of Washington and Bruce Glass with the Department of
35 Natural Resources gave the presentation.

1 MOTION: John Mankowski moved that the Board, pursuant to the Regulatory Fairness
2 Act, accept the Small Business Environmental Impact Statement

3 SECONDED: Dick Wallace
4

5 **Board Discussion**

6 Dick Wallace stated that one of the things that the Board talked about at the last meeting was the
7 relative value of the compensation part and it would go partly to offset the differential impact on
8 small businesses and the thought was to take a stab at quantifying that. John Perez-Garcia
9 answered by saying that there was a section in the back of the SBEIS that talks about the
10 mitigation which presents the dollar values that are associated with those sort of compensation
11 packages.
12

13 Pat McElroy wanted to clarify that it was the part where it talks about \$.50 and \$.68. The answer
14 was yes it was.
15

16 Dick Wallace said that what he was thinking was that if he was reading it correctly it was a
17 reduction of timber values of 18.5% and then 25.6% so it is important to note that with the
18 mitigation the difference between 18.5% and 25.6% is offset. Dr. Perez-Garcia said yes as was
19 presented last time it was a discussion of a moving target. First you need to know what the
20 disproportionate impact is and then come up with the mitigation. The scope of the work was not
21 to come back and analyze the mitigations impact on the disproportional issue but it is mentioned
22 in the section on mitigation.
23

24 Lloyd Anderson said that he had been in touch with one of the members of the committee that
25 John Perez-Garcia sits on and the gentleman's name was Harold Brunstad who represents the
26 logging sector and he has made phone calls regarding whether or not the increased costs to logging
27 companies had been looked at and Mr. Brunstad was told that yes those costs had been considered
28 and were in the report in the road program. What Lloyd was wondering was how they are in there
29 in the road program because harvesting costs are totally different than road construction costs. Dr.
30 Perez-Garcia said that he believes part of the logging costs are in the set up costs. Now the way
31 the information was collected was in two separate ways, one, there was a questionnaire passed
32 around about a year ago to independent loggers, large/small businesses, east and west side, a hand
33 full of people responded to that and that was done under Charlene Rodgers and then last summer
34 as well Dr. Perez-Garcia contacted the Washington Loggers Association and got a list of people to
35 talk to so their logging costs could be considered under these proposed rules and so those two
36 pieces of information were incorporated into the study. Lloyd wanted to know if they responded

1 by saying that they would have to buy more expensive logging equipment. Dr. Perez-Garcia said
2 no that they gave him a value number so it could be quantified and if that value number reflected a
3 purchase of a new piece of equipment then yes but they did not respond to a question about
4 whether they were going to use new equipment to log. Lloyd said that generally the desired future
5 conditions that the Board is striving for lends itself more to cable systems then ground based and
6 cable systems are significantly more expensive then ground based systems.

7
8 Judy Turpin noted that the 50 employees and less does not seem relevant to distinguish between
9 small and large in the forest products industry where some fairly large enterprises would have less
10 then 50 employees and that the definition is so different has been a frustration. Pat McElroy said
11 that it was noted, but that this was a statutory requirement. Dr. Perez-Garcia commented that he
12 actually took a look at that because to estimate the excise tax credit he used the other definition
13 and they matched up pretty well from the sample, what he had classified as under 50 employees as
14 small and under 2 million board feet for the small harvester matched up pretty well.

15
16 John Mankowski had a concern about the 5% issue. The concern being that it is really impossible
17 given the current budgets and the state of the science to really calculate what these rules do in
18 terms of fish population response.

19
20 **ACTION:** Motion passed unanimously

21
22 **FINAL COST BENEFIT ANALYSIS**

23 John Perez-Garcia and Bruce Glass also gave the presentation for the Final Cost Benefit Analysis.

24
25 **MOTION:** John Mankowski moved that the Board, pursuant to the Regulatory Fairness
26 Act, accept the Cost Benefit Analysis.

27 **SECONDED:** Dick Wallace

28
29 **Board Discussion**

30 John Mankowski wanted to make it clear to the Board and on the record that this is not a
31 prediction that these rules will increase populations by 5%; the Board really has no tools in front
32 of them today. The 5% as John understands the report is basically the breakeven point. The first
33 5% is where the benefits exceed the costs, the Boards assumption is that we are somewhere in that
34 first 5% the Board is not commenting about the specific number and with the tools and money
35 available to them the Board is not able to make a prediction.

1 Pat McElroy stated that after reading the material it is clear that the Board is in a situation where
2 they have imperfect information and the Board is at the point where it has to make a decision
3 based on the best information available and it is Pat's assessment to question that given the state of
4 technology and given the state of the information that it appears that given that that the Board has
5 the best information that is available to decision makers on this subject matter today. Dr. Perez-
6 Garcia agrees with that.

7
8 Steve Wells asked if other sectors or other participants in the overall salmon recovery effort also
9 done cost benefit analysis of their part of the big strategy. Dick Wallace answered that he believed
10 that the study that was used was one that Ecology paid for as kind of a building block for other
11 kinds of rules that might come up. As Dr. Perez-Garcia noted he has unquantified costs and
12 unquantified benefits and there is a question mark over whether or not the 5% is reached and who
13 gets to claim it. That is where Pat is driving at and John wants on the record is that there is not a
14 clear bright line here but that the Board has the best information available to them that is possible.
15 The Board needs to take this in context with the SBEIS and the EIS and all the rule package. The
16 Boards' charge is to somehow get their arms around the whole, making the decisions based on
17 those pieces but not to try to slice it up too tight because the data will not support that.

18
19 Pat McElroy thinks that part of the problem is that in some of these cases the unquantifiable
20 benefits and costs may in fact exceed those that you can at some level measure. Perhaps that is
21 more so on the benefit side than the cost side in some cases. Steve Wells agrees totally with Pat's
22 observation and specifically in the context of the value of certainty in the face of potential citizen
23 or other lawsuits under the endangered species act. One of the unquantified benefits to this
24 package has been a regulatory certainty and there is no question in Steve's mind that it adds very
25 large dollar value to the industries that the Board is regulating. That is what brought them to the
26 table. The Board has not tried to put a dollar value on that but Steve is convinced that if that were
27 factored in on the benefit side it would argue strongly for moving ahead with this package.

28
29 Judy Turpin wanted to point out that that would also be an unmeasured benefit to the state because
30 there are those who believe that the state also has vulnerability under ESA if the rules cannot get
31 assurances.

32
33 Toby Murray wanted to speak from personal experience from having operated under a multiple
34 species habitat conservation plan for 5 years. Toby is very comfortable in saying that the accuracy
35 of the costs is much higher than the accuracy of the benefits under this plan. The set asides fit
36 very closely within the framework that Toby is experiencing on his tree farm and he knows that is

1 true, the benefits are a crap shoot and the Board is doing the best they can under those
2 circumstances and clearly the costs side is reasonably accurate.

3
4 Lloyd Anderson said that the goal here is to save salmon statewide. He asked what other sectors
5 that will eventually come to the table with other programs, what would their economist possibly
6 face because the Board has grabbed the first share and presumably the only share? Dr. Perez-
7 Garcia said that it would probably be the same issues that he faced in studying this problem and
8 the biggest issue is the lack of information that really can relate benefit in terms of fish
9 populations to forest practices. That was the biggest obstacle that Dr. Perez-Garcia has had in
10 dealing with the study, there is no information that says by changing the forest practices that fish
11 number are going to change, fish habitat will change and that is going to help in fish numbers but
12 there is that extra step of fish habitat between the fish population and the forest practices that no
13 seems to have a handle on. Bruce Glass said that there is a wider issue involved here as well and
14 that is whether the better approach to evaluating these programs that are collectively aiming at
15 restoring salmon runs ought to be evaluating the programs collectively rather than on an individual
16 basis.

17
18 Pat McElroy said that the other thing is that when you look at the report it is easy to look at those
19 things that have been quantified and not give due regard to those that have not been quantified and
20 that may that we all share that first 5% but that may not be the entire issue it may be the other
21 aspects regulatory certainty, better environment generally, water quality generally that cannot be
22 quantified that may contribute more value. That is the dilemma because the focus is always going
23 to be on those things that cannot quantify rather than taking a look at the big picture.

24
25 **ACTION:** Motion passed unanimously

26
27 **HB 2106 – EXTENDING TIME TO COMPLETE RULE MAKING**

28 Pat McElroy discussed House Bill 2106. It is basically Pat's assessment that to the extent that the
29 Board can get the work done without an extension it would be better off. There is an appreciation
30 of the need to do this if this is absolutely essential. Pat thinks the legislature would be much
31 happier if the Board could get the business done in a timely way that would be the preferred
32 alternative to an extension. Another draft of the Bill would do three things, remove a specific date
33 for the expiration of the emergency rules, make that coincide with the effective date of the new
34 permanent rules, and delay the permanent rules until March 15, 2002 to provide the legislature
35 with the opportunity to review the rules. The Board can adopt the new permanent rules, those that
36 are consistent with Forest and Fish would go into effect. Those that deviate from Forest and Fish

1 would not go into effect until 60 days “of” the legislative session. The Board is now in a real bind
2 here because most of the rules are consistent although some were not even addressed by Forest
3 and Fish others may not be consistent but whether deviant or not is another matter so what the
4 Board is faced with is doing a pick and sort. From the administrative side it would be impossible
5 to try to administer because there would be new permanent rules that would go into effect, the
6 expiration of the emergency rules and some rules that are in a state of limbo and how do you deal
7 with those that the Board is bringing forward that Forest and Fish did not even address.

8
9 It is very clear to Pat that the legislature wants a 60-day period when they are in session to review
10 rules that are not consistent with Forest and Fish. Keith Johnson wanted to know if the Board
11 could identify which ones are inconsistent or deviant. Pat said that one version of the Bill that he
12 saw said that the Forest Practice Board or any member of the people that are negotiating. That is
13 not in the language that Pat is preparing. That language would reference the Forest Practice
14 Board. Judy Turpin said that the way Pat described it though even if the Board gets done on time
15 will they have this problem. Paddy O’Brien said that the Board will need to do its 60-day notice
16 soon. Judy asked if the 60-day notice be on the draft that is taken out to public hearing. Paddy
17 answered that was how it fit into the schedule.

18
19 The most important help that the Board can have is to move the rule package forward to keep the
20 stakeholders focused and Pat understands that tempers are getting short and that time is getting
21 short and that people are working incredibly hard long hours. Pat fully appreciates that but when
22 Pat ponders the possibilities that lie before the Board he really does not think there is any other
23 option but to keep driving forward. He would appreciate the support in that effort. The staff has
24 to work with their people to let them know that there are potentially very serious consequences of
25 a delay at this point in the process.

26
27 Keith Johnson wanted to know if this was leading up to another special meeting. Pat said right
28 now he did not think so.

29
30 Judy Turpin is not sure there is time for another meeting after March 6th anyway if there was to be
31 another meeting it would have to be before March 6th not after. Judy said that when she was at the
32 last meeting she made it clear that she was committed to getting a draft out on schedule for public
33 hearing. Her concern with the safety valve was not this part of process now. It is the Board’s
34 obligation since the stakeholders are not ready to put a draft out and to put out open issues if
35 necessary. They can come and testify to the Board at the public hearing but the Board cannot
36 continue to wait. Judy’s main concern is that the public hearing may identify a lot of substantive

1 issues and changes to be made. She would like to see a safety valve so that the Board can do that
2 and comply fully and fairly with the APA, so the Board does not create a vulnerability to the
3 whole process that the Board has been going through because of some artificial constraints.
4

5 Pat McElroy thinks the real issue for the next meeting is to get out a rule package that in those
6 areas where there is no agreement that the range of alternatives is available to the public and to the
7 legislature. The Board can quantify for the legislature what the effect would be of that sort of
8 deviation so that they have some way to assess that and it is going to require a lot of very hard and
9 diligent work but Pat does not see an alternative. Dick Wallace said it sounds like the Board is
10 headed for the 60-day notice after the March meeting and share the side-by-side crosswalk
11 document that Peter Heide has taken the lead on.. If it is 100 pages already that is excruciating
12 detail. It would be good to do two things. One would be to step back with an executive summary -
13 -overall big picture look --because the legislature is not going to plow through 100 pages. A lot of
14 it is not deviant from Forests and Fish but just details that need to be worked out given more time
15 and translated into rules. The other thing that House Bill 2091 did was if you do deviate from
16 Forest and Fish, you are to identify who is supportive or opposing those changes.
17

18 Bob Kelly wanted to know who decides if the draft is consistent with the report. Paddy reported
19 that it is the Board that reports to the legislature.
20

21 Steve Wells stated that if the Board follows Dick's suggestion that what is crucial is the summary
22 overview. It seems that if the first paragraph delivered to the legislature said that the Board has
23 adopted a rule package that implements or reflects the consensus of the participants in Forest and
24 Fish that that is as far as the legislature cares. When the legislature says that they reserve the right
25 to make policy and they made policy in this case. Steve does not think they were concerned with
26 buffer widths in eastern Washington. Steve would include the crosswalk and all the other
27 supporting materials but Steve feels that the Board would not be inconsistent with the legislatures'
28 intent if the Board conveyed to them that the Board had adopted a rule package that was
29 substantively the same as what the Forest and Fish participants agreed to.
30

31 Bob Kelly said he needed to state that he is concerned that the Board is talking about finalizing a
32 gap analysis without incorporating the tribal comments. Judy said that the Board would not adopt
33 it until the comments were entered. Bob responded by saying that if the Board is talking about a
34 draft analysis that at some point will have as many of the tribal comments as it can incorporated
35 then that is fine.
36

1 The Board is going to continue this meeting on March 6, 2001. There will be no public comment
2 at this meeting.

3

4 **CLOSING REMARKS**

5 The Board adjourned the regular session at 3:20 p.m. Executive Session was called to order at
6 3:30 p.m. Executive Session adjourned at 3:50 p.m. The next regular meeting is scheduled for
7 August 8, 2001, beginning at 9:00 a.m. at the Natural Resources Building. A special meeting is
8 scheduled for March 6, 2001 at the Ramada Inn in Olympia beginning at 9:00 a.m.