

1 **FOREST PRACTICES BOARD**

2 **SPECIAL MEETING**

3 March 31, 2009

4 Natural Resources Building

5 Olympia, Washington

6
7
8 **Members Present:**

9 Peter Goldmark, Chair

10 Brad Avy, Designee for Director, Department of Agriculture

11 Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development

12 Bridget Moran, Designee for Director, Department of Fish and Wildlife

13 Bill Little, Timber Products Union Representative

14 Carolyn Dobbs, General Public Member

15 Dave Somers, Snohomish County Commissioner

16 David Herrera, General Public Member

17 Doug Stinson, General Public Member/Small Forest Landowner

18 Norm Schaaf, General Public Member

19 Sherry Fox, General Public Member/Independent Logging Contractor

20 Tom Laurie, Designee for Director, Department of Ecology

21
22 **Members Absent:**

23 David Hagiwara, General Public Member

24
25 **Staff:**

26 Marc Engel, Acting Forest Practices Assistant Division Manager

27 Gary Graves, Acting Forest Practices Division Manager

28 Patricia Anderson, Rules Coordinator

29 Phil Ferester, Assistant Attorney General

30
31
32 **WELCOME**

33 Peter Goldmark called the Forest Practices Board (FPB or Board) special meeting to order at 9:00
34 a.m. Goldmark recognized Gary Graves for his 36 years of service to the Department of Natural
35 Resources (DNR or Department). Graves will be retiring at the end of April.

36
37 Goldmark announced that he would be designating Lenny Young, DNR, as his designee to serve on
38 the Board when he is not available.

39
40 Patricia Anderson, DNR, provided an emergency safety briefing.

41
42 **PUBLIC COMMENT**

43 Peter Goldman, Washington Forest Law Center (WFLC), urged the Board to consider itself as a
44 Board administering a Federal Habitat Conservation Plan (HCP). He said there is a strong
45 presumption that it will be science and process driven and that the public deserves to know it will be
46 science driven. He also shared that the environmental community, DNR and Washington Forest
47 Protection Association (WFPA) have joined forces to develop forest bonds to purchase working
48 forest lands.

1 Ken Miller asked the Board to encourage the adaptive management program to incorporate risk-
2 assessment disciplines. He said the Board could be presented with statistically valid resource risk-
3 assessments and an added perspective for the choices the Board is presented with. He also stated that
4 when new potential resource risks are identified, harvest size should be utilized as a mitigating factor
5 rather than no management options. Harvest sizes and regulatory incentives should be in the Board's
6 tool bag as more appropriate ways to offset current and future regulatory disincentives.

7
8 Karl Forsgaard, WFLC, encouraged the Board to maximize its use of the website to communicate to
9 the public and provide notice to the right people. This needs continued vigilance and there is still
10 room for improvement.

11
12 Steve Stinson commented on a lack of process that allows a hold on scientific evidence to move
13 forward while acknowledging dissenting views in a transparent manner. There are risks associated
14 with moving forward with faulty scientific findings. He submitted two articles published in the
15 Seattle Times relating to this issue.

16 **ADAPTIVE MANAGEMENT PROPOSAL PROCESS**

17
18 Darin Cramer, DNR, presented the process on how Adaptive management proposals can be initiated.
19 Proposals initiated by the Board, including actions taken in response to public requests, must follow
20 the proposal process outlined in Board Manual Section 22.

21
22 He reviewed the proposal process stages:

- 23 1. Initiation and Screening of Proposals
- 24 2. Proposal Review and Planning
- 25 3. Proposal Implementation
- 26 4. Policy Recommendation
- 27 5. Board Consideration of Action
- 28 6. Management Implementation

29
30 He said the elements in the proposal should include the affected forest practices rule, the urgency,
31 any relevant outstanding agreements, and other information/data supporting the proposal.

32 **PUBLIC COMMENT FOR WATERSHED ANALYSIS**

33
34 Stephen Bernath, Department of Ecology, stated that most of the prescriptions in watershed analysis
35 were superseded by the Forests and Fish rules. He said the driver to keep doing watershed analysis
36 became irrelevant except for mass wasting, and completing the Landslide Hazard Zonation project
37 would serve as a trigger to eliminate the use of prescriptions. He encouraged the Board to consider
38 this information when taking action on watershed analysis.

39
40 Scott Swanson, West Fork Timber, supports protection of unstable slopes and landforms as evidenced
41 by their development and implementation of the mass wasting prescriptions for the past 16 plus
42 years. He asked that the Department not alter years of practice and interpretation of its regulations
43 through informal policy guidance to staff. He requested the new interpretation that certain mass
44 wasting prescriptions contained in watershed analysis may not be "specific enough" and may be
45 classified as Class IV special be withdrawn. He urged the Board to engage in a more detailed analysis
46 of this matter.

47 **WATERSHED ANALYSIS**

48
49 Mary McDonald, DNR, provided a status of watershed analysis mass wasting prescriptions.
50 McDonald also provided the findings and actions initiated by the Forest Practices Division (FPD)

1 because of a review of Forest Practices Applications (FPAs). Some actions initiated because of the
2 review include requiring a watershed analysis worksheet, staff training, have geologists review
3 samples to verify specific prescriptions, have all regions use a master FPA log sheet, and have more
4 interactions with Department of Transportation concerning FPA's.

5
6 Marc Engel, DNR, discussed the future of watershed analysis. He stated that watershed analysis has
7 been treated as a legacy since the Forests and Fish rules were adopted. He said training has not been
8 available for qualified experts and so there are no experts to implement the rule.

9
10 He asked the Board to consider initiating an adaptive management proposal for a rule change to
11 remove the exemption for mass wasting prescriptions from the definition of Class IV-Special in
12 WAC 222-16-050 and add language to WAC 222-22-070 stating that the current rules supersede all
13 mass wasting prescriptions.

14
15 **Board Discussion:**

16 Carolyn Dobbs asked if landowners under the current watershed analysis process were involved in
17 the review process. McDonald said no, the review process was completed internally and based on a
18 word screening method. Results of the review are now available to the public and can be obtained
19 from the region offices.

20
21 Dobbs asked what opportunities were available for those who are affected to participate in the
22 development of any proposed changes. Engel responded there would be many opportunities for
23 participation through the adaptive management process. Dobbs further asked what the notification
24 process is for notifying the public of the CMER and Forests and Fish Policy (Policy) agenda topics.
25 Engel responded he would ensure that agendas for these groups are posted to the website.

26
27 McDonald added that the Department can notify the two landowners who have HCPs tied to mass
28 wasting and let them know what is going on and how they can be involved in the process.

29
30 Bridget Moran asked if there is any other consideration for those that have approved HCPs other than
31 push them into the new process.

32
33 Engel replied there could be an exemption in the rule for those who have an approved watershed
34 analysis to continue to use the prescriptions.

35
36 Norm Schaaf stated his experience is that the prescriptions developed can take a year or more to
37 accomplish and are much more site specific for a specific watershed than statewide rules. He asked if
38 this was generally true.

39
40 Gary Graves responded that was partly true and that watershed analysis prescriptions were written for
41 an identified specific landform.

42
43 Moran suggested that the Board have a discussion on the priorities for adaptive management. It was
44 suggested that this would occur at the May meeting.

45
46 Graves clarified that the current recommendation is to develop a rule proposal that removes the mass
47 wasting prescription out of the watershed analysis and rule that allows a landowner to use the current
48 mass wasting prescriptions.

1 Graves added that the Board can direct staff to broaden the scope to include other elements for
2 landowners that have an HCP.

3
4 Schaaf said that he believes it is important to retain those aspects of watershed analysis that are
5 working. He said he does not believe eliminating all of watershed analysis is appropriate. He
6 suggested that staff look at ways to resolve issues with landowners that are interested in preserving or
7 modifying their watershed analysis prescriptions before eliminating watershed analysis totally.

8
9 Chuck Turley reminded the Board of the initial direction from the Board to report back with a
10 recommendation on how to eliminate watershed analysis. This is based on the fact that there is no
11 training program available, and therefore no qualified experts and the costly efforts to review which
12 prescriptions to continue and do five-year reviews. He said to reinstitute this would take months if not
13 years and millions of dollars to set up the program. He also added there would be significant
14 challenges to try to determine which prescriptions to keep and not keep.

15
16 Schaaf said he is not looking at reinvigorating the entire watershed analysis process but is suggesting
17 keeping existing prescriptions that are meeting the goals of protecting resources.

18
19 **MOTION:** Dave Somers moved that the Forest Practices Board direct staff to prepare a mass
20 wasting adaptive management proposal and answers to the questions listed in Part
21 3.1, Proposal Initiation of Board Manual Section 22, Guidelines for the Adaptive
22 Management Program. The proposal will include options for respecting the
23 watershed analyses prescriptions that have been done and including those in HCPs
24 . . . (INAUDIBLE) and how the post-mortem study results will be integrated.

25
26 **SECONDED:** Carolyn Dobbs

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

29
30 It was suggested that this proposal be presented to the Board at the August or November meeting.

31
32 **PUBLIC COMMENT FOR DESIRED FUTURE CONDITION (DFC) RULE MAKING**

33 Peter Goldman, WFLC, stressed that Proposal 3 is not a product of the scientific process, that CMER
34 never researched its effects, and that it came out of nowhere. The rules say the 20 leave trees shall be
35 left behind. Furthermore, it is extremely bad policy and precedence to link a federal habitat
36 conservation program with legislative concessions to reducing fees, especially in this time of record
37 deficits in the state budget.

38
39 Miguel Perez Gibson (testimony read into record by Chris Mendoza) stressed that the 20 leave trees
40 per acre required in the “pack and whack” option of DFC rules under the HCP are specifically *in*
41 *addition* to the basal area requirement.

42
43 Kevin Godbout, Weyerhaeuser, commented on the importance of the Board’s dual responsibility to
44 protect the environment and ensure economic viability of the timber industry. He urged the Board to
45 adopt Proposal 2, the least cost action. He referred to his previous comments to the Board in which
46 he gave reason to believe that no new rule is necessary because current rule already meets the 325
47 square feet per acre basal area in riparian areas, when taking into account various buffer widths,
48 floors and other leave tree requirements.

1 Karl Forsgaard, WFLC, urged the Board to adopt Proposal 1 because it is the only proposal
2 supported by adaptive management. If the Board wants to pursue Proposal 3, it should adopt Proposal
3 1 now and send the 20 tree credit rule into adaptive management. He also repeated a point he made in
4 his comments on the State Environmental Policy Act (SEPA) analysis, that it should have been
5 conducted as a site specific proposal because the whole intent of SEPA is to look at environmental
6 impacts.

7
8 Peter Heide, WFPA, pointed out there are roughly 800,000 acres of forest land in Washington that
9 have been set aside for protection of fish, wildlife, water quality and other public benefits. When the
10 Legislature passed the Forests and Fish law the landowners gave up \$4 billion in assets. The Board
11 has accepted proposals 2 and 3 as viable alternatives to Proposal 1. He said he hoped the Board
12 would pass the motion before the Board.

13 14 **DESIRED FUTURE CONDITION RULE MAKING**

15 Chuck Turley, DNR, presented basic descriptions of each proposal, the conclusions of the
16 environmental analysis, information about estimated economic impacts of each, and the estimated
17 no-harvest buffer widths for each site class per stream width.

18
19 He showed annual economic impacts as follows.

20 From the January 2009 Final Economic Analysis:

21 Proposal 1 = \$1,012,299

22 Proposal 2 = \$699,983

23 Proposal 3 = \$904,306

24 Economic impact reflecting current timber prices (reduction of 31% from data used for the
25 January 2009 Final Economic Analysis):

26 Proposal 1 = \$708,609

27 Proposal 2 = \$489,988

28 Proposal 3 = \$633,014

29
30 He showed estimates of no-harvest buffer widths if Option 2, “Leaving trees closest to the water”
31 were to be utilized under each proposal. He explained the Department made these estimates by using
32 the sample data set of 100 forest practices applications submitted to DNR in 2005 and 2006, which
33 proposed inner zone harvest and ran the DFC model. He explained the data set was the same as that
34 used in the SEPA environmental analysis and the Final Economic Analysis. (Editor’s Note: The
35 “core+floor” widths are averages of the estimated no-harvest widths, calculated from the sample FPA
36 data).

- 37
- 38 • Site Class 1 - Small Streams
 - 39 – Current Rule: No sample
 - 40 – Proposal #1: No sample
 - 41 – Proposal #2: No sample
 - 42 – Proposal #3: No sample
 - 43 • Site Class 1 - Large Streams
 - 44 – Current Rule: Core + floor = 104 ft.
 - 45 – Proposal #1: Core + floor = 119 ft.
 - 46 – Proposal #2: Core + floor = 116 ft.
 - 47 – Proposal #3: Core + floor = 116 ft.
 - 48 • Site Class 2 - Small Streams
 - 49 – Current Rule: Core + floor = 87 ft.
 - 50 – Proposal #1: Core + floor = 88 ft.

- 1 – Proposal #2: Core + floor = 87 ft.
- 2 – Proposal #3: Core + floor = 87 ft.
- 3 • Site Class 2 - Large Streams
- 4 – Current Rule: Core + floor = 101 ft.
- 5 – Proposal #1: Core + floor = 106 ft.
- 6 – Proposal #2: Core + floor = 106 ft.
- 7 – Proposal #3: Core + floor = 106 ft.
- 8 • Site Class 3 - Small Streams
- 9 – Current Rule: Core + floor = 80 ft.
- 10 – Proposal #1: Core + floor = 83 ft.
- 11 – Proposal #2: Core + floor = 83 ft.
- 12 – Proposal #3: Core + floor = 83 ft.
- 13 • Site Class 3 - Large Streams
- 14 – Current Rule: Not allowed
- 15 – Proposal #1: Not allowed
- 16 – Proposal #2: Core + floor = 96 ft.
- 17 – Proposal #3: Not allowed
- 18 • Site Class 4 - Small Streams
- 19 – Current Rule: No sample
- 20 – Proposal #1: No sample
- 21 – Proposal #2: No sample
- 22 – Proposal #3: No sample
- 23 • Site Class 4 - Large Streams
- 24 – Current Rule: Not allowed
- 25 – Proposal #1: Not allowed
- 26 – Proposal #2: Not allowed (Correction made during discussion: Harvest would be
- 27 allowed if more than 325 square feet basal area existed on the site. The no-harvest
- 28 core + floor would be 80 ft. or greater.)
- 29 – Proposal #3: Not allowed

30
31 Tom Laurie asked whether there'd been threats of lawsuits over possible rule actions the Board may
32 take.

33
34 Turley said he'd heard two opinions in public testimony: The Board must adopt the least costly
35 alternative which is Proposal 2, and the Board must adopt Proposal 1 because the others don't follow
36 the adaptive management process. Lenny Young added there'd been no threat of litigation in writing.

37
38 Goldmark said he thought it was premature to go into Executive Session and suggested the discussion
39 continue.

40
41 Sherry Fox pointed out that the no-harvest widths shown in Turley's presentation were close for all
42 of the proposals.

43
44 Laurie asked for some clarification on the least cost alternative that meets the goals in the
45 Administrative Procedure Act.

46
47 Phil Ferester, Office of the Attorney General, pointed out RCW 34.05.328(1)(e), highlighting that an
48 agency must determine that a rule being adopted is the least burdensome alternative for those
49 required to comply with it that will achieve the general goals and specific objectives of the statute the
50 rule implements.

1
2 Goldmark introduced a possible alternative, in the form of a staff-recommended motion that could
3 address both environmental and economic concerns.
4

5 Brent Bahrenberg proceeded to make the following motion:
6

7 **MOTION:** Brent Bahrenberg stated that in response to Forests and Fish Policy's August 30,
8 2005 petition to the Forest Practices Board to consider rule making by investigating
9 the scope of potential outcomes of the DFC validation study, and
10

11 In light of the Board's consideration of three rule proposals to respond to the DFC
12 validation study by amending WAC 222-30-021, Western Washington riparian
13 management zones,
14

15 He moved that the Board adopt Proposal #3 based on the following:

- 16 1. It meets the goals of forest practices rule making which are:
 - 17 • To establish minimum standards for forest practices pursuant to the Forest
18 Practices Act under RCW 76.09.040 and pursuant to Administrative
19 Procedure Act under 34.05 RCW; and
 - 20 • To be consistent with the recommendations resulting from the scientifically
21 based adaptive management process pursuant to the Forest Practices Act
22 under RCW 76.09.370(6), and the Forest Practices rule under WAC 222-12-
23 045;
- 24 2. It increases the basal area target to 325 square feet per acre for all site classes.
25 This number is the median of the validation study's measured basal areas of
26 mature, unmanaged conifer-dominated stands. This is in response to the
27 validation study's conclusions that basal area per acre of mature, unmanaged
28 conifer-dominated stands:
 - 29 • Is higher than the values in current rule; and
 - 30 • Is not significantly different by site class.
- 31 3. It contains one provision to help mitigate loss of timber revenue from increasing
32 the basal area target to 325 square feet per acre. That provision is to:
 - 33 • Count the 20 conifer leave trees in the inner zone under Option 2 harvests in
34 the basal area calculation. The rationales for this provision are:
 - 35 1. All trees in the study plots were counted to derive basal area metrics;
 - 36 2. Researchers did not make an adjustment to factor out the basal area of
37 the 20 leave trees per acre; and
 - 38 3. The retention trees provide ecological function within the RMZ.
- 39 4. Its rule amendments are both consistent with the research conducted in the
40 validation study, which was to measure basal areas in mature riparian forests.
41 These rule amendments are to:
 - 42 • Change the basal area target for all site classes to 325 square feet per acre,
43 and
 - 44 • Count the 20 conifer leave trees in the inner zone under Option 2 harvests
45 in the basal area calculation.
- 46 5. It is not expected to have a significant adverse impact on the environment, per
47 the December 4, 2008 threshold determination under the State Environmental
48 Policy Act.
49

1 In recognition of the increased costs to the forest products industry to provide
2 additional riparian protections in times of increased economic pressures,

3
4 Board staff is directed to work with the legislature to develop a budget proviso to
5 suspend the required fifty dollar fee for all forest practices applications and
6 notifications as identified in RCW 76.09.065. Except for those 500 dollar class IV
7 applications involving forest conversions. Implementation of DFC Proposal #3 will
8 occur concurrently with the fee waiver. If the fee waiver is not obtained, then
9 implementation of rule proposal #3 will not occur and the current rule still applies.

10
11 **SECONDED:** Norm Schaaf

12
13 **Board Discussion:**

14 Dave Somers said he could not support the motion. First, the motion would set a precedent of
15 adopting a rule contingent on an action by another body, in this case the Legislature. He said to link
16 implementation of an environmental rule to a fee waiver is a policy step that is not going to go
17 unchallenged by the public. Secondly, Proposal 1 is the only alternative supported by adaptive
18 management, although counting the 20 trees per acre could go through the adaptive management
19 process in the future.

20
21 Fox said she appreciated the Department's efforts to develop the fee waiver concept at this critical
22 time for the industry. She said she supported the motion.

23
24 Dave Herrera said the tribes have consistently supported Proposal 1 as a product of the adaptive
25 management process, and the other proposals should undergo the necessary analysis. He added that
26 tribes are mindful of the economic situation for the industry and are committed to working with the
27 industry to find solutions. He said he could not support the motion.

28
29 Schaaf spoke in support of the motion. He said although Proposal 3 is not the least cost proposal, he
30 appreciated the accommodation of eliminating the fees and could therefore support it. He added he
31 disagreed with comments that only Proposal 1 has been through adaptive management. A consensus
32 solution from Policy was not given to the Board, but the Board moved forward with alternatives to
33 respond to the DFC study. Furthermore, the DFC study included all the trees in the mature forest
34 buffers, and there is no reason not to count the trees.

35
36 Goldmark said the Department tried to create a solution to achieve the dual purpose of ecological
37 protection and palatability to the industry. The question is, should the industry be asked to pay for
38 increased environmental protection when the industry's viability is at issue, especially in this difficult
39 economic situation? He said the Department has forwarded this proposal to try to bridge a difficult
40 situation, and he thought the three proposals were brought forward as part of the adaptive
41 management process.

42
43 Laurie asked if a rule could be adopted contingent on an action by the Legislature.

44
45 Ferester said the Board could adopt a rule with a delayed effective date. Young said the motion stated
46 the rule would not be effective until the other part of the motion was accomplished.

47
48 Laurie asked if the fee is statutory. Young answered yes, the fee is set in law. Laurie asked if creating
49 a contingency that would never come to pass would set the Board up for failure. Goldmark suggested
50 the Department could ask the Legislature and the answer could be known by the May Board meeting.

1
2 Ferester suggested the Board could propose an amendment to the motion removing the contingency
3 and requiring the Department to request changes to the fees for a time period.
4

5 Dobbs expressed that good process was a very important principal to her. Not to use the mediation
6 tool available in the adaptive management process was a fatal process flaw. If the Board had turned
7 the 20 tree per acre question back to the adaptive management process, the Board may not be
8 experiencing the current difficult situation. She noted that the Forests and Fish negotiators may have
9 been guided by the precautionary principal when deciding not to count the 20 trees per acre. She said
10 she could not support Proposal 3 and thought the economic part of the motion should be separated
11 from any motion to adopt a proposal.
12

13 Doug Stinson said he recalled much public comment related to the weaknesses of the DFC study, and
14 consequently it was very difficult to put his name on any of the proposals. He said he was more
15 concerned with being regulated out of business than about economic downturns. He said Proposal 3
16 was probably the Board's best shot.
17

18 Laurie said he supported Proposal 3, and that counting the 20 trees was reasonable and not necessary
19 to go through CMER to be a viable alternative. He said, however, he did not support the possibility of
20 not adopting the higher basal area target if the fee waiver was not implemented. He said it was
21 DNR's prerogative to cut its budget, but he could not support reducing the General Fund with the fee
22 waiver that is not in the Governor's budget.
23

24 **AMENDMENT:** Tom Laurie moved to amend the last paragraph of the motion as follows:
25 Board staff is directed to work with the legislature to develop a budget proviso
26 or legislation to suspend the required fifty dollar fee for all forest practices
27 applications and notifications as identified in RCW 76.09.065. Except for those
28 500 dollar class IV applications involving forest conversions. ~~Implementation~~
29 ~~of DFC Proposal #3 will occur concurrently with the fee waiver. If the fee~~
30 ~~waiver is not obtained, then implementation of rule proposal #3 will not occur~~
31 ~~and the current rule still applies.~~
32

33 **SECONDED:** Bridget Moran
34

35 Laurie emphasized he supported the Board having discussions on financial compensation or
36 incentives, but not to tie it to the motion.
37

38 Brad Avy said he could not support the decoupling of the motion.
39

40 Fox stressed the Board must provide some certainty to the industry that the Board is committed to
41 doing what it says it will do.
42

43 Discussion continued on the ramifications of adopting the motion.
44

45 Schaaf said he could not support the amendment to the motion because it would not be the least
46 burdensome of the Board's alternatives.
47

48 Moran said she supported the amendment. She said she preferred the parts be decoupled entirely, but
49 at a minimum could support the amended motion.
50

1 Stinson mentioned the fee waiver was a straightforward way to address economic impact, a solution
2 that hadn't ever been offered before. He indicated he was skeptical that other compensation methods
3 would ever be brought forward.

4
5 Laurie asked what percentage of the fee is from landowners affected by the rule. Gary Graves
6 estimated that about two thirds of applications are associated with roads or riparian management.

7
8 **ACTION ON**
9 **AMENDMENT:** Motion failed. 5 support / 6 oppose (Fox, Stinson, Avy, Schaaf, Little,
10 Bahrenburg) / 1 abstention (Goldmark)

11
12 Somers said he was very uncomfortable with any proposal that links legislation with a rule adoption,
13 and would not support it. He said he was troubled that research showed the basal area metrics in the
14 rules are low, but the Board won't implement a higher number if there's no payment.

15
16 Fox offered that language could be added so if the fee waiver isn't obtained, the Board is still
17 committed to reconsider the rule at a later time.

18
19 Ferester said the Board could delay adopting a rule until May, or start over with a new rule making
20 process.

21
22 Moran suggested that the Board separate the fee waiver portion of the motion and vote separately.

23
24 Bahrenburg said he was willing to withdraw the motion to allow for further discussion. Schaaf, who
25 seconded the motion, agreed.

26
27 **ACTION:** Motion withdrawn.

28
29 **MOTION** Bridget Moran moved that the Forest Practices Board direct staff to work with the
30 Legislature to develop a budget proviso or legislation to suspend the required fifty
31 dollar fee for all forest practices applications and notifications as identified in RCW
32 76.09.065, except for those 500 dollar class IV applications involving forest
33 conversions.

34
35 **SECONDED:** Dave Somers

36
37
38
39 **Board Discussion:**

40 There was discussion about the ramifications of the motion. Young asked if the Board wished to
41 include a time period for the fee waiver. Moran answered no, that was not part of the motion.

42
43 **ACTION:** Motion failed. (5 support / 6 oppose (Schaaf, Stinson, Fox, Bahrenburg, Little,
44 Avy) / 1 abstention (Goldmark)

45
46 Schaaf moved to return to the original motion.

47
48 **MOTION:** Norm Schaaf stated that in response to Forests and Fish Policy's August 30, 2005
49 petition to the Forest Practices Board to consider rule making by investigating the
50 scope of potential outcomes of the DFC validation study, and

1
2 In light of the Board's consideration of three rule proposals to respond to the DFC
3 validation study by amending WAC 222-30-021, Western Washington riparian
4 management zones,
5

6 He moved that the Board adopt Proposal #3 based on the following:

- 7
- 8 1. It meets the goals of forest practices rule making which are:
 - 9 • To establish minimum standards for forest practices pursuant to the Forest
10 Practices Act under RCW 76.09.040 and pursuant to Administrative
11 Procedure Act under 34.05 RCW; and
 - 12 • To be consistent with the recommendations resulting from the scientifically
13 based adaptive management process pursuant to the Forest Practices Act
14 under RCW 76.09.370(6), and the Forest Practices rule under WAC 222-
15 12-045;
 - 16 2. It increases the basal area target to 325 square feet per acre for all site classes.
17 This number is the median of the validation study's measured basal areas of
18 mature, unmanaged conifer-dominated stands. This is in response to the
19 validation study's conclusions that basal area per acre of mature, unmanaged
20 conifer-dominated stands:
 - 21 • Is higher than the values in current rule; and
 - 22 • Is not significantly different by site class.
 - 23 3. It contains one provision to help mitigate loss of timber revenue from
24 increasing the basal area target to 325 square feet per acre. That provision is:
 - 25 • to count the 20 conifer leave trees in the inner zone under Option 2
26 harvests in the basal area calculation. The rationales for this provision are:
 - 27 1. All trees in the study plots were counted to derive basal area metrics;
 - 28 2. Researchers did not make an adjustment to factor out the basal area of
29 the 20 leave trees per acre; and
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32 validation study, which was to measure basal areas in mature riparian forests.
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35 and
 - 36 • Count the 20 conifer leave trees in the inner zone under Option 2 harvests
37 in the basal area calculation.
 - 38 5. It is not expected to have a significant adverse impact on the environment, per
39 the December 4, 2008 threshold determination under the State Environmental
40 Policy Act.

41 In recognition of the increased costs to the forest products industry to provide
42 additional riparian protections in times of increased economic pressures,

43 Board staff is directed to work with the legislature to develop a budget proviso or
44 legislation to suspend the required fifty dollar fee for all forest practices
45 applications and notifications as identified in RCW 76.09.065. Except for those 500
46 dollar class IV applications involving forest conversions. Implementation of DFC
47 Proposal #3 will occur concurrently with the fee waiver. If the fee waiver is not
48 obtained, then implementation of rule proposal #3 will not occur and the current
49 rule still applies.

1
2 **SECONDED:** Doug Stinson

3
4 **ACTION:** Motion passed. (7 support / 5 oppose (Dobbs, Moran, Herrera, Somers, Laurie))

5
6 **PUBLIC COMMENT FOR FIXED WIDTH RULE MAKING**

7 Ken Miller, Washington Farm Forestry Association (WFFA), offered a proposal for a 110-foot single
8 tier, no management zone. He said he did not believe a 20-acre limit was necessary to protect
9 resources, but even with that limitation, a 110 foot buffer would be fair to landowners and good for
10 the resources.

11
12 Howard Wilson, WFFA, said he supported the fixed width riparian zone proposal and encouraged the
13 Board to support it. He said this rule change would save small forest landowners a lot of time and
14 money in preparing timber harvests.

15
16 Michelle Blake, WFFA, (testimony read into record by Rick Dunning) supported the fixed width
17 buffer option and appreciated the Board considering an adoption of a fixed width buffer option.

18
19 Rick Dunning, WFFA, provided a timeline of WFFA's collaborative efforts to demonstrate that the
20 fixed width rule proposal does not need to go through the adaptive management process. He said the
21 fixed width buffer is not a change to the Forests and Fish Report but rather what the Legislature
22 expected to be done for small forest landowners.

23
24 **SUMMARY OF FORESTS AND FISH POLICY/CMER FIXED WIDTH WORKSHOP**

25 Darin Cramer, DNR, presented a summary on the Policy/CMER Fixed Width Workshop held on
26 March 12, 2009.

27
28 Cramer stated that 34 people attended the workshop for at least part of the day, which included six
29 CMER members and seven Policy representatives. Not every caucus had both a CMER member and
30 Policy representative in attendance, but each caucus was represented by at least one person.

31
32 He said there were no areas of complete consensus with the two categories of comments – procedural
33 and substantive. He concluded that the lack of consensus limited any attempts at providing the Board
34 with recommendations. There was a majority support for providing a fixed width RMZ option to the
35 small forest landowner community, however no consensus on the adequacy of the current Board
36 process. He said any attempts to achieve consensus on any proposal would likely require considerable
37 time and effort with no guarantee of success.

38
39 **Board Discussion:**

40 Moran asked if there was any comment from the U.S. Fish and Wildlife Service (USFWS) partner on
41 whether the HCP would be jeopardized. Cramer responded that nothing specific was mentioned
42 however it is a potential outcome that should be discussed before going too far in the process.

43
44 Moran stated that she needs to know where the USFWS is on this to get a better idea of what the side
45 boards are on this discussion. Cramer said he understood, but no one in the USFWS was willing to
46 commit to anything at this time. He said they would probably want to see the environmental analysis
47 supporting the proposal before making any decisions and/or comments.

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49 Cramer agreed with Fox's statement that all caucuses want a fixed width buffer rule. Cramer added
50 that the detail of how it gets supported and what it entails is where there is a separation of opinion.

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FIXED WIDTH RULE MAKING

Marc Engel, DNR, requested that the Board direct staff to prepare a proposal initiation packet for adaptive management. The packet would include the fixed width buffer rule proposal and answers to the five questions listed in the Board Manual for initiating a proposal.

He added that subsequent to the 30-day review, staff does not recommend any additional changes to the rule proposal at this time.

Moran asked Ferester if the Forests and Fish Report provided any other path for this type of rule making rather than going through the adaptive management process. Ferester said he was aware of only the alternate plan process but would research it and get back to the Board. Graves said that this information would be presented to the Board at the time the adaptive management proposal is presented to the Board.

MOTION: Sherry Fox moved that the Forest Practices Board direct staff to file the CR102 to begin formal rule making of the fixed width buffer. Staff will develop the proposal packet that identifies the five questions completed and delivered to the adaptive management administrator in April. This proposal will be sent to Forests and Fish Policy in May for their consideration. Based on the Forests and Fish Policy recommendations, the Board will consider their action at the May meeting.

SECONDED: Carolyn Dobbs

Board Discussion:

Fox said she was concerned it would get stalled in the process by Policy not having time to work on it. She stressed that this matter be taken seriously and Policy buckle down and get it done.

Graves agreed with Fox about the importance of this issue, however the timeline indicated in the motion may be unreasonable as staff is already at capacity. He said staff would strive to meet this timeframe if directed to do so, but the likelihood of it being met was highly unlikely.

Graves and Stephen Bernath indicated that Policy’s priorities until July 1 is the Clean Water Act Assurances and the CMER budget for fiscal year 2010.

Goldmark added that DNR’s budget is under extreme pressure and this may cause unrealistic expectations of staff. He asked the Board to be mindful of the significant staffing challenges within the Department.

Fox said that this is why she did not want it to go through the adaptive management process.

Moran asked Fox to consider withdrawal of the motion as it may slow the process down and cause additional unnecessary work.

ACTION: Motion failed. 3 support / 8 oppose (Laurie, Moran, Goldmark, Bahrenburg, Schaaf, Avy, Somers, Herrera) – Dobbs not available for vote.

Board continued to discuss the process and timeline.

1 **MOTION:** Sherry Fox moved that the Forest Practices Board direct staff to develop the
2 proposal packet that identifies the five questions completed and delivered to the
3 adaptive management administrator in May. This proposal will be sent to Forests
4 and Fish Policy in July for their consideration. Based on Forests and Fish Policy's
5 recommendations, the Board will consider their action at the August meeting.
6

7 **SECOND:** Norm Schaaf
8

9 The Board will review the proposal packet prior to delivery to the adaptive management
10 administrator.
11

12 **ACTION:** Motion passed. 8 support / 2 oppose (Herrera and Somers) / 1 abstention
13 (Goldmark) – Dobbs not available for vote.
14

15 **EXECUTIVE SESSION**

16 No executive session.
17

18 Meeting adjourned at 2:50 p.m.
19