

1 **FOREST PRACTICES BOARD**

2 **REGULAR BOARD MEETING**

3 August 12, 2009

4 Natural Resources Building

5 Olympia, Washington

6  
7  
8 **Members Present:**

9 Peter Goldmark, Chair of the Board, Department of Natural Resources

10 Brad Avy, Designee for Director, Department of Agriculture

11 Bill Little, Timber Products Union Representative

12 Carolyn Dobbs, General Public Member

13 Dave Somers, Snohomish County Commissioner (*participated by phone from 9 a.m. – 12 p.m.*)

14 David Hagiwara, General Public Member (*participated from 9 a.m. – 11:30 a.m.*)

15 David Herrera, Skokomish Tribe

16 Doug Stinson, General Public Member/Small Forest Landowner

17 Joe Stohr, Deputy Director, Department of Fish and Wildlife

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 **Absent:**

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

24  
25 **Staff:**

26 Julie Sandberg, Acting Forest Practices Division Manager

27 Marc Engel, Acting Forest Practices Assistant Division Manager

28 Patricia Anderson, Rules Coordinator

29 Phil Ferester, Assistant Attorney General

30  
31 **WELCOME AND INTRODUCTIONS**

32 Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

33 Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency  
34 safety briefing.

35  
36 **APPROVAL OF MINUTES**

37 **MOTION:** Carolyn Dobbs moved to approve the May 20, 2009 meeting minutes.

38  
39 **SECONDED:** Tom Laurie

40  
41 Sherry Fox added the following sentence to the end of line 11 on page 15. “Fox added if there is not  
42 Policy consensus that board manual also provides an option to Policy to give relevant materials to the  
43 Administrator for delivery directly to the Board.”

44  
45 **SECONDED:** Tom Laurie

1 Tom Laurie amended page 13, line 12 to read “review was established in ~~Board Manual Section 2~~  
2 Schedule N2 of the Forests and Fish Report.”

3  
4 He also amended the first word on line 24, page 13 from “conducted” to “completed”.

5  
6 **SECONDED:** Sherry Fox

7  
8 Doug Stinson amended page 4, line 36 by changing “a couple of” to “2,000.”

9  
10 **SECONDED:** Joe Stohr

11  
12 **ACTION ON**  
13 **AMENDMENTS:** Amendments passed unanimously.

14  
15 **ACTION:** Motion passed. 11 support (Avy, Little, Stinson, Hagiwara, Stohr, Herrera,  
16 Fox, Laurie, Goldmark, Somers) / 1 abstention (Schaaf)

17  
18 **PUBLIC COMMENT ON GENERAL BOARD TOPICS**

19 Ann Stinson, Cowlitz Ridge Tree Farm, offered her perspective that tree farms are about the  
20 “greenest” types of farms there are. She said tree farmers are nature-loving and curious and can be  
21 trusted and listened to. She said she shares her perspective with people from the city that as trees  
22 grow, habitat is created for animals, clean air and water for humans, hiking and hunting for  
23 outdoorsmen, and green spaces for neighbors. No other building material can claim that about its  
24 production.

25  
26 Scott Swanson, West Fork Timber, reported that West Fork has been involved with the DNR forest  
27 practices forester and geologist review of mass wasting prescriptions applied to forest practices  
28 applications (FPAs). These FPAs have been approved without change. He explained that developing  
29 a habitat conservation plan (HCP) and working with state and federal agencies to protect and improve  
30 resources is a long and expensive process but landowners do this believing in the long run it will cut  
31 regulatory costs. Parties like West Fork should not be penalized for doing the right thing, especially  
32 when the science shows what they’re doing is working well. Removing the SEPA exemption after all  
33 the expense of obtaining an HCP will cause costs and delays at a time that the forest products  
34 industry is at an economic low. This is contrary to the goals of the Forest Practices Act which are to  
35 maintain a viable industry as well as protect resources. He invited DNR to establish a forum where  
36 consensus-based recommendations can be developed for Board consideration.

37  
38 Jim Lynch, K&L Gates, encouraged the Board to consider providing incentives for parties to pursue  
39 HCPs and not change state law or pull the rug out from under landowners who previously did the  
40 right thing. West Fork’s mass wasting prescriptions have been working well for years and therefore a  
41 legal precedent exists to continue implementation of these measures. He encouraged the Board to  
42 consider directing staff to coordinate directly with HCP holders so as to take into account what these  
43 changes really mean and to make sure nothing is done inadvertently that creates a disincentive to  
44 pursue these types of long-term agreements.

45  
46 Miguel Perez-Gibson, Conservation Caucus, encouraged the Board to make changes for protection of  
47 public resources as dictated by law while not creating undue costs for landowners.

1 Peter Goldman, Conservation Caucus, said that a bill has been introduced into the U.S. Senate which  
2 provides funding for municipal bonds to purchase development rights on working forest land, and  
3 which would be paid off by working forests. He contended that approaches such as this could help  
4 shift the mentality away from, "It's just the environmental rules that are putting us out of business."  
5

## 6 **REPORT FROM THE CHAIR**

7 Commissioner Goldmark reported:

- 8 1) He delegated authority to chair Forest Practices Board meetings in his absence to Department  
9 Supervisor Lenny Young.
- 10 2) The November meeting will be a work planning meeting for 2010. He said the Board will have a  
11 very busy work schedule and said they would discuss whether to hold more than four meetings  
12 per year.
- 13 3) The timeline on the agendas is built around 15 minute comment periods prior to all action items.  
14 This means when comment periods are less than 15 minutes, the meetings will continue and run  
15 earlier than shown on agendas. He encouraged anyone wishing to comment at meetings to arrive  
16 early to assure having the opportunity to comment.
- 17 4) He, Governor Gregoire, and Brian Cladoosby, President of the Association of Washington Tribes,  
18 are convening a Forest Ecosystem Collaborative meeting on September 1 and 2 at the Quinault  
19 Lodge. The purpose of the event is to gather forest ecosystem management decision-makers and  
20 stakeholders to work to promote collaborative agenda setting and decision making for the state's  
21 forest ecosystems. He said this will be a positive opportunity to create a vision that will support  
22 forestry while meeting growing ecological demands.
- 23 5) At Carolyn Dobbs' encouragement he asked her and Sherry Fox to be members of a by-laws  
24 committee to develop a complete set of guidelines for how the Board functions. He said he  
25 anticipated there could be a draft for the Board to consider in six months, and by-laws adopted in  
26 2010.

## 27 **STAFF REPORTS**

### 28 Adaptive Management

29 Darin Cramer, DNR, reported that Forests and Fish Policy (Policy) accepted the fixed width riparian  
30 proposal initiation package on August 6, and formed a subgroup to proceed. The subgroup's first  
31 meeting will be August 20. Work on the strategic plan is ongoing, with a considerable amount of time  
32 spent on preparation for the Forest Ecosystem Collaborative, budget issues, some adaptive  
33 management process training for both Policy and CMER, and determining how a program review  
34 will be done in the near future.  
35

### 36 Board Manuals

37 Marc Engel, DNR, said he anticipated presenting two amended board manual sections to the Board at  
38 its February 2010 meeting. Board Manual Section 7, Guidelines for Riparian Management Zones,  
39 will need to be amended if the Board adopts a desired future condition (DFC) rule, and a new Small  
40 Forest Landowner Conifer Restoration template will be proposed for Section 21, Guidelines for  
41 Alternate Plans.  
42

### 43 Rule Making Activity

44 Marc Engel, DNR, pointed out that the Desired Future Condition, Habitat Open Space, and Northern  
45 Spotted Owl rule making actions will be proposed at this meeting, and Trees and Houses will be  
46 discussed during the Board's November planning session. Sherry Fox asked why there was no  
47

1 mention of the fixed-width riparian rule making. Engel replied it was in the adaptive management  
2 review stage and its status will be discussed with the Board in November.

#### 3 4 Compliance Monitoring

5 Walt Obermeyer, DNR, reported that forest practices application (FPA) sampling is on schedule with  
6 77 percent completed and 42 applications yet to be reviewed in this calendar year. He also mentioned  
7 some of the subjects the Compliance Monitoring Stakeholder Committee would be discussing in the  
8 near future. Carolyn Dobbs asked if there was any information as to the reason for the high  
9 proportion of “non-compliance” determinations for those applications using DFC Option 1.  
10 Obermeyer said his preliminary review of the data indicated it may be due to a very low sample size.

#### 11 12 Small Forest Landowner Advisory Committee and Small Forest Landowner Office

13 Dan Pomerenk, DNR, said in spite of the budget reductions in the Small Forest Landowner Office,  
14 landowner assistance is still available through long-term applications, alternate plans, the Family  
15 Forest Fish Passage Program, and the Stewardship Program. He mentioned that the handout  
16 previously provided to the Board showing the assistance that is still available, is on the website and is  
17 taken to various events. One recent and successful event was a field day that took place in Skagit  
18 County where approximately 500 landowners attended 28 different classes. He also reported that 32  
19 fish passage projects are scheduled for completion for 24 landowners.

20  
21 Carolyn Dobbs noted that applications for the Forest Riparian Easement Program are still being  
22 accepted even though the funding is not available and wondered why. Pomerenk said discussions  
23 with legislators are ongoing, and Goldmark concurred that DNR is working very hard on that. Dobbs  
24 said she wondered if the Board may be able to provide support in some way, and Goldmark said  
25 perhaps the Board could consider developing something like a resolution of support at its November  
26 meeting.

27  
28 Norm Schaaf mentioned the Salmon Recovery Funding Board is considering whether forest road and  
29 culvert replacement projects may be eligible for funding. Fox said the Board did ask staff to write a  
30 letter for the Board to the Legislature. At Goldmark’s suggestion, Fox said she would be happy to  
31 work with staff to develop a resolution before the November meeting. Carolyn Dobbs and Norm  
32 Schaaf also offered to support the effort.

33  
34 Tom Laurie asked how many riparian area miles have been protected under the Forest Riparian  
35 Easement Program. Pomerenk said he did not have the numbers at the moment but would be happy to  
36 supply the information after the meeting and on future reports. Fox asked for the same information  
37 for the Family Forest Fish Passage Program to be included on future reports.

38  
39 Sherry Fox mentioned that the memo on assistance programs is a little bit fluff, knowing that  
40 assistance programs are not in the field anymore. She asked who does assist landowners on  
41 applications now, because the field foresters are no longer there. Pomerenk acknowledged that one-  
42 on-one consultation is indeed gone now but there is stewardship assistance available. Fox emphasized  
43 that she wanted the Board to understand that the reality in the field is bleak.

#### 44 45 Spotted Owl Policy Working Group

46 Facilitator Lois Schwennesen remarked that she was amazed at the collaborative capacity of the  
47 group members but that it was important that the Board have realistic expectations. What the Board

1 will see from the group will be interesting but the Board should not expect all the problems to be  
2 solved. The group is addressing environmental, economic, and social issues. The Board will see  
3 creativity, but will be informed of more work to be done. In its remaining meetings the group will be  
4 looking carefully at change management, and how spotted owl issues can morph into larger questions  
5 of endangered species management and a greater involvement of interest groups. She said she will be  
6 back with an update in November.

#### 7 8 Upland Wildlife Planning

9 David Whipple, DFW, updated the Board on activities to date on the Landscape Level Wildlife  
10 Assessment project. He said the Board will receive a presentation on both the technical and the policy  
11 aspects of the project in November to show how the assessment works so the Board will have a sound  
12 foundation to build upon.

13  
14 Sherry Fox asked if they have found money. Whipple answered no, but one staff project leader is still  
15 working part time to keep the project alive.

#### 16 17 Forest Practices Application Renewal

18 Chuck Turley, DNR, gave a report to the Board in response to a set of questions the Board asked in  
19 May. The questions were in regards to the projected costs in workload of allowing early renewal of  
20 active FPAs proposing activities in riparian management zones. The cost of processing renewals and  
21 re-submissions were estimated to be over \$100,000 for renewals and over \$2 million for re-  
22 submissions. He clarified that if the Board made a decision to allow for early renewals of these  
23 applications, the program would not ask for extra funding to accomplish it, but would incorporate the  
24 extra workload by not giving as much attention to other applications.

#### 25 26 **BUDGET IMPACTS TO FOREST PRACTICES DIVISION**

27 Julie Sandberg, DNR, gave an overview of recent budget impacts for the Department of Natural  
28 Resources as a whole, and for the Forest Practices Program. The program experienced an 18 percent  
29 reduction in its General Fund State budget amounting to approximately \$4 million. Losses included  
30 all funding for the Landslide Hazard Zonation project and much of the Small Forest Landowner  
31 Office funding including all funding for the Forest Riparian Easement Program. Four program  
32 positions were eliminated in the regions. The Division lost funding that supported a position to  
33 provide small forest landowners long-term application assistance, and the Division also eliminated  
34 positions that provided training coordination, operational and Board administrative support, small  
35 forest landowner outreach, and cartography. The Family Forest Fish Passage Program position was  
36 saved because the Recreation and Conservation Office allowed the use of funds for administration.  
37 Also, one specialist position in the Small Forest Landowner Office was saved by moving a part of a  
38 position that has administered the Riparian Open Space Program to the Forest Practices program to  
39 administer an Habitat Open Space Program.

40  
41 Sandberg said that although we still do have one wildlife biologist in the Division, the bulk of  
42 landowners' questions will need to be directed to field foresters. She said time will tell how that will  
43 work out, and the program will be looking for any retooling necessary to provide services most  
44 efficiently.

45  
46 Joe Stohr asked if the agency is looking ahead to a September forecast and planning for any  
47 supplemental budget prospects. Goldmark said the biggest factor for the agency has been the

1 Resource Management Cost Account funding source which is very close to zero. The agency as a  
2 whole has already taken cuts of \$40 million and the services are necessarily less than usual. He said it  
3 is unknown what the September forecast will bring, but DNR has been a very conservative manager  
4 of the current allocation of the general funds.

5  
6 Norm Schaaf asked about how the loss of funding for cartography staff will reconcile with updates  
7 needed on the water typing maps, which has long been an issue. Sandberg said the regions are being  
8 asked if they have any capacity due to FPAs slowing down across the board.

9  
10 Doug Stinson pointed out that most of the 500 people who attended the field day in Skagit County  
11 (earlier reported by Dan Pomerenk) were new landowners needing information. He said now is a  
12 wonderful opportunity to get the field foresters together with these new forest landowners to help  
13 bring them along.

14  
15 **CMER REVIEW: COUNTING THE 20 TREES PER ACRE IN THE RIPARIAN**  
16 **MANAGEMENT ZONE**

17 Terry Jackson and Chris Mendoza, CMER Co-chairs, provided a presentation to supplement CMER's  
18 report to the Board entitled, *CMER Committee Final Report on the Desired Future Condition*  
19 *"Alternative 3" Request from the Washington State Forest Practices Board*. CMER's analysis  
20 concluded that the impact of allowing 20 leave trees per acre in the inner zone to be counted toward  
21 the basal area requirement is estimated at a decrease in inner zone buffer width ranging from 0.1 feet  
22 to less than 4 feet. They acknowledged the good work of all the CMER members that participated in  
23 the analysis and report development.

24  
25 Sherry Fox commended them for a great report, and also pointed out that with either Proposal 1 or  
26 Proposal 3 there will be an increase in resource protection due to higher basal area requirement.

27  
28 Tom Laurie thanked them and said he was impressed with how the group focused and proved that the  
29 adaptive management process can work if focused appropriately.

30  
31 Peter Goldmark thanked them for addressing this issue and said he really appreciated the help.

32  
33 **PUBLIC COMMENT FOR DESIRED FUTURE CONDITION RULE MAKING**

34 Miguel Perez-Gibson, Conservation Caucus, thanked the Board and CMER for the report.

35  
36 **DESIRED FUTURE CONDITION RULE MAKING**

37 Chuck Turley and Lenny Young, DNR, gave a brief overview of the staff recommendation they  
38 forwarded to the Board at the March 31, 2009 meeting, which was to adopt Proposal 3.

39  
40 **MOTION:** Tom Laurie moved that the Forest Practices Board adopt Rule Proposal 3.

41  
42 **SECONDED:** Carolyn Dobbs

43  
44 **Board Discussion:**

45 Doug Stinson said it was very hard for him to support a proposal based on flawed science.

1 Sherry Fox said she regretted that the Board didn't seem to take a large amount of the public  
2 comment into consideration, and was concerned that the Board would not be adopting the least cost  
3 alternative if it adopts Proposal 3.

4  
5 Norm Schaaf said the least cost alternative was Proposal 2 and he was disappointed that it wasn't  
6 analyzed by CMER along with Proposal 3.

7  
8 David Herrera said Proposal 3 was a compromise following huge challenges and interest on all sides.

9  
10 Carolyn Dobbs said she has held firm on Proposal 1 but believed it was time to compromise and look  
11 at Proposal 3.

12  
13 Peter Goldmark said he wanted the Board to move forward as one.

14  
15 **ACTION:** Motion passed. 7 support (Herrera, Dobbs, Hagiwara, Stohr, Laurie, Avy,  
16 Goldmark) / 4 oppose (Fox, Stinson, Little, Schaaf). Somers was not available  
17 for the vote.

18  
19 Tom Laurie said he'd been thinking about how to implement the DFC rule that is least costly, and  
20 had a motion to help facilitate that. The idea is allowing landowners to renew their applications with  
21 the updated basal area without having to submit a whole new application.

22  
23 **MOTION:** Tom Laurie moved that where an application is submitted for renewal and all  
24 aspects of the application remain the same except that additional resource  
25 protection is provided to comply with an impending rule change, the Board  
26 encourages the Department to conclude that the application meets the Class II  
27 renewal requirement that "No modification of the uncompleted operation is  
28 proposed." (WAC 222-16-050(4)(b)(i))

29  
30 **SECONDED:** Norm Schaaf

31  
32 **Board Discussion:**

33 Goldmark said this was to help make the transition for landowners as low cost as possible.

34  
35 Herrera said he hadn't seen the motion until that day. He said he knew the tribes wanted to make sure  
36 there would be no delay in implementing the new rule, and it seemed like the motion would  
37 accomplish that. He said he'd heard from a few people that the previous evening and the morning of  
38 the Board meeting there were discussions that included some of the caucuses but not the tribal  
39 caucus. He said the tribes have a major role in recovering salmon, and in the future he would  
40 appreciate it if he or another representative is included in similar discussions so their concerns can be  
41 heard.

42  
43 **ACTION:** Motion passed unanimously.

1 **PUBLIC COMMENT FOR FISCAL YEAR 2010 ADAPTIVE MANAGEMENT PROGRAM**  
2 **BUDGET**

3 None.

4  
5 **FISCAL YEAR 2010 ADAPTIVE MANAGEMENT PROGRAM BUDGET**

6 Darin Cramer, DNR, updated the Board on the adaptive management budget information presented at  
7 the May 20, 2009 meeting. He said the program will likely have at least \$500,000 more in Fiscal  
8 Year (FY) 2010 than previously assumed. However, this is not a large enough increase to meet the  
9 FY 2011 needs shown on the budget the Board adopted in May. He said the Policy Budget  
10 Committee has met several times since the May meeting to sharpen the details on the budget, and has  
11 managed to find efficiencies in the FY 2010 budget such as cost reductions in projects and more  
12 available funds in the Forests and Fish Support Account than previously understood. But the  
13 deficiencies in the FY 2011 budget still need to be dealt with, and hopefully some action will come  
14 out of the Forest Ecosystem Collaborative. He said he would be updating the Board at the November  
15 2009 and February 2010 meetings as the Board will need to be sure that the budget adopted in May is  
16 the appropriate one for the funding that will ultimately be available to the program.

17  
18 **PUBLIC COMMENT FOR NORTHERN SPOTTED OWL RULE MAKING**

19 None.

20  
21 **NORTHERN SPOTTED OWL RULE MAKING**

22 Gretchen Robinson, DNR, requested that the Board direct staff to initiate the Northern Spotted Owl  
23 rule making by filing a CR-102, and to re-adopt the emergency rule containing the same language to  
24 allow time for permanent rule making to be completed. She said if the Board does approve initiating  
25 rule making, staff will plan a public hearing and forward the completed environmental checklist to  
26 the Commissioner of Public Lands for a SEPA threshold determination. With public review  
27 completed late in September, the Board will be able to consider adopting the permanent rule at its  
28 November meeting.

29  
30 Doug Stinson asked about the wide spread in the cost estimate, \$0 to \$144 million. Robinson  
31 answered that if no landowners submitted surveys to the Washington Department of Fish and  
32 Wildlife (WDFW), or if such surveys were submitted and the Northern Spotted Owl Advisory Group  
33 determined that the site center status should not be changed until the Board determines a long-term  
34 strategy, then the cost of the rule would be zero.

35  
36 Sherry Fox referred to page six of the economic analysis which indicated that one landowner  
37 submitted survey documentation to WDFW who found it to be incomplete. She asked what is  
38 considered to be an incomplete survey. David Whipple answered that WDFW looks at very specific  
39 data surrounding the surveys, raw data collected in the field, time of day of calls, weather conditions,  
40 location of survey stations, topography, etc., and determines whether the protocol is followed.

41  
42 **MOTION:** Joe Stohr moved that the Forest Practices Board approve the draft rule  
43 proposal amending WACs 222-16-010 and 222-16-080 for public review and  
44 direct staff to file a CR-102 Proposed Rule Making to initiate permanent rule  
45 making. The rule proposal will remove language about the moratorium on  
46 Northern Spotted Owl decertification, adds a definition of “spotted owl  
47 conservation advisory group, adds language to critical habitats which specifies



1 the group's function, and indicates the advisory group's existence is limited for  
2 one year.

3  
4 **SECONDED:** Sherry Fox  
5 **ACTION:** Motion passed unanimously  
6

7 Norm Schaaf noted the language indicates the advisory group's existence is for one year and asked  
8 about the implication for after the one year. Robinson said staff is not aware of any information from  
9 the Spotted Owl Policy Working Group that indicates there should be any changes to the language  
10 that limits the advisory group's existence to one year. Goldmark added that the implication is status  
11 quo after the one year.

12  
13 **MOTION:** Joe Stohr moved that the Forest Practices Board re-adopt the emergency rule  
14 that amends WACs 222-16-010 and 222-16-080 and direct staff to file a CR-  
15 103 Rule Making Order by August 27, 2009 to allow time to complete the  
16 permanent rule making process.  
17

18 **SECONDED:** Norm Schaaf  
19

20 **Board Discussion:**

21 Joe Stohr asked if there is an issue of the emergency rule lapsing before the permanent rule becomes  
22 effective. Robinson answered that if the Board adopts an emergency rule now, it will be effective for  
23 120 days past August 26 or until the Board adopts the permanent rule, whichever is sooner. Phil  
24 Ferester added that emergency rules can be renewed as long as the agency is progressing on the  
25 adoption of the permanent rule.  
26

27 **ACTION:** Motion passed unanimously  
28

29 **PUBLIC COMMENT FOR HABITAT OPEN SPACE RULE MAKING**

30 None.  
31

32 **HABITAT OPEN SPACE RULE MAKING**

33 Dan Pomerenk, DNR, requested that the Board direct staff to file a CR-101, Preproposal Statement of  
34 Inquiry, for a "Habitat Open Space" rule making. He explained that the 2009 Legislature passed  
35 Substitute Senate Bill 5401, which amended a section of RCW 76.09.040 related to what used to be  
36 the Riparian Open Space Program. The Legislature modified this section to include critical habitat for  
37 threatened or endangered species to the acquisition program, rather than only habitat within  
38 unconfined avulsing channel migration zones. He said the Forest Practices program will administer  
39 this program, and that the Legislature included \$500,000 in the budget.  
40

41 Doug Stinson asked whether the program will be only for the purchase of the fee title of the land or  
42 also for development rights. Pomerenk answered conservation easements of trees only or land and  
43 trees, where under the previous program a fee interest purchase was possible.  
44

45 Carolyn Dobbs asked about the difference between an easement for trees only versus an easement for  
46 land and trees. Pomerenk said he didn't have an answer at the moment. Stinson asked if the  
47 landowner would continue to be able to practice forestry under such easements. Phil Ferester said in

1 general, conservation easements don't allow forestry activity. Peter Goldmark clarified the program  
2 is to compensate landowners who are adversely impacted by the loss of productivity caused by  
3 owning critical habitat. Ferester encouraged the Board to contact him directly if they have legal  
4 questions.

5  
6 **MOTION:** Brad Avy moved that the Forest Practices Board direct staff to file a CR-101  
7 Pre-Proposal Statement of Inquiry to notify the public that the Board is  
8 considering rule making to implement Substitute Senate Bill 5401 that creates  
9 the Habitat Open Space program.

10  
11 **SECONDED:** Sherry Fox

12  
13 **Board Discussion:**

14 Sherry Fox mentioned it is important to note that the Policy Working Group on Northern Spotted  
15 Owl Conservation initiated this legislation so that landowners of habitat could get relief. She said  
16 \$500,000 is not much but is certainly a start.

17  
18 **ACTION:** Motion passed unanimously.

19  
20 **PUBLIC COMMENT FOR FORESTS AND FISH POLICY PRIORITIES**

21 Rick Dunning, Washington Farm Forestry Association (WFFA), said WFFA's board has decided not  
22 to continue funding staff to attend Forests and Fish Policy meetings. He said after years of attempts  
23 of collaboration at Forests and Fish Policy, if this state wanted to implement some of the promises  
24 made by the Legislature when Forests and Fish was adopted, then it could have been done. Those  
25 legislative promises included WFFA's three core issues: the Forest Riparian Easement Program, a  
26 viable Small Forest Landowner Office, and an alternate planning process achieved with less costly  
27 prescriptions. He said when the state passes regulations that impact the true green providers of jobs  
28 and taxes, and then at the first signs of budget trouble eliminates the very programs that promised to  
29 offset that regulatory process, the landowners have been disrespected twice.

30  
31 Peter Goldman, Conservation Caucus, said the caucus agrees with Dunning. He said the caucus  
32 realizes that Forests and Fish has a hugely disproportionate impact on small forest landowners and is  
33 displeased that the state hasn't lived up to its commitment. He pointed out that the CMER budget  
34 only includes half of the Schedule L-1 studies that were promised in the HCP. He said the caucus had  
35 recently written to the federal government to ask them to impress on the state how important these  
36 studies are to this key Endangered Species Act permit.

37  
38 **FORESTS AND FISH POLICY PRIORITIES**

39 Policy co-chairs Stephen Bernath and Tom Robinson, referred the Board to their May 14, 2009 memo  
40 that listed Forests and Fish Policy priorities for FY 2010 and said they would answer any questions  
41 from the Board members.

42  
43 Sherry Fox asked when to expect the Department of Ecology's review of the Forest Practices  
44 program's Clean Water Act assurances. Bernath said Ecology Director Jay Manning has chosen to  
45 send it after the Forest Ecosystem Collaborative meeting in September.

1 Norm Schaaf talked about the importance of maintaining full participation to build the collaboration  
2 sought in Forests and Fish. He encouraged Policy to look outside of the typical sources. Forests and  
3 Fish is looked at as an example outside of the state and perhaps that could be capitalized upon.

4  
5 **PUBLIC COMMENT FOR CMER MEMBERSHIP**

6 Pete Heide, Washington Forest Protection Association (WFPA), informed the Board that Jim  
7 MacCracken, a landowner representative in CMER, left Longview Fibre and won't be able to  
8 continue on the committee. He said WFPA hopes to have a replacement for him in the next few  
9 months.

10  
11 **CMER MEMBERSHIP**

12 Darin Cramer requested that the Board fill the DNR vacancy on CMER with Leslie Lingley, and  
13 open Jim MacCracken's position as vacant.

14  
15 **MOTION:** Carolyn Dobbs moved that the Forest Practices Board approve Leslie Lingley  
16 representing DNR as a CMER core member and declare Jim MacCracken's  
17 landowner seat vacant.

18  
19 **SECONDED:** Doug Stinson

20  
21 **ACTION:** Motion passed unanimously.

22  
23 Tom Laurie asked how long the Federal Services position has been open. Cramer answered it has  
24 been over a year.

25  
26 **WATERSHED ANALYSIS REVIEW AND UPDATE**

27 Chuck Turley, DNR, referred to the Board's direction at the March 3, 2009 meeting and said it was  
28 problematic for DNR. Continuing to allow a Class IV-special exemption and to continue to respect  
29 mass wasting prescriptions within HCPs would be problematic because there are five-year reviews  
30 that should have been done but were not, and DNR would need to rebuild a training program for  
31 certifying qualified experts. He said those processes got pushed aside after the Forests and Fish rules  
32 were adopted. He acknowledged the perspective that some prescriptions work and some good  
33 prescriptions were built into HCPs. But there's another perspective exemplified by a recent landslide  
34 in Whatcom County where significant landsliding has recently occurred, and where a watershed  
35 analysis was completed in 1999 with no subsequent five-year review.

36  
37 Norm Schaaf said he thought that five-year reviews were not obligatory unless called for by  
38 participants in the watershed analysis. Turley confirmed that is correct, and re-phrased that five-year  
39 reviews were not accomplished as it was expected when watershed analysis was put into place.

40  
41 Tom Laurie asked what would happen for applicants if the Board took mass wasting out of watershed  
42 analysis. Turley answered that there would be no Class IV-special exemption so all FPAs including  
43 potentially unstable slopes would need to be classified Class IV-special, which would require a  
44 geotechnical report.

1 Doug Stinson asked for more clarification on what triggers the five-year review. Turley answered that  
2 any of the parties or the Department may initiate a five-year review, and there is an expectation in  
3 rule that reviews might be warranted after a significant event like a storm.  
4

5 Stinson asked if DNR is taking full advantage of the people that have HCPs to get their experiences  
6 and know-how. Turley said he knows some prescriptions are good and some are bad and the problem  
7 is trying to figure out an efficient way to maintain that subset of prescriptions that do work.  
8

9 Dave Somers said he had been in support of using watershed analysis as much as possible, but if staff  
10 says they can't do what the Board asked, the Board should give them the nod that staff is probably  
11 correct. He said he believes in the watershed analysis process, but if put to rest the results could be  
12 incorporated into the permit process as an informational piece.  
13

14 Schaaf asked about DNR's study that Scott Swanson talked about earlier. Marc Engel, DNR, clarified  
15 it is part of a work plan the program is conducting for the Board. The Forest Practices program,  
16 including the science team, is reviewing whether the landforms are appropriately identified in FPAs  
17 and that mass wasting prescriptions are appropriately applied. Mary McDonald added that the  
18 program is doing this to assure that prescriptions are specific and processes are conducted properly.  
19

20 Schaaf said it would certainly be important information to consider if prescriptions are adequate and  
21 properly implemented before throwing out all of the watershed analysis mass wasting prescriptions.  
22

23 Turley emphasized that a big part of the problem is to know whether the prescriptions work  
24 regardless of whether they are applied appropriately. He reminded the Board of the group of  
25 scientists he convened in August 2008 who all agreed that long-term monitoring hadn't been, and  
26 should be, accomplished. They suggested pulling information from the Mass Wasting Prescription  
27 Scale Effectiveness ("post mortem") study and from the five-year reviews that have been done to get  
28 some idea of effectiveness if possible. But doing an effectiveness analysis on a large scale would be  
29 an exhaustive process. He said part of the program's field review is to ensure that prescriptions are  
30 site specific, detailed and measurable, but this does not get to effectiveness.  
31

32 Joe Stohr asked if CMER studies could help with the effectiveness question. Darin Cramer said  
33 information can possibly be gleaned from the Mass Wasting Prescription Scale Effectiveness study  
34 when it is completed, but it will be very difficult to trace a specific prescription back to a source.  
35

36 Sherry Fox asked Turley to explain why it wouldn't be possible to at least make the cut with HCPs,  
37 understanding the cost and commitment to protecting the resources that goes into those agreements.  
38 Turley said he would need to see the language in each HCP to know how the watershed analysis mass  
39 wasting prescriptions are built in.  
40

41 Brad Avy said companies that put in the time and effort to develop prescriptions should not be  
42 penalized because of whatever went awry in funding or the agency moving that program along.  
43

44 Schaaf referred to one of Turley's points that DNR no longer has a training program for certifying  
45 qualified experts. He said we do have the experts conducting site-specific reviews for landowners  
46 even though they may not qualify under the watershed analysis certification scheme any longer. He  
47 added that landowner knowledge and involvement should be engaged before any Board action.  
48

1 Peter Goldmark asked Turley how practical it was to analyze HCPs and bring information back to the  
2 Board. Turley said it would be easy to examine 15 HCPs and determine how they deal with unstable  
3 slopes, but to determine the prescriptions' effectiveness would necessitate developing a standard for  
4 evaluating them. What do we set as the dividing line to determine if a prescription is going to be  
5 effective or not?  
6

7 Schaaf said no one was suggesting that watershed analysis would eliminate landslides, but  
8 effectiveness hasn't been studied statewide for any other issues. The issue should be whether  
9 prescriptions are set up in a way that recognizes unstable slopes and utilizes best management  
10 practices to minimize the opportunity for damage to public resources. Statewide effectiveness  
11 research is a different and much broader question.  
12

13 Laurie suggested that perhaps a work group or stakeholder group could help the Department sort this  
14 issue out. Turley said the group of scientists he did convene are in touch with stakeholders and know  
15 the most about it.  
16

17 Schaaf contended that the issues discussed at that time were technical and that now implementation  
18 and policy issues should be considered. He added that the laws governing the Board require that any  
19 changes to the rules go through an adaptive management process, and somehow the entire  
20 stakeholder group will need to eventually be engaged if there's going to be a rule change.  
21

22 Carolyn Dobbs said she supported convening a group as it might come closer to developing good  
23 collaborative direction.  
24

25 Goldmark said there's a fairness issue, that not allowing prescriptions to be exempt from Class IV-  
26 special would put those landowners on equal footing with other landowners in terms of everyone  
27 meeting the same standard.  
28

29 Fox said that would create a situation where landowners who decided to go through the watershed  
30 analysis process and spend the resources and time to get the technical expertise, would now have to  
31 go through another process. These landowners were already ahead of the other folks in terms of  
32 planning and identifying their unstable slopes.  
33

34 Goldmark said he thought the Forests and Fish law superseded that.  
35

36 Schaaf said the exemption is from Class IV-special, not from resource protection. Watershed analyses  
37 are usually much more specific even than today's standard rules because in many cases they still  
38 require site specific analysis before a determination can be made. Those that engaged in watershed  
39 analysis spent hundreds of thousands of dollars on a process that was not a simple process, and those  
40 with HCPs spent millions of dollars. So those landowners are definitely not on equal footing; they set  
41 aside their resources for a longer time than those that came after that, and if we throw that out, then  
42 we are penalizing them.  
43

44 Avy said another issue of fairness comes with the idea that the decision is hinging on whether or not  
45 prescriptions are effective and yet the agency has not made the investment to figure that out. So in the  
46 absence of an effectiveness analysis and an answer from the agency, even if the prescriptions are  
47 effective they could get tossed out.

1 **MOTION:** Norm Schaaf moved that Forest Practices Board direct the Board staff to  
2 convene a Board subcommittee to inform the Board regarding policy and  
3 resource issues for unstable slopes and the continued use of watershed analysis  
4 prescriptions and their Class IV-special exemption. This committee will report  
5 back at the November meeting.  
6

7 **SECONDED:** Doug Stinson  
8

9 **Board Discussion:**  
10 Goldmark and Turley indicated that the subcommittee would be composed of Board members.  
11

12 **ACTION:** Motion passed unanimously.  
13

14 **NEW BUSINESS**  
15 The Board discussed changing the November meeting date.  
16

17 **MOTION:** Carolyn Dobbs moved that the Forest Practices Board change the November  
18 Forest Practices Board meeting from Wednesday, November 4<sup>th</sup> to Tuesday,  
19 November 10<sup>th</sup>.  
20

21 **SECONDED:** Doug Stinson  
22

23 **ACTION:** Motion passed unanimously.  
24

25 The Board will discuss whether it will want to do rule making to change the Board meeting schedule  
26 at their November planning meeting.  
27

28 Doug Stinson asked for discussion on his letter to the Conservation Caucus. Goldmark said the Forest  
29 Eco-System Collaborative is the approach he is taking to promote understanding among stakeholders.  
30

31 Joe Stohr commented that Stinson's idea was innovative if perhaps unrealistic. The principal is clear  
32 that there's value in walking in someone else's footsteps to understand others' concerns.  
33

34 **EXECUTIVE SESSION**  
35 No executive session.  
36

37 Meeting adjourned at 2:10 p.m.