Members Present
Stephen Bernath, Chair, Department of Natural Resources
Noel Willet, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Tom Nelson, General Public Member
Heather Ballash, Designee for Director, Department of Commerce
Jeff Davis, Designee for Director, Department of Fish and Wildlife
Lisa Janicki, Elected County Official
Patrick Capper, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member
Tom Laurie, Designee for Director, Department of Ecology

Members Absent
Brent Davies, General Public Member
Dave Herrera, General Public Member

Staff
Joe Shramek, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Senior Counsel

WELCOME AND INTRODUCTIONS
Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.
Newly elected Public Lands Commissioner Hilary Franz introduced herself and thanked the Board for all their hard work and is looking forward to working with the Board in the future.

APPROVAL OF MINUTES
MOTION: Stephen Bernath moved the Forest Practices Board approve the November 8 & 9 meeting minutes as amended.
SECONDED: Tom Laurie
ACTION Motion passed. 9 support / 2 abstentions (Willet and Nelson)

PUBLIC COMMENT
Ray Entz, Kalispel Tribe of Indians and Upper Columbia of United Tribes, said there are many accountability issues within the Adaptive Management Program (AMP) and asked the Board to address some of the issues, specifically review CMER membership and term limits, participation
grants, and TFW Policy Committee (Policy) member appointment. He said he is committed to
working on this issue to bring something forward to the Board by the May meeting.

Ken Miller, Washington Farm Forestry Association (WFFA), read the poem When You’re So
Old by Robert Mealey. He felt the poem describes small forest landowners are and why they
matter.

Mary Scurlock, Conservation Caucus, shared their caucuses’ Board and AMP priorities for 2017:
complete an AMP performance review; adopt a permanent water typing system rule; complete
Policy recommendations for guidance on how to locate the perennial initiation points for Type N
Waters; complete Policy recommendations for improved guidance and rules for unstable slopes;
a statistically sound compliance monitoring program; and program funding.

Chris Mendoza, Conservation Caucus, responded to Ray Entz’s comments regarding CMER. He
shared his experience within CMER and how unrest may come from members who do not follow
the process. He volunteered to work with Entz to address the AMP issues. He also stated the
default process to locate the break point between Type Np and Ns Waters is an important issue
because CMER and the tribes have completed two peer review reports for locating this point. He
said no guidance in the board manual or rule exists, but is hopeful there are enough peer
reviewed reports for Policy to make a recommendation to the Board this year.

Peter Goldman, Conservation Caucus, shared his perspective on why water typing and perennial
initiation points are not new rules, but rather old business agreed to in the Forest and Fish Report
FFR). He said the FFR was historic in several ways, two in particular—to improve how to type
waters for fish presence and absence, and develop a system to determine where the non-fish
streams start. He said Policy has been working on getting it right and asked the Board to not put
stakeholders in a position advocating for new rules when these were concepts originally
promised with the 1999 Forest and Fish Report. He asked the Board to request Policy bring
consensus recommendations or majority and minority reports on water typing at the Board’s
May meeting.

Kevin Godbout, Weyerhaeuser Company, said “day of” agenda changes and materials make it
difficult for members of the public to participate effectively in the meeting and requested the
Board consider such implications. He specifically mentioned that the Kalispel Tribal letter
regarding issues within CMER and the conservation caucus’ AMP priorities did not provide
stakeholders enough preparation to fully engage in the discussions today. He also expressed
concerns about the interim protocol stream survey guidance memo in that nothing was available
in the meeting packet to better inform on what is to be discussed. He asked for a transparent and
open process on these sensitive issues for regulatory stability. He felt industry has performed
well under the existing regulatory system and that the system is one of the best in the world and
is performing well.

**CULTURAL RESOURCES UPDATE**

Bernath introduced Tim Thompson, Thompson Consulting Group, as the neutral facilitator hired
to bring the state, tribes, and landowners together to explore concerns around the identification
and protection of tribal cultural resources.
Tim Thompson provided a status update on where the group is at in the negotiation process. He credited the three caucuses: landowner caucus developing suggestions for pilot agreements; tribes suggested ways to make the existing process work better and Department of Natural Resources (DNR) acknowledging lack of fundamental understanding and the need to add staffing to facilitate better discussions. He acknowledged that there are examples where landowners are implementing cultural resource protection marvelously, but there are voids and places where the state and DNR can improve.

He provided a summary of eight implementation suggestions that are being discussed:

1. Seek baseline funding from Department of Interior for cultural resource agreements as originally provided in the Forests and Fish Agreement.
2. Fund cultural resource expertise within the Small Forest Landowner Office.
3. Provide state funding for statewide cultural resources education and training efforts.
4. Provide funding for an ambassador within DNR to assist with communications between tribes, landowners, and Department staff.
5. Modify the Forestry Riparian Easement Program statute to provide partial compensation to small landowners for leaving trees in place in order to protect cultural resources.
6. Consider modifying the Forests and Fish Support Account statute to remove the federal funding element.
7. Initiate a pilot program to evaluate alternative approaches to initiating tribal-landowner meetings.
8. Implement an audit system to evaluate program performance after the pilot is completed.

He concluded by stating that the list of recommendations do not have consensus yet. He said this is a status report he will provide to the caucuses and will ask them how they want to proceed and then move forward accordingly.

REPORT FROM CHAIR
Bernath recognized Bill Little for his service to the Board from 2008 to December 2016, and recognized Adrian Miller for his hard work and leadership facilitating the Policy Committee. He also recognized Dick Miller for representing the small forest landowner community at Policy.

Bernath reported on the status of the Governor’s budget from the requests by the forest practices program. The budget did not provide money to expand the small landowner office. From the three capital requests, the Family Forest Fish Passage Program received 5 million, the Forestry Riparian Easement Program received 3.5 million, and the Riparian and Habitat Open Space Program received one million. He said the program remained silent regarding funding for the AMP.

Based on public comments at previous board meetings, Bernath noted the following:

- DNR will be working to conduct a financial and a performance audit on the AMP;
- The AMP is reviewing the Lean pilot process within the Cooperative Monitoring, Evaluation, and Research Committee (CMER). He asked for a report at the May Board meeting to ensure the process is working as effectively as possible; and
- He will ask the Adaptive Management Program Administrator (AMPA), in consultation with stakeholders, to identify any additional changes to ensure the process is working effectively and efficiently as possible and report back at the May meeting.

He said he will be asking Joe Shramek, DNR, to report at the May meeting on the performance measures for forest practices field staff as well as the compliance component.

Bernath asked Board members to hold May 9 open in order to have a two day meeting in May. He also said that he is looking to have a field tour in June.

TFW POLICY COMMITTEE’S PROGRESS REPORT ON UNSTABLE SLOPES
PROPOSAL INITIATION UPDATE AND RECOMMENDATIONS FROM THE MASS-WASTING EFFECTIVENESS STUDY

Bernath reminded the Board of their accepted Proposal Initiation for the AMP to consider additional aspects of unstable slopes that were not included in the development of the board manual. He also reminded the Board that at their February 2014 meeting, they accepted the Policy consensus recommendations for next steps associated with the CMER Mass Wasting Effectiveness Study.

Marc Engel, DNR, provided a historical recap on Board actions addressing unstable slope rules and guidance starting in 1982 when the Class IV Special trigger for roads was adopted. He mentioned other rule adoptions including Class IV Special triggers, watershed analysis, and the rule identified landforms and SEPA guidance. He focused the presentation on Board actions taken since their February 2014 meeting which included actions taken to respond to the Policy recommendations for next steps associated with the CMER Mass Wasting Effectiveness Study and to the Oso landslide in 2014 and the two year process to amend Board Manual Section 16 "Guidelines for Unstable Slopes and Landforms."

He reminded the Board of their decision based on Policy recommendations to take no action at the February 2014 Board meeting regarding the Mass Wasting Effectiveness Monitoring Project. Hans Berge, DNR, added that Policy did agree that further research was needed on monitoring the effectiveness of road and harvest prescriptions to meet mass wasting resource objectives. In addition, Berge said the group looked at tools for unstable slopes screening such as LiDAR and a study to evaluate the rule identified landforms.

Engel outlined the presentations and actions taken at the May 2014 Board meeting. He also provided the timeline and approved content contained in the approval of Phase 1 and 2 of the board manual as well as the Board’s direction as a result of the issues brought forward by the Conservation Caucus and the Washington Forest Protection Association. He mentioned how the unstable slopes proposal initiation was formed and the Board’s decision to seek legal advice from the Attorney General before taking any action regarding a moratorium on activities on the groundwater recharge area of deep-seated landslides.

Berge provided a progress update on the February 2015 Board accepted Unstable Slope Proposal Initiation which included topics related to climate change, public safety, further understanding of deep-seated landslides, terms used in the board manual and shallow-rapid tools. He said Policy
formed a subcommittee to review elements of the proposal initiation and determine what
elements could be addressed through Policy and what elements could be forwarded for
completion by UPSAG and CMER. He said there are a couple of elements that still need to be
addressed and it is unclear as to how to proceed. One is the impact climate change plays and the
other is public safety, which may be outside the technical scope of CMER and needing Policy
direction before moving forward. He said the subcommittee will look again at the remaining
elements but may need some support from the Board to move forward on the remaining issues.

Paula Swedeen asked at what point can the Board get involved and provide support. Berge said
he is not sure. He said the subcommittee needs to discuss these topics and he believes that at
some point the subcommittee will need some direction from the Board. Berge was unsure if the
committee would be providing recommendations.

Swedeen requested Policy ask for direction from the Board rather than stay stuck and delay
moving forward on the complex issues surrounding public safety. Bernath requested an update
from the subcommittee at the May 2017 Board meeting.

Engel added that the Board’s acceptance of Policy’s recommendations on the Unstable Slopes
Proposal Initiation included an update to the Board on the status and completion of each product
as requested by Board members. Swedeen clarified by saying she wanted to see Policy ask for
assistance if they get stuck on certain topics.

Bernath asked for assurance that all the commitments made are moving ahead and are not left
behind. Berge responded that most are part of various mass wasting commitments and are
moving forward in some form. He also said regardless of the events, some elements still need to
be addressed, such as deep-seated landslides and rule identified landforms. Engel concluded by
stating that DNR’s administrative commitments were completed including the additional
information rule and changes to the Forest Practices Application regarding unstable slopes
information.

**TFW POLICY COMMITTEE UPDATE ON THE WATER TYPING SYSTEM**

Ray Entz, co-chair, and Hans Berge, DNR, provided the following progress report on the
Board’s motions passed at the November 2016 Board meeting:

- Acceptance of Policy consensus recommendations and direction to Board staff to prepare draft
  rule and guidance.
  - Department staff has begun evaluating rule elements contained in WACs 222-16-030 and -
  031 that the Board accepted as remaining language for the new rule.

- Acceptance of Policy recommendation for development of a Fish Habitat Assessment Method
  (FHAM).
  - Policy invoked dispute resolution and agreed to a process for evaluating FHAM proposals by
    an independent contractor.
  - The AMPA received four fish habitat assessment methods
  - The fish habitat assessment method contractor evaluation will also include a recommended
    methodology
• Stage 2 of dispute resolution was invoked and Policy voted by consensus to use mediation to resolve the dispute.
• The AMPA will send the Fish Habitat Technical Group’s conceptual framework for a methodology for inclusion in the fish habitat assessment method contractor evaluation.
• Policy directed the technical group to continue meeting and focus on identifying potential criteria for potential habitat breaks and other items.
• The fish habitat assessment method contractor team will present the evaluation report at the March Policy meeting.

Direction to Policy regarding non-consensus issues.
• Policy invoked dispute resolution on the definition of off-channel habitat; and appointed a group to find resolution to the outstanding issues.
• The Landowner and Conservation Caucuses agreed to work off-line to reach common ground on outstanding off-channel habitat language elements.
• Refinements to the off-channel habitat subgroup’s recommendations will occur prior to the Policy’s mediation session in March.

Direction to Policy on Type F/N points through water typing modification forms (WTMF) as the regulatory fish habitat points in the Fish Habitat Water Typing Map.
• Policy began dispute resolution on the acceptance of all existing WTMF.
• The Conservation, Industrial Landowners, DNR, and Westside Tribal Caucuses met as a subgroup to find a resolution.
• Policy reviewed recommendations and voted unanimously to resolve the dispute.

Funding approval to initiate science based products.
• Formal dispute resolution was not initiated regarding the development of the water typing model and the evaluation of default physical criteria.
• AMPA will be convening a technical group to develop study designs. The Board’s original authorization was initially $500,000, but after considering options and timelines, Policy authorized to spend $250,000.

UPDATE ON DNR’S INTERIM GUIDANCE FOR THE 2017 WATER TYPING SEASON
Bernath said at the last Board meeting one of the consensus items was to have DNR provide interim guidance to landowners and stakeholders on expectations for adequately documented water type surveys and completed water type modification forms in order for DNR to make good decisions.

Joe Shramek, DNR, provided an update on the progress and timing of the operational guidance for the 2017 protocol stream survey season. He said the Department issues a memo each year in February to provide information about the forecasted abundance of water in streams supplied by snow-dominated watersheds. He said in addition to the water abundance forecast, the 2017 memo will be used to provide clarity about expectations for how protocol stream surveys are to be conducted and reviewed as the Board continues to consider changes that may come following adoption of new rules and technical guidance.
He said the expectations for how protocol stream surveys are conducted will not change compared to prior years because they needed to continue to be based on current rule and board manual guidance until such time that the Board adopts changes. The focus will be in three areas:

- Protocol surveys will be carried out and acted upon in the same ways as in prior years.
- How water type review teams are used to review, prioritize, and provide information used by the Department to make decisions about proposed water type changes.
- Proponents need to completely fill out the water type modification forms.

He closed by stating the memo will be provided before the end of February 2017 after incorporating updated water forecasts and discussing the content with TFW stakeholders and Department staff.

PUBLIC COMMENT

Ray Entz, Kalispel Tribe of Indians and Upper Columbia of United Tribes, provided comments on the forest chemical process. He said Mahan’s leadership was much appreciated. He said the recommendations to change the Forest Practices Application and to add best management practices to the board manual met the tribe’s concerns brought to the Board in 2016.

John Henrikson, WFFA, said they support the work of the Northern Spotted Owl Implementation Team (NSOIT) in developing a programmatic Safe Harbor Agreement that can be voluntarily utilized by forest landowners to enhance existing owl habitat and grow new habitat. He encouraged the Board to continue to give direction to the NSOIT to develop incentives that will work for both small and large forest landowners as it is unrealistic to expect private landowners to shoulder the entire cost for developing this critical public benefit.

Ken Miller, WFFA, invited the Board to his tree farm to demonstrate the small forest landowner template. He said this would help the Board visualize what they have proposed and what is assumed to be complex template.

Karen Terwilleger, Washington Forest Protection Associated (WFPA), spoke on Type N Water typing and the lack of a default in the board manual for uppermost perennial flow. She said they have significant concerns with the science in the study. She said they have offered to develop a collaborative process to obtain appropriate data but have been rebuffed by Policy and mentioned their proposal initiation before Policy. She stated there is still a lot of work to be done on this once Type F is completed. Regarding Type F, she said that any changes to rule or guidance must be based on science and any proposed alternatives to change the regulatory break need to be evaluated against the Board’s expectations passed in August 2015 and the performance targets identified in the FFR.

LEGISLATIVE UPDATE

Joe Shramek, DNR, provided an update on legislative activity that could affect the Board in its duties or the Department in the implementation and enforcement of the rules. He highlighted two bills in particular:

- HB 1531/SB 5394 amending the Stewardship Act (chapter 76.13 RCW) to promote working forests and the Forest Riparian Easement Program as parts of the state’s carbon sequestration climate strategy.
• HB 1275/SB 5393 amending the Hydraulic Code (chapter 77.55 RCW) to add forest practice
      applications with hydraulic projects for fish barrier removal projects to an existing
      streamlined permitting process administered by WDFW.

He said the Department was supportive of these bills after working with others on technical
changes to the original versions.

PESTICIDE WORK GROUP REPORT
Donelle Mahan, DNR, provided an overview of topics discussed at previous work group
meetings and provided a final report including actions DNR will implement.

She said the final topic was how to modify the applications to make it clearer. She said all work
group members agreed on the specific additions. The new aerial pesticide application is targeted
to become effective on February 9, 2017.

She said there were discussions about adding reporting on active ingredient quantities in the
applications and whether this would be needed and useful information, because most proponents
would list the maximum amount of herbicide which could be used, not the actual quantity of
active ingredient which could create more confusion than clarity. She said this led to discussions
about how reporting might be done post-application through best management practices. All
group members supported post-application reporting as a non-mandatory best management
practice. She said DNR will devise a process for this to occur.

She concluded by stating the following will help stakeholder reviewers, landowners, and DNR:
• Update Forest Practices Illustrated by July 2017
• Update Board Manual Section 12 by May 2018

Swedeen asked about the stakeholder’s responses to the final decisions. Mahan said that most of
the group was okay with the final outcomes. Some participants still wanted to see required one-
mile notifications and post spray records, but that would require statute and rule changes.

ELECTRONIC SIGNATURE AND ELECTRONIC PAYMENT RULEMAKING
Bernath said DNR is in the initial stages of developing a system for forest practices proponents
to electronically submit their Forest Practices Applications and fees. He said DNR currently has
the authority to accept applications/notifications electronically but lacks clear authority to accept
electronic signature or electronic payment.

Marc Ratcliff, DNR, asked the Board to consider rulemaking to add electronic signature and
electronic payment as another option for accepting forest practices applications and fees. He said
the ability to submit electronic signatures and DNR’s receipt of electronic formats will be a
viable option alongside the current process of certified mail or hand delivery at DNR region
offices.

He said staff will ensure that electronic records and signatures are consistent with the guidelines
provided by the state’s Chief Information Officer (CIO).
PUBLIC COMMENT ON RULE MAKING FOR ELECTRONIC SIGNATURE AND PAYMENT

None.

ELECTRONIC SIGNATURE AND ELECTRONIC PAYMENT RULEMAKING

Marc Ratcliff, DNR, requested the Board to approve the filing of the CR-101 Preproposal Statement of Inquiry to notify the public of the Board’s intent to consider rule making.

MOTION: Lisa Janicki moved the Forest Practices Board direct staff to file a CR-101 Preproposal Statement of Inquiry to notify the public the Board is considering rule making relating to acceptance of electronic signatures and payments associated with forest practices applications/notifications.

SECONDED: Heather Ballash

Discussion:
None

ACTION: Motion passed unanimously.

TFW POLICY COMMITTEE’S REVIEW OF SMALL FOREST LANDOWNER TEMPLATE UPDATE

Bernath reminded the Board that at their May 2016 meeting, the Board accepted a proposal initiation for a western Washington small forest landowner template proposed by WFFA. He said Policy has been reviewing the proposal to determine if it meets the definition of a template.

Marc Engel, DNR, and Ken Miller, WFFA, provided a progress update for potential timing when an analysis and recommendations will be presented to the Board.

Engel said the strategy approved by the Board is based on the requirements listed in WAC 222-12-0403 and entails a process of review and several parts that all have to happen in order to develop an alternate plan template. He said several parts are in varying stages of completion. A subgroup has reviewed the proposed prescriptions as to how it meets riparian function as outlined in rule and are actively looking at alternate plan prescriptions.

Miller added that small landowners are encouraged by the process moving forward. He said the small landowner caucus was able to present their perspectives to Policy which resulted in good dialog and clarifying questions for the caucus. He said he believes that there is still some misunderstanding of what actually are the prescriptions. He is hopeful that within a year a consensus proposal will be before the Board.

Engel said next steps include initiating the literature synthesis and once the subgroup has all the data they will do the evaluation of the prescriptions and then present to Policy sometime late 2017. He said Policy will then take action and present recommendations to the Board.
303D LISTING UPDATE

Bernath said the Department of Ecology (Ecology) adopts standards for water quality and evaluates current monitoring data to discern what waters in the state are impaired. The Board adopts rules that are intended to meet clean water requirements. He said this presentation on 303D listing for forest lands can potentially be used as one measure of success in meeting clean water requirements.

Mark Hicks, Ecology, provided a status of Washington’s Water Quality Assessment focused on forest lands. The assessment is a comprehensive review of the quality of Washington’s waters and is required under the federal Clean Water Act.

He said the goal of the 303(d) listing is to identify waters impairing or suspected of impairing beneficial uses and implement and encourage changes that reduce pollution or cleanup the impairment so beneficial uses will be met.

In addition, Hicks provided a brief overview of the Clean Water Act Assurances. He said Ecology with support from the Environmental Protection Agency provided the Clean Water Assurances in Schedule M-2 of the FFR. Also, the assurances and the Forest Practices Habitat Conservation Plan form a package of federal and state assurances which creates more regulatory certainty.

He said assurances were granted because federal and state agencies recognized the FFR prescriptions significantly improved water quality protection, and may meet water quality standards long term, therefore reducing the urgency to develop total maximum daily loads or propose alternative implementation requirements. Also, because the AMP was established to test the rules and to expediently adjust them if needed.

NORTHERN SPOTTED OWL IMPLEMENTATION TEAM (NSOIT) UPDATE

Lauren Burnes, DNR, said the priority of the NSOIT has been the development of a voluntary, “opt-in” programmatic safe harbor agreement for the Northern spotted owl. She said the primary objective is to incentivize private landowners to undertake voluntary conservation measures that will benefit the spotted owl by creating, maintaining, or enhancing its habitat.

She said it’s a voluntary enrollment process and is open to all landowners and aims to provide umbrella protection to interested landowners by alleviating the Class IV-Special process and providing federal assurances for the owl.

She said safe harbor agreements require both an assessment of the baseline habitat and a projection or estimate of the amount of habitat that would constitute the net conservation benefit. It does not have to provide permanent conservation; however, the conservation measures need to be sufficient to provide a net conservation benefit to the covered species and should, whenever possible, be retained for ten years prior to the landowner returning their property to baseline.

She said landowners will be able to opt-out if they no longer wish to participate in the program. As long as there is no mitigation debt (if there was a baseline it would have to remain) a landowner would be allowed to harvest the net accrued conservation benefit habitat.
Burnes concluded by stating that in special and likely rare circumstances it may be necessary to use forest management activities to enhance the value of baseline habitat that would otherwise be degraded in the near future without management.

**STAFF REPORTS**

**Adaptive Management Update**
Hans Berge, DNR, provided an update on the Board’s motion related to funding a study design to develop a water type model pilot and one for default physical criteria. He said a contract for both study designs has been completed. He said it is unlikely that the full $500,000 will be spent for these study designs.

**Upland Wildlife Update**
Terry Jackson, Department of Fish and Wildlife (WDFW), said the bald eagle and peregrine falcon have demonstrated sustained recovery and both have been de-listed by the Washington State Fish and Wildlife Commission effective February 4, 2017. She said the two species will continue to be classified as “protected wildlife” under state law, and protected under the Federal Migratory Bird Treaty Act. In addition, she said the Bald Eagle will continue to be protected under the Federal Bald and Golden Eagle Protection Act and that landowners will still be required to protect eagles and their nests, consistent with federal guidelines.

Regarding the lynx and marbled murrelet, she said on February 4, 2017, the commission up-listed both to State Endangered. She said one implication to the Board of the up-listing for both species is that DNR will have 30 days from this listing to provide recommendations to the Board, after consulting with WDFW, as to whether any changes or additions are needed to the current forest practices rules and/or protection approach.

There were no questions for the following reports:
- Board Manual Update
- Clean Water Act Assurances
- Compliance Monitoring
- Rule Making Activity
- Small Forest Landowner Advisory Committee and Small Forest Landowner Office Update

**2017 WORK PLAN**
Marc Engel, DNR, reviewed the revised work plan and recommended additions as a result of today’s meeting. Bernath added the following updates at the May 2017 meeting:
- Compliance Performance Measures
- Adaptive Management Program review for process recommendations
- Review of Lean process within CMER

**MOTION:** Bob Guenther moved the Forest Practice Board approve the 2017 Work Plan as amended.

**SECONDED:** Carmen Smith

**ACTION:** Motion passed unanimously.
SETTLEMENT OFFER ASSOCIATED WITH SUMAS MOUNTAIN COMMUNITY FOR LANDSLIDE AWARENESS AND PAUL KENNARD VS. WASHINGTON STATE FOREST PRACTICES BOARD

Phil Ferester, Senior Counsel, provided a brief status regarding the legal challenge. He said the May 2016 Board action to approve Board Manual Section 16 was challenged in King County Superior court—the case was called Sumas Mountain Community for Landslide Awareness and Kennard v. Forest Practices Board. He said the court dismissed the case in January and following the dismissal, Sumas Mountain and Kennard offered to settle the case. He said the Board will need to discuss the offer and decide on any action to take.

PUBLIC COMMENT ON SETTLEMENT OFFER REGARDING SUMAS COMMUNITY FOR LANDSLIDE AWARENESS AND PAUL KENNARD VS. WASHINGTON STATE FOREST PRACTICES BOARD

Peter Goldman, Washington Forest Law Center, provided his perspective on why a settlement would be in the best interest of the Board, public safety and public interest. He said it is the Board’s duty to ensure the rules and the board manual are precautionous and technically sound. He said they challenged the approval of Board Manual Section 16 because they thought the manual failed to implement the Class IV-Special rule. As a result, users are left with rules identified in the Forests and Fish Report that rely heavily on board manual for implementation and one cannot challenge a board manual because it is not rule. He summarized the two requests of the settlement offer: formal guidance from the Office of the Attorney General on what is rule versus board manual and formation of a neutral expert panel to review Section 16 to ensure it is sound. He said they would not pursue any further litigation for a period of twelve months if the Board accepts the offer.

Karen Terwilleger, WFPA, said they were an intervening party to this lawsuit and believe the court reached the correct decision. She said guidance documents are not enforceable and do not go through the adaptive management process which differentiates them from a rule. She also said that Washington forest practices has one of the strongest standards in the nation for dealing with unstable slopes in forestry. She also mentioned the proposal initiation that is currently being reviewed by Policy to go through the adaptive management process to assess whether changes are needed to the board manual or rule.

EXECUTIVE SESSION

Executive session convened from 4:25 p.m. to 5:25 p.m.

SETTLEMENT OFFER REGARDING SUMAS COMMUNITY FOR LANDSLIDE AWARENESS AND PAUL KENNARD VS. WASHINGTON STATE FOREST PRACTICES BOARD

Bernath solicited the Board for their thoughts on the settlement offer.

Patrick Capper said he was not ready to make a decision today and requested more time for discussion.
Heather Ballash said she had concerns with the offer and would like more time to develop some options that might help move this forward. She said that she was not ready to make a decision today.

Jeff Davis said the Board has consensus about the importance of public safety and that the Board needs to defend the current process. He said that the settlement offer may not be consistent with the Adaptive Management process and that he was not ready to make a decision.

Carmen Smith said that she agreed with Ballash.

Tom Nelson said he agreed with other Board members in that there are some conditions in the offer that the Board may not be able to fulfill within their authority. He also said that some elements of the settlement offer were objectionable and that he was not ready to make a decision. He said he would like to have further discussions.

Bob Guenther said that a lot of effort has been made in the past couple of years for public safety and he was not ready to make a decision today.

Paula Sweden said she also was not comfortable to make a decision today. She said within the Board’s structure it has done what it can but it does not get to all the points raised by the plaintiff. She said she would like to explore other possibilities while acknowledging what has been done.

Lisa Janicki said she was concerned about circumventing the process and coming out with the wrong answer. She said she would like to move the discussion down the road, because some points merit further discussion.

Noel Willet said he concurred with other Board members in not being prepared to make a decision. He said he believes in public safety and that the discussions need to continue.

Tom Laurie said that he was not concerned with an appeal but felt that a more public discussion could be beneficial. He said he was also not ready to make decision today. He also noted that the schedule proposed is unrealistic given the current work before the Board, but he was willing to revisit the topic after further discussions occur.

Bernath acknowledged the important task the Board has regarding public safety. The Board is committed in making sure the adaptive management items are moving forward. He mentioned that as a result of the 2007 storms, the unstable slopes scientific advisory group looked at those landslides and brought back a non-consensus report, which resulted in Policy’s consensus recommendations. He made a commitment to finding out the status of those recommendations and the connection to the proposal initiation.

Bernath summarized by stating that the Board is not willing to make a decision about the settlement offer today.
Bernath reviewed some of the commitments made today:

- Look into conducting a thorough review of the AMP and possible financial audit
- Board counsel to present an open discussion on rule versus guidance for the May meeting
- Board will continue to talk about public safety

Swedeen asked to hear from Commissioner Franz regarding her outreach she is doing towards this issue.

The Board will schedule a workshop for May 9 and conduct the regular meeting on May 10.

Meeting adjourned at 5:45 p.m.