

1 **FOREST PRACTICES BOARD**  
2 **REGULAR BOARD MEETING**  
3 May 11, 2010  
4 Natural Resources Building  
5 Olympia, Washington  
6  
7

8 **Members Present**

9 Lenny Young, Chair of the Board, Department of Natural Resources  
10 Anna Jackson, Designee for Director, Department of Fish and Wildlife  
11 Bill Little, Timber Products Union Representative  
12 Dave Somers, Snohomish County Commissioner  
13 David Hagiwara, General Public Member  
14 David Herrera, General Public Member  
15 Doug Stinson, General Public Member/Small Forest Landowner  
16 Norm Schaaf, General Public Member  
17 Paul Isaki, Designee for Department of Commerce  
18 Tom Davis, Designee for Director, Department of Agriculture  
19 Tom Laurie, Designee for Director, Department of Ecology  
20

21 **Absent**

22 Carolyn Dobbs, General Public Member  
23 Sherry Fox, General Public Member/Independent Logging Contractor  
24

25 **Staff**

26 Darin Cramer, Forest Practices Division Manager  
27 Marc Engel, Forest Practices Assistant Division Manager  
28 Patricia Anderson, Rules Coordinator  
29 Phil Ferester, Assistant Attorney General  
30

31 **WELCOME AND INTRODUCTIONS**

32 Lenny Young called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.  
33 Introductions were made by Board members, staff, and the public. Young said he was hoping to  
34 present plaques to outgoing Board members Brad Avy, Department of Agriculture and Brent  
35 Bahrenberg, Department of Commerce, and expressed appreciation to them for their service on  
36 the Board.  
37

38 Shane Martinez, Department of Natural Resources (DNR or Department), provided a safety  
39 briefing.  
40

41 **APPROVAL OF MINUTES**  
42

43 **MOTION:** Dave Somers moved to approve the February 10 meeting minutes.  
44

45 **SECONDED:** Anna Jackson  
46  
47

1 Board Discussion

2 Anna Jackson suggested the following changes to page 4, lines 6 and 8:

3 Carolyn Dobbs referred to page 4 of the annual report, “WDFW will attempt to  
4 contact a new landowner relative to developing a management plan.” She asked  
5 how the department will have contact with the landowner at the earliest possible  
6 time. Whipple answered that contact had already been made with the current  
7 landowner, and although there is little management expected, the department  
8 will continue communications with this landowner in an attempt to facilitate  
9 contact with any new landowner as soon as possible.

10  
11 Tom Laurie suggested amending page 16, line 17 by replacing the word, “protection” with “anti-  
12 degradation.”

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

15  
16  
17 **MOTION:** Doug Stinson moved to approve the March 26 meeting minutes.

18  
19 **SECONDED:** Norm Schaaf

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

22  
23  
24 **MOTION:** Anna Jackson moved to approve the April 23 meeting minutes.

25  
26 **SECONDED:** Dave Somers

27  
28 **ACTION:** Motion passed. 10 support / 1 abstention (Hagiwara)

29  
30 **REPORT FROM CHAIR**

31 Lenny Young reported:

- 32 • Adaptive Management Program funding is secured for another year through a supplemental  
33 budget request, but there must be continued focus and effort in securing the program’s long-  
34 term funding.  
35 • As will be discussed in the Business Reference Guide discussion, no communications from  
36 the public to the Board will be allowed during meetings except in public comment sessions  
37 designated on the agenda and during breaks.

38  
39 **PUBLIC COMMENT**

40 Connie Bergstrom, Log Smarter, Stevens County, asked the Board to develop best management  
41 practices for appropriate clear cut size and chemical spraying for the dry land forests. She  
42 explained Log Smarter is a grass roots organization in Northeast Washington that includes  
43 people from all walks of life. Its members support the timber industry which is very important  
44 for the local economy, and the sustainability of logging for future generations. But there is great  
45 concern about the massive destruction caused by logging practices of Forest Capital Partners.  
46 This company owns a huge amount of land and strips it down to nothing for their investors. They  
47 are not stewards of the land. They spray the land, wildlife, and water with a mixture of chemicals

1 that has not been tested. There are no hydrology studies in the area, so the effect on wells is  
2 unknown. Berry picking and recreation in the area is becoming dangerous.

3  
4 Mike Slater, Log Smarter, Stevens County, asked that the Board consider changing forest  
5 practices rules for Eastern Washington. He explained he, as an adjacent forest landowner to  
6 Forest Capital, feels like the canary in the mine shaft. He said the company has clear cut to his  
7 boundary line and over sprayed his property with herbicides. According to Forest Capital's own  
8 statistics, since 2005 it has sprayed about 57,000 acres in Northeastern Washington, and cut  
9 about 70,000 acres. When the company is finished, they will sell and go back to Boston, leaving  
10 the citizens with a moonscape and an economy that will not be supportive to the timber industry,  
11 causing people to lose their jobs and mills to shut down. The herbicide they are using is a  
12 combination of Chopper, Generation 2, Accord, and Oust and it is so powerful it is even killing  
13 12-year old Ponderosa pine trees which is a climax species in the area. He said they have a  
14 petition with over 700 signatures, signed by environmentalists, loggers, and foresters alike,  
15 crossing all political boundaries. They do not understand how this can be sustainable forestry,  
16 and they hope the Board will listen and change rules for Eastern Washington state.

17  
18 Caroll Vrba, Log Smarter/Citizens for a Clean Columbia, said she was very concerned about  
19 human exposure, water contamination, the flow of water into the Columbia River, and how much  
20 time it will take for re-growth in the dry land forest. She said hydrologists say the long-term  
21 effect will be on shallow wells in the valleys. She said the forest practices rules don't seem to  
22 take into account the differences between the dry land Eastern Washington forests and the wetter  
23 forests in Western Washington.

24  
25 Anna Jackson asked about the purpose of the petition. Vrba answered the group wanted to see  
26 how widespread the concern about these logging practices really was, and they decided to find  
27 out how many people would stand up and be counted by asking for their signatures.

28  
29 Rick Dunning, Washington Farm Forestry Association, referred to two documents he had sent to  
30 the Board: the Legislature's new prioritization for the Forest Riparian Easement Program  
31 (FREP), and "Family Forest Owners and Forest and Fish Promises" dated April 14, 2010. He  
32 said the new FREP prioritization will pit landowner against landowner. Washington's forest  
33 policy is very difficult for the small forest landowners of this state, and the Board's efforts to  
34 protect the state's forest resources are being undermined by the industrial-sized rules.

35  
36 Chris Mendoza, Conservation Caucus, said having conducted several alternate plans for small  
37 forest landowners over the years, he realized they suffer from economy of scale. They are being  
38 asked to provide the same protection as the large industrial landowners, but without the tools or  
39 the land base necessary to respond to and survive the challenges of the forest practices rules. He  
40 also commented that the Compliance Monitoring Oversight Committee is working well and the  
41 Department of Fish and Wildlife and the Department of Ecology are working with DNR to  
42 determine the correct water types for a given area before a landowner applies for a forest  
43 practice.

44  
45 Peter Goldman, Washington Forest Law Center, commented on the costs of unsustainable  
46 practices, and the tragedy of not looking at the cumulative effects of unsustainable practices. He  
47 also urged the Board to closely oversee Forests and Fish Policy (Policy) in regards to its work on  
48 watershed analysis because the SEPA loophole must be fixed.

1 Miguel Perez-Gibson, Conservation Caucus, said he does not think the long-term viability of the  
2 timber industry and the protection of public resources can be achieved one forest practice at a  
3 time –cumulative effects will need to be addressed sooner or later. He spoke in support of  
4 funding for FREP and the Small Forest Landowner Office. He commented the permit fee of \$50  
5 for everyone is actually subsidizing the large industrial landowners, as it costs DNR \$5,000 to  
6 process applications. He suggested raising this fee for large landowners and putting the money  
7 into a fund for small forest landowner programs.  
8

9 Jeffrey Thomas, TFW Cultural Resources Committee/Puyallup Tribe, said the Puyallup Tribe  
10 supports revisiting the rule language in WAC 222-20-120.  
11

## 12 **STAFF REPORTS**

### 13 Adaptive Management

14 Jim Hotvedt, DNR, pointed out an addition to the CMER work plan, the Projects and Functions  
15 Table. It shows the Forests and Fish goals and the functions addressed by each project which  
16 should be very helpful to users of the work plan. He acknowledged and thanked CMER for  
17 developing the table.  
18

### 19 Board Manual, Rule Making Activity, and 2010 Work Plan

20 Marc Engel, DNR, said the Riparian Open Space rule making is progressing and the Board  
21 should be seeing a proposal for the 30-day review in August. The board manual for that program  
22 is expected to be completed for the Board’s consideration at the same time the Board considers  
23 adopting the rule. The work plan will be modified to show a semi-annual Compliance  
24 Monitoring report in November and noted the Upland Wildlife Work Plan will show a status of  
25 “ongoing” indefinitely.  
26

### 27 Compliance Monitoring

28 Walt Obermeyer, DNR, updated his April 19, 2010 written report. To date, 46 percent of the  
29 sample applications are complete. This year the program is working on a smaller sample size  
30 which allows time to look at haul route compliance.  
31

32 In reference to the written report, Norm Schaaf and Doug Stinson asked Obermeyer to elaborate  
33 on rule compliance vs. application compliance, and the haul route review. Obermeyer answered  
34 the Compliance Monitoring Stakeholder Committee members have determined the primary  
35 reporting emphasis will be whether forest practices comply with the rules, even if the application  
36 goes beyond rule requirements. The haul route review is related to a Clean Water Act assurance  
37 milestone, and looks at the haul route between the application area and public access during the  
38 time of haul.  
39

### 40 Small Forest Landowner Office and Advisory Committee

41 Mary McDonald, DNR, reported:

- 42 • Work on the conifer restoration template is suspended because the advisory committee  
43 members do not believe it would be supported by the family forest community.
- 44 • The Forest Riparian Easement Program may receive about \$1 million via a proviso in the  
45 supplementary budget. The office will be working out prioritization details with interested  
46 stakeholders.

- 1 • The addition of a westside stewardship forester is expected and will be funded with federal  
2 and Washington State University Extension funds.
- 3 • The program recently acquired two federal grants for the Family Forest Fish Passage  
4 Program.
- 5 • 35 long-term applications have been approved to date.

6  
7 Norm Schaaf asked for clarification about the prioritization of FREP expenditures and the  
8 stakeholder input mentioned in McDonald's staff report. McDonald answered the proviso  
9 language for using the funds in the coming year includes 14 prioritization elements. It also  
10 directs the Department to work with interested stakeholders to develop prioritization and  
11 eligibility criteria for changes for future program implementation. A recommendation is due to  
12 the Office of Financial Management on October 1, 2010.

#### 13 14 TFW Cultural Resources Committee

15 Pete Heide, co-chair, said the committee is looking for feedback from Darin Cramer and Rodney  
16 Cawston on a draft charter, and expressed thanks to them for their time and consideration. He  
17 said the committee completed a brainstorming session on guidance for cultural resources  
18 management for TFW stakeholders, forest landowners, and tribes, and the Board can expect to  
19 see those products in the future.

20  
21 Jeffrey Thomas, co-chair, said the committee looks forward to progress on the official standing  
22 of the committee, and thanked Darin Cramer and Rodney Cawston. He pointed out that the use  
23 of General Land Office (GLO) information (item 3 on the committee's work plan) has come up  
24 recently and is a very important topic in the Puyallup watershed. The committee will be  
25 continuing to focus on revisions to WAC 222-20-120.

#### 26 27 Northern Spotted Owl Implementation Group

28 David Whipple, Washington Department of Fish and Wildlife (WDFW), reported the group is  
29 formed with Chuck Turley serving as chair. The group has met once, has adopted ground rules,  
30 and is currently drafting a charter. The members all agreed at this time the group does not need  
31 facilitation.

#### 32 33 **LEGISLATIVE UPDATE**

34 Darin Cramer, DNR, summarized 2010 legislation that will impact the Forest Practices program  
35 directly or indirectly:

- 36 • House Bill (HB) 2541 directs DNR to develop landowner conservation incentives to  
37 encourage maintaining forest lands in forestry.
- 38 • HB 2935 transfers the jurisdiction of appeals of DNR decisions from the Forest Practices  
39 Appeals Board to the Pollution Control Hearings Board. This will require rule making.
- 40 • HB 2420 promotes industries that rely on the state's working land base.
- 41 • Senate Bill (SB) 6481 narrows down the number of counties required to adopt and enforce  
42 forest practices ordinances or regulations to those planning under the Growth Management  
43 Act with a population of 100,000 or more, and the cities within those counties.
- 44 • SB 6578 creates an optional multi-agency permitting team.
- 45 • HB 2617 eliminates some boards and commissions and removes all travel allowances for  
46 Class 1 boards (Small Forest Landowner Advisory Committee), and requires cost-savings for  
47 Class 4 boards (Forest Practices Board).

1  
2 Norm Schaaf asked how the Board is expected to be involved in the incentives program under  
3 HB 2541. Cramer said the Board will receive more specific information as DNR develops a plan  
4 for implementation.

5  
6 **WATERSHED ANALYSIS UPDATE**

7 Darin Cramer, DNR, said staff intends to have a complete watershed analysis review process and  
8 prioritized list completed for Board review prior to the August 2010 meeting. An agreement  
9 between DNR and Weyerhaeuser Company, which was discussed at the March 26 special  
10 meeting, is drafted and it should be finalized within a few days.

11  
12 Jim Hotvedt, DNR, reported he submitted a proposal to Policy which followed almost literally  
13 the information in the proposal approved by the Board at the April 23 special meeting. Policy  
14 accepted it, decided to keep it in the Policy track, and designated a subgroup to develop a charter  
15 and a schedule. Policy has set a target date of December 2010 at the earliest, but no later than  
16 May 2011, for returning to the Board with a proposal.

17  
18 Norm Schaaf asked Cramer whether there will be stakeholder involvement in the watershed  
19 analysis review plan and prioritization list. Cramer answered yes, once staff develops draft  
20 criteria and a review process, all interested stakeholders will be invited to review and provide  
21 feedback. This will take place prior to the Board's August meeting.

22  
23 **CLEAN WATER ACT ASSURANCES UPDATE**

24 Stephen Bernath, DOE, explained this quarter's update is more extensive than other quarterly  
25 updates because the Department of Ecology (DOE) has decided to include a comprehensive  
26 assessment of successes and adjustments to milestones on an annual basis.

27  
28 Mark Hicks, DOE, commented that spring is a good time of year to provide more extensive  
29 updates because it follows on the CMER budget and planning process when the status of the  
30 CMER projects is reviewed. This update shows some due dates are moved further out into the  
31 future, but it does not signal a relaxation in the assurances. Instead it is a recognition that a  
32 milestone is going to take a little longer. For example, we may have realized an original due date  
33 for a particular project didn't take into account the appropriate amount of time it takes for all of  
34 the steps in the project.

35  
36 Hicks said DOE is pretty happy with the pace of meeting the milestones, and DNR is giving a  
37 huge amount of support in terms of taking over the leadership where appropriate. Forward  
38 movement must be kept up – if some due dates slide behind it is much harder to keep up with the  
39 overall schedule. It is important not to underestimate the amount of time it takes to accomplish  
40 things, especially in the cooperative world of adaptive management. Ecology's biggest concern  
41 now is the long-term budget situation.

42  
43 Norm Schaaf referred to the differences between the terms used for the tasks in the milestones  
44 summary and the projects in the CMER work plan, and asked for confirmation as to whether the  
45 plan is on track to meet the Clean Water Act assurances. Hicks confirmed the projects and the  
46 milestones are lined up well.

1 **RMAP POLICY SUBGROUP REPORT**

2 Stephen Bernath, Policy co-chair, referred to a draft Road Policy Work Group charter dated May  
3 6, 2010. He explained that he and Tom Robinson, Policy co-chair, will be submitting a proposal  
4 to the Board prior to the August meeting. He explained that a key cornerstone of the Forests and  
5 Fish rules and the Forest Practices Habitat Conservation Plan (HCP) is road maintenance and  
6 abandonment planning (RMAP). This is a commitment by landowners to inventory their roads,  
7 determine any fixes needed, and complete work within 15 years from the rule's effective date. It  
8 is now ten years into the plan and recently the economy has not been favorable to the timber  
9 industry. Industry representatives have asked Policy to consider an extension of the RMAP  
10 process. The Road Policy Work Group charter shows the work that is being done to prepare a  
11 proposal to the Board. A proposal is expected to address:

- 12 • Conditions for an extension of the RMAP timeline.
- 13 • How to better track RMAPs accomplishments, and to re-engage the small landowners in this  
14 effort by getting better funding for the Family Forest Fish Passage Program.
- 15 • How to appropriately determine and convey in the 2013 legislative report whether the small  
16 forest landowner RMAP checklist approach is successful.
- 17 • Funding for counties to do their bridge work, because the counties own bridges downstream  
18 from forest landowners.
- 19 • Opportunities for low interest loans to help the large landowners to meet timelines.
- 20 • Ensuring no unintended consequences to whatever Policy proposes.

21  
22 Anna Jackson asked if there is agreement amongst the players that there is to be no change in  
23 fundamental resource protection and assurances. Bernath answered yes, the obligations would  
24 not change but would take place over a slightly longer period of time to recognize the economic  
25 situation and still accomplish the goals.

26  
27 Tom Robinson said Policy wants to take a watershed perspective and an approach that  
28 emphasizes the importance of downstream fish passage barrier removal. The counties' and the  
29 small landowners' systems are basically an overlay of one another.

30  
31 Tom Laurie asked about the expected process and deliverable to the Board in August. Bernath  
32 explained a staff subgroup will collect information on RMAPs progress to date, which will feed  
33 into a policy subgroup for proposal development. This will hopefully go to Policy in June, and  
34 between June and July Policy will develop a proposal that can be forwarded to the Board in  
35 sufficient time before the August meeting for the Board to be prepared to consider action.

36  
37 **PUBLIC COMMENT ON CMER 2011 WORK PLAN AND BUDGET**

38 Chris Mendoza, CMER co-chair, explained CMER made substantial revisions to the work plan  
39 this year to help show and facilitate the interaction between CMER's work and Policy's work.

40  
41 **CMER 2011 WORK PLAN AND BUDGET**

42 Jim Hotvedt, Adaptive Management Administrator, requested the Board's approval of the 2011  
43 CMER Work Plan and budget. He gave an overview of the work plan's organization and  
44 hierarchical structure, and said the document can be a very helpful reference once one  
45 understands this organization. He said there are two additions to the work plan this year, the  
46 CMER Projects and Functions Table described earlier in the Adaptive Management staff report,  
47 and a "Link to Adaptive Management" section under each program to help Policy and the Board

1 to understand how each rule group critical question is being addressed by the CMER projects.  
2 For each program, this section identifies knowledge gained, gaps in knowledge, and  
3 recommendations for addressing gaps.  
4

5 He pointed out the proposed new and ongoing projects shown on Table 4 of the work plan, and  
6 the budget proposal on a separate table, "FY 2011-2019 Policy Preferred CMER Budget." He  
7 explained the projected FY 2011 revenue (\$2,768,049) is sufficient to pay for the new and  
8 proposed projects plus staff costs (\$2,683,000). The problem comes in 2012 when federal monies  
9 run out. Long-term support revenues are projected to be only \$1.2 million. DNR and DOE are  
10 working to secure grants from the Environmental Protection Agency (EPA) on behalf of the  
11 Adaptive Management Program. DNR applied for a \$600,000 grant for wetlands mitigation and  
12 \$285,000 for CMER management and information, and DOE applied for a \$695,000 grant for  
13 the Westside Type N Experimental Buffers project. Results of those applications will be coming  
14 soon. It is expected that sometime later this summer EPA will advertise another round of  
15 requests for applications.  
16

17 **MOTION:** Tom Laurie moved that the Forest Practices Board approve the 2011 CMER  
18 Work Plan and Budget as presented.  
19

20 **SECONDED:** Dave Hagiwara  
21

#### 22 Board Discussion

23 Norm Schaaf said he noticed some projects seem to be given a higher priority on Table 4 than  
24 they seem to warrant when one looks at Table 3. Hotvedt said Table 3 reflects the original  
25 ranking criteria of scientific uncertainty and risk, and the prioritized list on Table 4 reflects a  
26 different, updated set of priorities based on the outcome of the Clean Water Assurances review  
27 last spring.  
28

29 David Hagawara asked if the Board could be notified of the outcome of the pending grant  
30 applications, to which Young and Hotvedt answered yes.  
31

32 **ACTION:** Motion passed unanimously.  
33

#### 34 **PUBLIC COMMENT ON CMER MEMBERSHIP**

35 None.  
36

#### 37 **CMER MEMBERSHIP**

38 Jim Hotvedt, DNR, explained there is a core set of CMER members that are voting members,  
39 and there is a vacancy in the landowner caucus. The Washington Forest Protection Association  
40 has requested that A.J. Kroll fill the vacancy.  
41

42 **MOTION:** Norm Schaaf moved that the Forest Practices Board approve Table 2 as the  
43 current CMER roster that reflects A.J. Kroll as a member.  
44

45 **SECONDED:** Dave Somers  
46  
47



1 Board Discussion

2 Lenny Young suggested a friendly amendment to drop the word, “core” from the motion because  
3 the rules do not refer to a “core” membership.  
4

5 **ACTION:** Motion passed unanimously.  
6

7 **BUSINESS REFERENCE GUIDE**

8 Marc Engel, DNR, presented a Business Reference Guide for the Board’s consideration. He said  
9 late last year the Board formed a “By-Laws Committee” consisting of Peter Goldmark, Sherry  
10 Fox and Carolyn Dobbs to consider the potential for by-laws for the Board. The committee met  
11 in January and March and recognized that chapter 222-08 WAC already contains the practices  
12 formal by-laws would have provided. At the committee’s request, Board counsel Phil Ferester  
13 developed a Forest Practices Board Business Reference Guide. Engel requested that one sentence  
14 be added to the guide prohibiting the passing of written or electronic notes to Board members  
15 during meetings.  
16

17 Tom Laurie and Paul Isaki both asked for confirmation that the document is simply guidance  
18 based on WAC without the effect of a rule. Phil Ferester answered it is not a rule, and added the  
19 Board can choose to adopt revisions to its procedural rules any time, but that is a longer and  
20 more involved process and may not be necessary to accomplish the Board’s goals.  
21

22 Norm Schaaf asked whether the timelines shown on Attachment A limits the use of amendments  
23 and motions that come up during the course of discussions in meetings. Engel answered the  
24 timeline is for the information that will be made available to the Board and the general public  
25 prior to each regular meeting. Lenny Young said he understood that the committee discussed  
26 actually locking down the agenda according to this timeline, but decided they did not want to go  
27 to that point.  
28

29 David Hagiwara asked for clarification on the meaning of “during meetings” in regards to the  
30 prohibition of passing notes to Board members. Young answered the language would not  
31 prohibit communications during breaks.  
32

33 Young directed staff, with the Board’s consent, to incorporate the new language and post the  
34 Business Reference Guide on the Board’s website.  
35

36 **PUBLIC COMMENT ON NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN**  
37 **TRIBES RULE MAKING**

38 Pete Heide, Washington Forest Protection Association, said the committee has discussed this  
39 issue for some time and it is a high priority item on the committee’s work plan. He explained the  
40 language in the rule was adopted in 1987 with the original TFW rules. It was designed to provide  
41 a vehicle for tribes to deal directly with landowners on cultural resource issues that did not fit  
42 well into the categories of archaeological and historic sites. The tribes didn’t want the  
43 government involved in cultural resource issues, and wished to consult directly with landowners  
44 to achieve protection. Recently the cultural director of the Cowlitz Indian Tribe brought a  
45 concern to the committee that the rule essentially directs the tribes to have a meeting with  
46 landowners that the tribes wouldn’t necessarily always want to participate in. The committee

1 worked on a solution, but it turns out DNR has some additional problems with implementing the  
2 rule.

3  
4 He said he fully expects a consensus proposal will go to the Board. The landowners definitely  
5 want to continue to work on these issues through the voluntary approaches described in the  
6 Cultural Resources Protection and Management Plan and build relationships with the tribes.  
7 However, it is important that the Board understands landowners do not want the burden of proof  
8 shifted to them, as it is very difficult and expensive to prove the negative on these issues.  
9

10 **NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN TRIBES RULE MAKING**

11 Sherri Felix, DNR, requested the Board’s approval to provide notice to the public that the Board  
12 is considering rule making in WAC 222-20-120. Staff believes it is timely to file the CR-101 for  
13 this rule making because the Board’s 2010 work plan includes this topic for rule making and the  
14 TFW Cultural Resources Committee is developing consensus recommendations for amending  
15 the rule. The committee is endeavoring to improve understanding and implementation of this rule  
16 while respecting tribal sovereignty. To achieve these goals the committee’s work is focused on  
17 clarifying ambiguous language and resolving issues with the landowner-tribe meetings that are  
18 required when applications involve cultural resources.

19  
20 **MOTION:** Tom Laurie moved that the Forest Practices Board direct staff to file the CR-  
21 101 with the Office of the Code Reviser to inform the public that the Board is  
22 considering rule making to amend WAC 222-20-120. This rule making would  
23 clarify ambiguous language and resolve issues with the rule’s landowner-tribe  
24 meeting requirement and tribal sovereignty.

25  
26 **SECONDED:** Dave Somers

27  
28 Board Discussion

29 Norm Schaaf asked if there is an expected timeline for this rule making. Felix answered there is  
30 no expiration of a CR-101, and she did not know when the committee would come to consensus  
31 because the issue is complicated and sensitive.

32  
33 **ACTION:** Motion passed unanimously.

34  
35 **PUBLIC COMMENT ON NORTHERN SPOTTED OWL RULE MAKING**

36 None.

37  
38 **NORTHERN SPOTTED OWL RULE MAKING**

39 Gretchen Robinson, DNR, requested the adoption of the Northern Spotted Owl rule. She  
40 provided a brief background for the benefit of the newer Board members. She explained the  
41 Board has conducted several rule making activities related to spotted owl conservation since  
42 2005 when WDFW scientists reported declines in Washington’s spotted owl population and  
43 habitat. Starting in 2005 the Board placed a moratorium on the decertification of Northern  
44 Spotted Owl site centers through a series of emergency and permanent rules. In December 2008  
45 the Board eliminated the moratorium language but added a process in which a three-member

1 Spotted Owl Conservation Advisory Group would have a role, along with WDFW, in the  
2 evaluation of whether any site center may be decertified at a landowner's request while the  
3 Board considered a long-term conservation strategy. She referred the Board to the "Chronology  
4 of Board Actions" in their materials for rule making activities from December 2008 to the  
5 present. She pointed out the recommendation in November 2009 by the Policy Working Group  
6 on Northern Spotted Owl Conservation to continue the current decertification process under an  
7 open ended rule with an annual review until the Board resolves outstanding questions regarding  
8 spotted owl conservation.

9  
10 She reported no one attended the April 7, 2010 public hearing and the Board did not receive any  
11 comments on the rule proposal. She also reported staff has reviewed all of the small forest  
12 landowner long-term applications and found that none of them include lands in the designated  
13 areas that may be subject to the rule.

14  
15 **MOTION:** Anna Jackson moved that the Forest Practices Board adopt the rule proposal  
16 that amends WAC 222-16-010 and 222-16-080 relating to the spotted owl  
17 conservation advisory group and elimination of the moratorium on Northern  
18 Spotted Owl decertification. She further moved to direct staff to file a CR-103  
19 Rule Making Order with the Office of the Code Reviser.

20  
21 **SECONDED:** Dave Somers

#### 22 23 Board Discussion

24 Tom Davis asked who sat on the Board's Policy Working Group. Young answered the group was  
25 represented by government, landowner, and conservation interests.

26  
27 Davis asked why the Board is looking at an annual review rather than a sunset date. Young  
28 answered the Board had been through a series of extensions of emergency rules to keep doing  
29 this while long-term strategies were put in place, and it seemed more efficient to make it open  
30 ended while the Board completes a long-term strategy. Phil Ferester added that emergency rules  
31 are only valid for 120 days, and it can be a major workload issue for the Board and staff to adopt  
32 multiple emergency rules.

33  
34 Tom Laurie said the fact that there was no public comment at all speaks to the Policy Work  
35 Group being an effective way to deal with the issues.

36  
37 **ACTION:** Motion passed unanimously.

#### 38 39 **PUBLIC COMMENT ON ADMINISTRATIVE APPEALS RULE MAKING**

40 None.

#### 41 42 **ADMINISTRATIVE APPEALS RULE MAKING**

43 Gretchen Robinson, DNR, requested that the Board begin an expedited rule making process to  
44 address changes in statute to administrative appeals processes (House Bill 2935, 2010  
45 legislation). The legislation simplified the appeals process for environmental and land use  
46 decisions. The affect on forest practices is:

- 1 • It eliminated the Forest Practices Appeals Board (FPAB) and makes DNR’s decisions  
2 appealable to the Pollution Control Hearings Board.
- 3 • It made the defined term, “date of receipt” the standard trigger for appeals timelines.
- 4 • It standardized appeal deadlines to 30 days, making Stop Work Orders appealable within 30  
5 days instead of 15 days.
- 6 • It broadly included the decisions of DNR under the Pollution Control Hearings Board’s  
7 jurisdiction, making it suitable to insert guidance in the rules for the “notice of a conversion  
8 to a non-forestry use” – an appealable notice added to RCW 76.09.060(3)(b) in 2007  
9 legislation.

10  
11 She explained the first step in expedited rule making for the forest practices program is to  
12 distribute language for early review to WDFW, counties and tribes pursuant to RCW  
13 76.09.040(2).

14  
15 **MOTION:** Dave Somers moved that the Forest Practices Board approve the rule proposal,  
16 relating to the elimination of the Forest Practices Appeals Board and a  
17 definition for “notice of a conversion to a non-forestry use,” for a 30 day review  
18 with the counties, Department of Fish and Wildlife and tribes. This rule making  
19 incorporates provisions of the 2010 Substitute House Bill 2935 and the 2007  
20 Second Substitute Senate Bill 5883.

21  
22 **SECONDED:** Norm Schaaf

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

25  
26 **EXECUTIVE SESSION**

27 Executive session was convened from 11:50 a.m. to 12:00 noon.

28  
29 Meeting adjourned at 12:00 noon.