

1 **FOREST PRACTICES BOARD**
2 **REGULAR BOARD MEETING**
3 May 8, 2012
4 Natural Resources Building
5 Olympia, Washington
6

7 **Members Present**

8 Bridget Moran, Chair of the Board, Department of Natural Resources
9 Bill Little, Timber Products Union Representative
10 Bob Guenther, General Public Member/Small Forest Landowner
11 Carmen Smith, General Public Member/Independent Logging Contractor
12 Dave Somers, Snohomish County Commissioner
13 David Whipple, Designee for Director, Department of Fish and Wildlife
14 Norm Schaaf, General Public Member
15 Paula Swedeen, General Public Member
16 Phil Davis, General Public Member
17 Jaclyn Ford, Designee for Director, Department of Agriculture
18 Tom Laurie, Designee for Director, Department of Ecology
19

20 **Members Absent:**

21 David Herrera, General Public Member
22 Mark Calhoon, Designee for Director, Department of Commerce
23

24 **Staff**

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

30 **WELCOME AND INTRODUCTIONS**

31 Bridget Moran called the Forest Practices Board (FPB or Board) meeting to order at 9:05 a.m.
32 Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency
33 safety briefing.
34

35 **APPROVAL OF MINUTES**

36 **MOTION:** Dave Somers moved the Forest Practices Board approve the February 14, 2012
37 meeting minutes.
38

39 **SECONDED:** Bob Guenther
40

41 **Board Discussion:**

42 David Whipple made two corrections to page 7, lines 34 and 35 to read as follows:
43 David Whipple . . . administrative changes to their self-certification process under the Bald and
44 Golden Eagle Protection Act and track state forest practices applications proposing activities certain
45 distances from eagle ~~habitat~~ nests and roosts. . .
46

47 **ACTION:** Motion passed unanimously.
48

1 **REPORT FROM CHAIR**

2 Bridget Moran reported:

- 3 • Beginning May 2013 there will be an annual review of the effectiveness of the new process in
4 WAC 222-20-120 regarding the notice of forest practices to affected tribes.
- 5 • The compliance monitoring 2010-2011 biennial report showed mixed results and there is still
6 much work to do to reach full compliance. Completing the compliance action plan tasks and
7 implementing a training program is expected to result in improved compliance over time.
- 8 • Second Engrossed Substitute Senate Bill 6406 integrating FPA/HPAs passed:
- 9 ○ The Board will consider filing a CR-101 at this meeting;
- 10 ○ New forest practices application (FPA) fees and three-year FPA terms will take effect July
11 10, 2012;
- 12 ○ Rule making to integrate hydraulic project approval in forest practices will occur by
13 December 2013.
- 14 • The critical habitat (SEPA) rule making is moved to August to allow the Washington
15 Department of Fish and Wildlife (WDFW) time to consider a recommendation to the Board on
16 the gray wolf.

17
18 David Whipple, WDFW, explained that in December 2011 the Washington Fish and Wildlife
19 Commission adopted the Wolf Conservation Management Plan for the gray wolf in Washington. He
20 said he will be assembling the Wildlife Working Group to assess the forest practices critical habitat
21 rules in relation to the Wolf Conservation Management Plan.

22
23 **PUBLIC COMMENT**

24 Chris Mendoza, Conservation Caucus, commented on the compliance monitoring report. He said he
25 appreciated that the report is more objective than in the past and there was more opportunity for
26 input. He also mentioned the haul road results were probably artificially high because monitoring
27 did not take place in rainy conditions, which is the critical time to assess disconnection from waters.

28
29 Peter Goldman, Washington Forest Law Center, asked the Board to consider how it can influence
30 regulators to improve compliance.

31
32 Pete Heide, Washington Forest Protection Association (WFPA), stressed that WFPA members' goal
33 is to perform at 100 percent compliance. He summarized points he made in a letter which he
34 provided to Board members, including notable results that show signs of compliance improvements
35 and suggestions for future reports. He said WFPA remains concerned about the reporting of water
36 type classifications. He also said the rules are clear and enforcement should be emphasized.

37
38 **STAFF REPORTS**

39 Bridget Moran asked if Board members had questions about the staff reports. There were no
40 questions.

41
42 **2012 LEGISLATIVE SUMMARY AND BUDGET UPDATE**

43 Darin Cramer, DNR, reported the passage of legislation affecting the forest practices program:
44 2ESSB 6406 which integrates hydraulic projects into the FPA process; E2SHB 2238 that pairs
45 required investments in compensatory environmental mitigation with programs that are referenced
46 in Title 76 RCW; 3ESHB 2127 on fiscal matters; and ESB 6074, a jobs in the environment bill that
47 appropriated \$10 million to the Recreation and Conservation Funding Board for the Family Forest
48 Fish Passage Program.

1
2 He summarized provisions of 2ESSB 6406, including:

- 3 • Rule making by December 31, 2013 to incorporate fish protection standards from the hydraulics
- 4 code and develop guidance;
- 5 • Adding 30 days to the review period for FPAs that include hydraulic projects;
- 6 • Eliminating the Forest Practices Act requirement for an early 30-day review of draft rules by
- 7 WDFW and counties (effective July 2012);
- 8 • FPA fee increases (effective July 2012); and
- 9 • FPAs effective for three years instead of two (effective July 2012).

10
11 **OVERVIEW OF PROPOSED NORTHERN SPOTTED OWL CRITICAL HABITAT**
12 **DESIGNATION**

13 Ken Berg, U.S. Fish and Wildlife Service (USFWS), gave a presentation on the Service's proposed
14 revised northern spotted owl critical habitat designation and the draft environmental impact
15 statement on the experimental barred owl control (which is part of the spotted owl recovery plan).
16 He explained that the economic analysis for the proposed critical habitat rule will be released the
17 end of May and the comment period for the proposed rule will be extended for 30 days after the
18 release of the analysis.

19
20 He said all of the private forest lands proposed for critical habitat in Washington (approximately
21 180,000 acres) are within the current Spotted Owl Special Emphasis Areas, and about a quarter of
22 those areas are already covered by habitat conservation plans or safe harbor agreements.

23
24 Bridget Moran said the Board will consider modifications to its critical habitat rule after the federal
25 rule is finalized, and the USFWS expects a final federal rule just after the Board's November 2012
26 meeting. She also said the Board will continue the discussion about the spotted owl at the August
27 meeting and consider convening a Board subcommittee.

28
29 **ADAPTIVE MANAGEMENT REVIEW (LEAN PROCESS) UPDATE**

30 David Howe, Strategica, reported observations from the Lean Event on the Adaptive Management
31 Program. He explained that the CMER scoping paper and the study design processes were selected
32 for assessment. The key suggested changes are:

- 33 • fewer review and approval steps;
- 34 • smaller teams of qualified writers;
- 35 • fewer input/comment/decision points for CMER; and
- 36 • expedited peer review for projects with less potential for rule change.

37
38 Howe said the process improvements could result in as much as an 80 percent time reduction,
39 assuming the appropriate expertise is available to comprise differently structured technical writing
40 and implementation groups (TWIGs). He also offered additional observations: the distinction
41 between CMER and Forests and Fish Policy (Policy) is fuzzy; there is excessive due process; the
42 consensus decision making approach contributes to extremely long cycle times. He suggested that
43 the recommended process be piloted before full implementation.

1 Jim Hotvedt, DNR, and Howe provided the following answers to Board members' questions:

- 2 • Other parts of the adaptive management process could benefit from a similar assessment.
- 3 • It was advantageous to include an independent facilitator in the Lean process.
- 4 • CMER voting members participated in the Lean process and were outstanding to work with.
- 5 • CMER will be considering whether to conduct one or more pilots, which may be possible for
- 6 studies currently underway.

7
8 With general Board agreement, Bridget Moran provided direction to CMER to receive the formal
9 report, digest it, and initiate the suggested scoping and study design process improvements on
10 projects that would commence before the August Board meeting. She also requested that CMER
11 provide a status report and recommendations to the Board in August.

12 13 **COMPLIANCE MONITORING BIENNIAL REPORT**

14 Walt Obermeyer, DNR, presented a summary of the 2010-2011 Biennial Compliance Monitoring
15 Report and provided a detailed overview of the results. He concluded that:

- 16 • The correct water type determination, and subsequent Type F Water buffering, of low-gradient
- 17 streams in Western Washington needs improvement;
- 18 • There were fewer "major" and "moderate" severity occurrences than in the 2008-2009 biennial
- 19 sampling period;
- 20 • A high level of compliance was demonstrated on haul routes; and
- 21 • There was good compliance in road construction and abandonment.

22
23 Darin Cramer, DNR, reported on the status of the Compliance Action Plan. He said recently
24 completed actions are:

- 25 • FPAs must include water type classification information and documentation to be considered
- 26 complete;
- 27 • Special emphasis sampling, employed in 2011, has resulted in the haul route survey and a
- 28 water/wetland classification sample; and
- 29 • A condition is added to 20-acre exempt FPAs to provide a two-day notice before harvest.

30
31 He said water typing guidance will soon be added to the forest practices website and several other
32 action items are ongoing.

33
34 Norm Schaaf asked how many of the 8,973 FPAs submitted in 2010-2011 included harvesting; how
35 many of the 196 sample FPAs included harvesting; what is the east/west breakdown; and what is
36 the landowner breakdown. Obermeyer said he would provide the answers at a later date because he
37 did not have the information with him.

38 39 **PUBLIC COMMENT**

40 Chris Mendoza, Conservation Caucus, commented on the Lean discussion. He commented that the
41 Adaptive Management Program (AMP) is a stakeholder-driven process and asked the Board to be
42 cautious about any change for AMP decision approval from the current consensus to a majority
43 requirement. He added that the Lean process should not be seen as a substitute for an objective
44 independent audit.

1 **INTRODUCTION TO STATE FORESTER**

2 Aaron Everett, DNR, explained his role as Washington State Forester, including:

- 3 • serving as DNR’s conduit for several federal funding programs including fire, forest health, and
4 stewardship forestry technical assistance programs;
5 • tracking federal funding legislation, e.g., the Farm Bill; and
6 • initiating a process under state law to look at forest health issues in Eastern Washington.

7
8 There was discussion about the state forester’s nexus with the Forest Practices Board. Everett gave
9 the example of seeking funding partners for the Forestry Riparian Easement Program, the Family
10 Forest Fish Passage Program, and Adaptive Management Program scientific research.

11
12 **CLEAN WATER ACT ASSURANCES**

13 Mark Hicks, Department of Ecology, reported that in the past six months:

- 14 • The Solar Radiation/Effective Shade study was completed (approved all the way through the
15 CMER and Policy process).
16 • Two studies are nearing completion (now in CMER review):
17 ○ Bull Trout Overlay Temperature; and
18 ○ Mass Wasting Landscape-Scale Effectiveness.
19 • Two non-CMER milestones were completed upon adopting the RMAPs rule; those are revising
20 the forest roads board manual and revising the RMAPs reporting forms.

21
22 He also mentioned two additional notable efforts:

- 23 • Progress on developing a strategy to examine the effectiveness of the Type N rules; and
24 • The Lean assessment.

25
26 **FOREST BIOMASS WORK GROUP UPDATE**

27 Rachael Jamison, DNR, explained that the Forest Practices Biomass Working Group is comprised
28 of a broad range of stakeholders and was formed to analyze the efficacy of the forest practices rules
29 for forest biomass removal. Its purpose is to arrive at a consensus recommendation to the Board
30 after analyzing existing science, policy, available technologies, best management, and the existing
31 forest practices rules applicable to biomass harvest. She said the group will be taking a field trip to
32 eastern Washington in June, and plans to offer a final recommendation to the Board in August.

33
34 There was discussion about demand for biomass and the construction of biomass facilities in the
35 state. Jamison pointed out that demand is not within the purview of forest practices; however, the
36 results of the University of Washington’s supply study shows that although there is not a limitless
37 supply, there is much more forest biomass available than previously thought.

38
39 Paula Swedeen inquired about planned facilities on the Olympic Peninsula. Norm Schaaf answered
40 Nippon Paper’s co-generation facility expansion is under construction and Port Townsend Paper’s
41 expansion has received permits.

42
43 Bridget Moran explained that any forthcoming recommendations having an effect on aquatic
44 resources would go through the Adaptive Management Program process prior to the Board
45 receiving a recommendation. She also requested that staff send the Working Group’s website link to
46 Board members.

1 **RULE MAKING FOR FORESTRY RIPARIAN EASEMENT PROGRAM**

2 Gretchen Robinson and Dan Pomerenk, DNR, requested that the Board adopt the Forestry Riparian
3 Easement Program rule changes. They said two public hearings were held, one in Spokane on
4 March 27 and one in Centralia on March 29, and the Board received one comment in support of the
5 proposal and one comment about the under-funding of the program.

6
7 **MOTION:** Dave Somers moved the Forest Practices Board adopt the rule proposal amending
8 chapter 222-21 WAC, Forestry Riparian Easement Program, that incorporates House
9 Bill 1509. He further moved the Board direct staff to file a CR-103 Rule Making
10 Order with the Office of the Code Reviser.

11
12 **SECONDED:** Paula Swedeen

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14 Board Discussion:

15 Norm Schaaf asked about use of the term, “forests and fish rules” in rule language, and asked if it
16 would be understood through time which rules it refers to. Staff responded that the proposed rule
17 language includes a definition in WAC 222-21-010 that should provide a clear understanding:
18 “Forests and fish rules” means the rules adopted by the Board in accordance with RCW 76.09.055,
19 RCW 76.09.370, and the amendments to those rules.”

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21 **ACTION:** Motion passed unanimously.

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23 **PUBLIC COMMENT ON PILOT RULE MAKING FOR WESTSIDE TYPE N BUFFER**
24 **EFFECTIVENESS SOFT ROCK STUDY**

25 Peter Goldman, Washington Forest Law Center, said the Conservation Caucus supports the pilot
26 rule making. He stressed it is important to stick with the methodology that has been agreed to and
27 living with the results no matter what they are.

28
29 **PILOT RULE MAKING FOR WESTSIDE TYPE N BUFFER EFFECTIVENESS SOFT**
30 **ROCK STUDY**

31 Jim Hotvedt, DNR, and Mark Hicks and Bill Ehinger, Department of Ecology described the Type N
32 Experimental Buffer Treatment for Soft Rock Lithology study and requested the Board’s approval
33 to proceed. They explained the goal of the research is to answer how harvest affects:

- 34 • water temperature within and at the outlet of a Type N basin;
35 • sediment input to and storage within a Type N channel;
36 • suspended sediment and nutrient export to downstream Type F waters; and
37 • benthic macroinvertebrate communities immediately downstream of a harvest unit.

38
39 There was discussion about whether the study sites or reference sites could be changed after the
40 Board approves the action. Hicks said the proposal indicates the likely magnitude of sites but there
41 is a possibility of sites being eliminated and added. Ehinger said the reference sites will not change.

42
43 Hotvedt described several revisions to the draft CR-101 he wanted the Board to consider before
44 approval.

45
46 **MOTION:** Tom Laurie moved the Forest Practices Board approve a pilot rule for the Westside
47 Type N Buffer Effectiveness Study in Soft Rock Lithologies under the

1 Administrative Procedure Act (RCW 34.05.313) as presented today. The pilot will
2 test the effectiveness of the current riparian management rules in providing
3 protection for water quality and providing riparian functions along non-fish bearing
4 streams in western Washington.

5
6 Forest practices conducted under this pilot will vary from existing forest practice
7 rules for certain study sites and the Board determines that the pilot rule is in the
8 public interest and necessary to conduct the riparian treatments. He further moved
9 the Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify
10 the public that the Board is conducting pilot rule making.

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12 **SECONDED:** David Whipple

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14 **ACTION:** Motion passed unanimously.

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16 **PUBLIC COMMENT ON CMER 2013 WORK PLAN AND BUDGET**

17 None.

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19 **CMER 2013 WORK PLAN AND BUDGET**

20 Jim Hotvedt, DNR, requested approval of the 2013 CMER work plan and budget. He provided an
21 overview of the entire work plan document, and pointed out that the 2013 projects and budget are
22 shown on pages 11 and 12 of the document. He summarized the 2013 budget which shows a Forests
23 and Fish Support Account balance of \$1,737,000.

24
25 Bridget Moran said it appears more funds are available than are needed for projects, which is not
26 consistent with what the Board often hears about the lack of Adaptive Management Program
27 funding. Cramer explained that this budget addresses an anticipated shortfall in available funding.
28 He said the program will be in trouble by the middle of the next biennium at the current rate of
29 spending, and a sustainable long-term funding source must be found. The Forests and Fish Support
30 Account is currently the primary source of funding, but it is not adequate to keep the program
31 moving at its current pace. Hotvedt added that quite a few of the field projects are winding down
32 right now, and new projects and study designs are not being initiated because of the funding
33 uncertainty.

34
35 **MOTION:** Norm Schaaf moved the Forest Practices Board approve the 2013 CMER work plan
36 and budget.

37
38 **SECONDED:** Phil Davis

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40 **ACTION:** Motion passed unanimously.

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42 **PUBLIC COMMENT ON RULE MAKING FOR SECOND ENGROSSED SUBSTITUTE**
43 **SENATE BILL 6406**

44 Vic Musselman, Washington Farm Forestry Association, highlighted the portion of the bill that
45 specifies one three-year FPA renewal. He explained that currently applications can be renewed
46 more than once, which has benefitted small forest landowners who want to wait for more favorable
47 market conditions. He asked that Board consider a streamlined FPA review process for harvest
48 proposals already approved in the expired applications.

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RULE MAKING FOR SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

Gretchen Robinson, DNR, requested approval to file a CR-101 *Preproposal Statement of Inquiry* to notify the public the Board is considering rule making to:

- Incorporate hydraulic project approvals in the forest practices application process; and
- Clarify existing rule language related to forest practices within urban growth areas.

She indicated that staff will provide a timeline for rule making related to the hydraulic project approvals at the August meeting.

MOTION: Carmen Smith moved the Forest Practices Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public the Board is considering rule making to incorporate provisions of Second Engrossed Substitute Senate Bill 6406 relating to hydraulic project approvals for forestry activities and to clarify classification definitions.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

Executive session was convened from 3:10 p.m. to 3:39 p.m.

Meeting adjourned at 3:40 p.m.