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**FOREST PRACTICES BOARD
MEETING MINUTES**

November 1, 2006
Natural Resources Building
Olympia, Washington

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Members Present:

Vicki Christiansen, Chair of the Board
Alan Soicher, General Public Member
Bob Kelly, General Public Member
Bridget Moran, Designee for Director, Department of Fish and Wildlife
Dave Somers, Snohomish County Commissioner
David Hagiwara, General Public Member
Doug Stinson, General Public Member/Small Forest Landowner
Lee Faulconer, Designee for Director, Department of Agriculture
Sherry Fox, General Public Member/Independent Logging Contractor
Sue Mauermann, Designee for Director, Community, Trade and Economic Development
Toby Murray, General Public Member
Tom Laurie/Stephen Bernath, Designee for Director, Department of Ecology

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Staff:

Lenny Young, Forest Practices Division Manager
Neil Wise, Assistant Attorney General
Patricia Anderson, Rules Coordinator
Erin Daley, Board Support

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WELCOME AND INTRODUCTIONS

Doug Sutherland called the meeting to order at 9:00 a.m. Erin Daley, Department of Natural Resources (DNR), provided an emergency safety briefing. Introductions were made by Board, staff, and attendees.

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ANNOUNCEMENTS

Sutherland thanked Faulconer for his service on the Forest Practices Board and presented him with a plaque of appreciation.

Ann Wick will replace Lee Faulconer as the director's designee for Department of Agriculture. Wick's first meeting will be in February. Sutherland welcomed Wick to the Board.

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DESIRED FUTURE CONDITION WORKSHOP

Dave Schuett-Hames, Northwest Indian Fisheries Commission, provided an overview of the CMER approved Desired Future Conditions (DFC) Validation Study.

Jeff Welty, Weyerhaeuser, presented specific information on how the Western Washington Riparian Management DFC model is working.

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Gary Graves, DNR, described how the DFC process is applied in the field.

1 **PUBLIC COMMENT**

2 Ken Miller, Washington Farm Forestry Association, reminded the Board of the ongoing need to
3 simplify the rules. Small forest landowners have difficulty understanding the rules. Miller
4 encouraged the Board to keep family forest landowners in mind as they deliberate future rules.

5
6 Joseph Pavel, Northwest Indian Fisheries Commission, is hopeful that the DFC and PIP studies will
7 provide learning opportunities and ways to simplify the system that will guide us to our resource
8 recovery path.

9
10 Peter Heide, Washington Forest Protection Association, urged the Board to consider the McConnell
11 study funded through CMER when discussing next steps for the DFC rule making. He also
12 reminded the Board that Policy recommended that the Board consider rule making by investigating
13 the scope of potential outcomes to resolve issues identified in the study not to apply a number.

14
15 Miguel Perez-Gibson, Conservation Caucus, shared his list of the top 10 Forests and Fish
16 challenges--the Habitat Conservation Plan, adaptive management process, incidental take permits,
17 and funding for CMER. He his concerned that after all the time and money spent on DFC and PIP
18 that a more consensus product is not before the Board.

19
20 Joseph Murray, Merrill and Ring, stated that due to the complexity of the DFC rule the decision
21 should be delayed. He asked the Board to consider a workshop to look at how the rule has been
22 implemented for the last five years.

23
24 Kevin Godbout, Weyerhaeuser Company, stated that as costly and complex as the Forests and Fish
25 adaptive management process is, it does provide information to decision makers to make informed
26 decisions. Forests and Fish identified that the Board should conduct performance and financial
27 audits and conduct a peer review every five years of the CMER process. Godbout said that the
28 Board is making decisions based on a schedule and encouraged the Board to take the necessary time
29 to make a well informed decision.

30
31 Peter Goldman, Washington Forest Law Center, urged the Board to follow the policy decisions that
32 have been laid out in hours of meetings. He also recommended that the Board amend the rules that
33 the science process has identified as wrong. He also encouraged the Board to start work on the
34 cumulative affects issue.

35
36 Heath Packard, Audubon Washington, stated that today's decisions could instill hope and
37 confidence in the process but could also challenge the integrity of the process. Packard encouraged
38 the Board to make prudent and wise choices.

39
40 **ACKNOWLEDGMENT**

41 Vicki Christianson and Doug Sutherland recognized Pat McElroy and presented him with a gift
42 from the Board and staff.

43
44 **PERENNIAL INITIATION POINT RULE MAKING**

45 Christianson stated that the Board received a petition for rule making from Forests and Fish Policy
46 (Policy) on perennial initiation points, commonly referred to as PIPs. In response, the Board
47 initiated rule making. The proposed rule change included provisions that direct applicants for a
48 forest practices application to a new Board Manual Section 23. In moving rule making forward, the
49 Board directed staff to prepare the new board manual section concurrent with the rule. As required
50 by the Administrative Procedure Act and the Regulatory Fairness Act, the Board also directed

1 preparation of a cost-benefit analysis and a small business economic impact statement. The Board
2 scheduled public hearings to take testimony on the proposed rule, the new manual section, and the
3 economic analyses. In addition, the field trip associated with the Board's annual retreat provided the
4 Board considerable information and opportunity for discussion of PIP issues and the protection of
5 Type N Waters.

6
7 She believes that the majority of comment received by the Board raised substantial concern about
8 the proposed rule, the new board manual section, and the economic analysis. She recognizes the
9 limitations of the study that gave rise to Policy's petition for rule making.

10 11 **Board Comments**

12 Toby Murray commented that there is a fundamental disagreement between the definition of PIP or
13 whether something else should be identified. He is concerned with removing the defaults. He hopes
14 that Policy will present the Board with some options on how to resolve this problem.

15
16 David Hagiwara commented that the field tour in September was enlightening because it was very
17 clear that the rule does not fit all situations. The Board should not move forward just because it is
18 on the Board's work plan.

19
20 Bob Kelly stated that the tribes are implementing this rule in hopes that the adaptive management
21 process will address those outstanding issues that we do not have agreement on. The Board needs to
22 make sure the board manual makes sense to everybody.

23
24 Dave Somers commented that he is uncomfortable with the options that are before the Board. He
25 believes the options are unsatisfactory and would like to talk about what the Board can do to resolve
26 the issues.

27
28 Lee Faulconer expressed that there is confusion about the definition. He hopes that the Board can
29 deal with the issue and put a system in place that provides the necessary protection and is easy to
30 follow.

31
32 Bridget Moran expressed the need to be responsive to the adaptive management program. The
33 Board will need to take incremental steps given what the Board finds through these studies and
34 proceed cautiously so we are not imposing unrealistic expectations on the landowners.

35
36 Sue Mauermann stated that it is tough to establish regulatory performance standards around natural
37 systems that change all the time. She agreed that everyone does not have a common understanding
38 of what the definition was in the beginning of this process.

39
40 Stephen Bernath states that he views this as the beginning of an adaptive management process, not
41 the end or the middle. The Board needs to figure out how to improve the process and work
42 together.

43
44 Sherry Fox said that she had a different interpretation of what they were doing with perennial
45 stream. She thought it meant that it was flowing all the time and there would be some easy
46 identification. She does not think we have decided what we are protecting yet. She believes that
47 Policy needs to go back and get a clear definition of what perennial flow is.

48
49 Doug Stinson is appreciative of the adaptive management process. However, he does not think the
50 Board should adopt something that is not working nor has an agreement on. The field tour showed

1 obvious problems and small landowners feel pushed up against the wall on regulations. The Board
2 should question the science to ensure that it is valid.
3

4 Alan Soicher expressed his concern for the extremely slow process. The data was collected in 2001.
5 It is 2006 and the Board is still unsure whether to move forward or not. There is a cost when we
6 receive this new information and nothing is done. He thinks we should move forward with the
7 information we have and continue to amend the rules as additional science studies come available.
8

9 **MOTION:**

Bridget Moran moved that in consideration of Forests and Fish Policy's
10 recommendation; the study that underlies Policy's petition; and the comments
11 received on the proposed rule, the new manual section, and the economic
12 analysis, that the Board finds as follows:

- 13 1. Implementing the adaptive management program is an essential part of
14 being true to the Forests and Fish Report and the forest practices habitat
15 conservation plan.
- 16 2. The study that gave rise to the petition was a pilot study. However,
17 Forests and Fish Policy concluded that the results of the study would
18 likely be replicated if a full study was conducted, and that time and
19 money would be saved by accepting the pilot study. Policy unanimously
20 agreed to take action based on that pilot study.
- 21 3. The study was designed to determine whether the default basin sizes
22 established in the Forest Practices Rules are correct. The study
23 determined that these default basin sizes are not correct.
- 24 4. Taken together, study results, comments received, presentations made
25 during the Board's field tour, and operational experiences suggest
26 substantial variability in the real or apparent location of perennial
27 initiation points among drainages, and within the same drainage among
28 years and seasons. Equally sincere and qualified persons may estimate the
29 perennial initiation point in different locations. These differences appear
30 to be most prevalent in northwest Washington, but are not uncommon in
31 other parts of the state. This creates a significant enforcement problem for
32 the Department of Natural Resources and a friction point among the
33 department, landowners, and stakeholders.
- 34 5. In order for a rule to be fairly and evenly enforced, the applicant and the
35 Forest Practices forester must be able, on different days in different
36 seasons of the year, to reach the same conclusion as to where a PIP is.
- 37 6. Even after 6 months' discussion by Forests and Fish Policy and detailed
38 attention during rule-making and manual writing, it has not been possible
39 to determine a method for locating a PIP in the field, in a simple,
40 repeatable, non-technical way. It is entirely possible that no such point,
41 that is a point that is truly perennial season-after-season, year-after-year,
42 exists for some streams.
- 43 7. While the Board received information from a number of landowners
44 which suggests that the cost-benefit analysis may have underestimated
45 costs of implementing the proposed rule, that analysis was based on
46 implementing the new board manual section. Currently, PIPs are located
47 in the field for about 80 percent of the Forest Practices Applications that
48 involve PIPs. Thus, the proposed rule will affect only the 20 percent of
49 applications involving PIPs where default basin sizes are currently used.
50 Therefore, the Board finds that the benefits of eliminating the use of

1 default basin sizes outweigh costs, and deems the cost-benefit analysis
2 and small business economic impact statement as adequate to support this
3 rule.

4 Therefore, I move that the Forest Practices Board takes the following actions.

- 5 1. The Board adopts the rule with the following change: references to the
6 Board Manual Section 23 in WACs 222-16-030 (3) (c) and 222-16-030
7 (4) (c) are deleted.
- 8 2. The Board does not desire the Department to continue work on the
9 manual section related to PIPs, at this time.
- 10 3. The Board requests Forests and Fish Policy to re-evaluate the ways in
11 which the Forest Practices Rules protect riparian functions associated
12 with Type N waters. The Board requests Policy to provide the Board with
13 options for providing this protection that can be implemented in the field
14 using simple, non-technical means that are easily repeated by different
15 persons at different times of the year. Among these options, the Board
16 asks Policy to consider approaches that do not utilize the concept of
17 "perennial initiation point" or classify Type N waters into sub-categories.
18 Any options provided by Policy must provide no less protection for
19 riparian functions than provided in the current rules.
20 The Board is cognizant of the need to move expeditiously, but at the same
21 time recognizes the consequences of setting unrealistic deadlines. We
22 thus ask that Policy consider this a very high priority and report regularly
23 to the Board on progress. It is our hope that Policy can provide these
24 recommendations within 6 months.
- 25 4. The Board also requests Forests and Fish Policy to re-assess all ongoing
26 and planned Type N adaptive management projects to ensure each study
27 will provide needed scientific information.
- 28 5. The Board requests the Department to monitor implementation of the
29 Forest Practices Rules that provide protection for riparian functions
30 associated with Type N waters, and to note both successes and
31 difficulties.
- 32 6. And last but not least, the Board directs staff to re-evaluate the methods
33 and assumptions employed to estimate the costs of implementing the
34 proposed rule, in light of comments received by the Board and in
35 anticipation that similar methods and assumptions would be needed to
36 evaluate the costs of implementing recommendations provided by Policy.
37 The Board urges staff to apply a reasonable method to quantify the
38 benefits of any proposal that is brought forward by Policy.

39
40 **SECOND:** Stephen Bernath

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42 **Board Discussion**

43 Sherry Fox is concerned with the lengthy motion and not having enough time to react and suggest
44 amendments. She stated that she does not agree with paragraph #7 under "findings" and
45 recommends either deleting the entire paragraph or parts of it.

46
47 Christiansen reminded the Board that in order for the Board to move forward with rule making a
48 conclusion on whether the benefits outweigh the costs must be made since the economic analysis
49 was lacking a conclusion.

1 Alan Soicher asked what guidance DNR would provide for the next six months if a board manual
2 section is not available. Gary Graves, DNR, responded that the Department would work with
3 landowners to emphasize the point of uppermost flow as the point to be identified on the ground as
4 the protected point that establishes the upper most point of protection for Type Np waters to figure
5 out how much buffer is required below that point.

6
7 **AMENDMENT #1:** Alan Soicher moved to amend the original motion by adding “as amended.”
8 to the last sentence in paragraph #3 under “actions”.

9
10 **SECONDED:** Bob Kelly

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12 **ACTION:** Motion passed unanimously.

13
14 Bob Kelly asked that the Board consider a specific time line for Policy’s recommendations. He feels
15 that it is too open ended. Fox agreed.

16
17 **AMENDMENT #2:** Sherry Fox moved to amend the original motion by changing the last
18 sentence in “action” item #3 to read as follows: “~~It is our hope that Policy~~
19 ~~can~~ will provide recommendations to the Board within six months.”

20
21 **SECONDED:** David Hagiwara

22
23 **Board Discussion**

24 Sue Mauermann expressed concern over whether Policy will be able to make a consensus
25 recommendation within six months. She wants to ensure that the Board receives several options for
26 the Board to consider. Moran clarified that the intent of the motion is for Policy to come up with
27 options for alternative approaches on the ground.

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

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32 **AMENDMENT #3:** Sherry Fox moved to amend the original motion by striking out the entire
33 “findings” section.

34
35 **SECONDED:** David Hagiwara

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37 **Board Discussion**

38 Toby Murray reiterated that the Board must have some “findings” in order to adopt the rule.

39
40 Neil Wise, Office of the Attorney General (AGO), recommended further discussion to determine
41 some “findings”.

42
43 **AMENDMENT to**
44 **AMENDMENT #3:** Toby Murray moved to amend Amendment #3 by adding the lead in
45 paragraph to the “findings” section and paragraphs #1, 5 and 6.

46
47 **SECONDED:** Doug Stinson

48
49 **Board Discussion**

1 Dave Somers noted that the amendment does not include a finding on the economic analysis which
2 is required.

3
4 Wise reviewed the Administrative Procedure Act that states what the Board needs to have in order
5 to adopt a rule which is to identify the findings. He recommended that these findings be determined
6 and adopted by the Board prior to filing with the Office of the Code Reviser. The purpose of the
7 concise explanatory statement is to recap the rule making process and Board actions and not to
8 capture the “findings” of the cost-benefit analysis.

9
10 Christiansen stated that without any findings on the cost-benefit analysis, the Board can not adopt
11 the rule.

12
13 **ACTION:** Motion failed on the amendment to Amendment #3.

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16 **AMENDMENT #3**

17 **ACTION:** Motion failed.

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20 **AMENDMENT #4:** Sherry Fox moved to strike paragraphs #2, #3 and #4 and change paragraph
21 #7 under “findings”. Paragraph #7 to change as follows: “While the Board
22 received information from a number of landowners which suggests that the
23 cost-benefit analysis may have underestimated costs of implementing the
24 proposed rule, that analysis was based on implementing the new board
25 manual section. Currently, PIPs are located in the field for about 80 percent
26 of the Forest Practices Applications that involve PIPs. ~~Thus, the~~ The proposed
27 rule will ~~affect only~~ have an adverse economic impact on the 20 percent of
28 applications involving PIPs where default basin sizes are currently used.
29 ~~Therefore~~ However, the Board finds that the probable benefits of eliminating
30 the use of default basin sizes outweigh costs, and deems the cost-benefit
31 analysis and small business economic impact statement as adequate to
32 support this rule.”

33
34 **SECONDED:** Stephen Bernath

35
36 **Board Discussion**

37 Toby Murray stated that he is undecided on how he will vote on the motion but feels that the
38 economic analysis is flawed by not quantifying the benefits.

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41 **AMENDMENT #4**

42 **ACTION:** Motion passed.

43
44 **Board Discussion**

45 Soicher asked if the term “riparian functions” used in paragraph #3 under “actions” should be
46 changed to “public resources”. Bernath recommended “riparian functions” be changed to “aquatic
47 resources”. Soicher agreed.

48
49 **AMENDMENT #5:** Stephen Bernath moved to change the term “riparian functions” used in the
50 last sentence of the first paragraph of paragraph #3 under “actions” to

1 “aquatic resources”. The sentence would read as follows: “Any options
2 provided by Policy must provide no less protection for ~~riparian functions~~
3 aquatic resources that in provided by the current rules as amended.”

4
5 **SECONDED:** Alan Soicher

6
7 **AMENDMENT #5**

8 **ACTION:** Motion passed unanimously.
9

10 **Board Discussion**

11 Soicher is concerned about not having written field guidance for field practitioners and concerned
12 that there will be uneasy situations in the field.

13
14 In response to Soicher’s comment Fox said that for the past six years PIPs have been identified
15 without a board manual. She does not believe that resources have been damaged and that DNR staff
16 are very efficient to ensure that proper protection is in place.

17
18 Fox believes the final motion is a good compromise and thanked everyone for their diligent work
19 and looks forward to the recommendations from Policy.

20
21 Bernath stated that Policy needs to look at the regional differences as part of the recommended
22 options.

23
24 Moran stated it was important to respond to the adaptive management process.

25
26 Lee Faulconer agreed that the final motion is a good compromise and hopes that the
27 recommendations from Policy include a solution or a few options that the Board can make a
28 decision on within the next 6-7 months.

29
30 Dave Somers agreed with Faulconer and hopes that some field guidance can be developed soon.

31
32 Toby Murray appreciated the efforts made by the Board in coming up with a compromise to the
33 original motion. He appreciates paragraph #3 under the “action” item. It is essential that everyone
34 weigh in on Policy to focus on the issue to reach a conclusion.

35
36 Christiansen reflected that the Board is responsive to the public comments as shown today by the
37 Board’s deliberations. It is clear that the Board considers all the information and is the policy
38 making body. She is committed to providing leadership to Policy in order to maintain accountability
39 on this issue.

40 **ORIGINAL**

41
42 **MOTION ACTION:** Motion passed unanimously. Amended motion reads as follows:
43 Bridget Moran moved that in consideration of Forests and Fish Policy's
44 recommendation; the study that underlies Policy's petition; and the comments
45 received on the proposed rule, the new manual section, and the economic
46 analysis, that the Board finds as follows:

- 47 1. Implementing the adaptive management program is an essential part of
48 being true to the Forests and Fish Report and the forest practices habitat
49 conservation plan.

- ~~2. The study that gave rise to the petition was a pilot study. However, Forests and Fish Policy concluded that the results of the study would likely be replicated if a full study was conducted, and that time and money would be saved by accepting the pilot study. Policy unanimously agreed to take action based on that pilot study.~~
- ~~3. The study was designed to determine whether the default basin sizes established in the Forest Practices Rules are correct. The study determined that these default basin sizes are not correct.~~
- ~~4. Taken together, study results, comments received, presentations made during the Board's field tour, and operational experiences suggest substantial variability in the real or apparent location of perennial initiation points among drainages, and within the same drainage among years and seasons. Equally sincere and qualified persons may estimate the perennial initiation point in different locations. These differences appear to be most prevalent in northwest Washington, but are not uncommon in other parts of the state. This creates a significant enforcement problem for the Department of Natural Resources and a friction point among the department, landowners, and stakeholders.~~
2. In order for a rule to be fairly and evenly enforced, the applicant and the Forest Practices forester must be able, on different days in different seasons of the year, to reach the same conclusion as to where a PIP is.
3. Even after 6 months' discussion by Forests and Fish Policy and detailed attention during rule-making and manual writing, it has not been possible to determine a method for locating a PIP in the field, in a simple, repeatable, non-technical way. It is entirely possible that no such point, that is a point that is truly perennial season-after-season, year-after-year, exists for some streams.
4. While the Board received information from a number of landowners which suggests that the cost-benefit analysis may have underestimated costs of implementing the proposed rule, that analysis was based on implementing the new board manual section. Currently, PIPs are located in the field for about 80 percent of the Forest Practices Applications that involve PIPs. Thus, the proposed rule will affect only have an adverse economic impact on the 20 percent of applications involving PIPs where default basin sizes are currently used. Therefore However, the Board finds that the probable benefits of eliminating the use of default basin sizes outweigh costs, and deems the cost-benefit analysis and small business economic impact statement as adequate to support this rule.

Therefore, I move that the Forest Practices Board takes the following actions.

1. The Board adopts the rule with the following change: references to the Board Manual Section 23 in WACs 222-16-030 (3) (c) and 222-16-030 (4) (c) are deleted.
2. The Board does not desire the Department to continue work on the manual section related to PIPs, at this time.
3. The Board requests Forests and Fish Policy to re-evaluate the ways in which the Forest Practices Rules protect riparian functions associated with Type N waters. The Board requests Policy to provide the Board with options for providing this protection that can be implemented in the field using simple, non-technical means that are easily repeated by different persons at different times of the year. Among these options, the Board

1 asks Policy to consider approaches that do not utilize the concept of
2 "perennial initiation point" or classify Type N waters into sub-categories.
3 Any options provided by Policy must provide no less protection for
4 riparian functions than provided in the current rules as amended.
5 The Board is cognizant of the need to move expeditiously, but at the same
6 time recognizes the consequences of setting unrealistic deadlines. We
7 thus ask that Policy consider this a very high priority and report regularly
8 to the Board on progress. ~~It is our hope that Policy can~~ will provide these
9 recommendations within six months.

- 10 4. The Board also requests Forests and Fish Policy to re-assess all ongoing
11 and planned Type N adaptive management projects to ensure each study
12 will provide needed scientific information.
- 13 5. The Board requests the Department to monitor implementation of the
14 Forest Practices Rules that provide protection for riparian functions
15 associated with Type N waters, and to note both successes and
16 difficulties.
- 17 6. And last but not least, the Board directs staff to re-evaluate the methods
18 and assumptions employed to estimate the costs of implementing the
19 proposed rule, in light of comments received by the Board and in
20 anticipation that similar methods and assumptions would be needed to
21 evaluate the costs of implementing recommendations provided by Policy.
22 The Board urges staff to apply a reasonable method to quantify the
23 benefits of any proposal that is brought forward by Policy.

24 25 **UPLAND WILDLIFE PLANNING**

26 Bridget Moran stated that Department of Fish and Wildlife (DFW) is interested in reinvigorating the
27 wildlife side of the Board's work plan. She feels that DFW would like to address the wildlife issues
28 on a landscape approach. She would like all the caucuses to work collaboratively with her to
29 reinvigorate Forests and Fish Policy to include wildlife. Moran asked the caucuses to join her in a
30 launch to reinvigorate the wildlife work plan and a recommitment of the TFW principles to move
31 that forward.

32 33 **Board Discussion**

34 Christianson asked if Moran had some kind of timeline. Moran replied that she does not have a
35 timeline yet. Her commitment is to see this on Policy's work plan. Once she talks to Policy she will
36 know what the timeline will be.

37 38 **NSO RECOVERY PLAN UPDATE**

39 Lenny Young, DNR, provided an update on the Northern Spotted Owl Recovery Plan. John
40 Mankowski and Young have been dually representing the State of Washington since the team was
41 convened in April 2006. At the end of Summer, a consensus draft plan was submitted to the
42 Regional Director of U.S. Fish and Wildlife Service. The Regional Director traveled to Washington
43 D.C. to brief an oversight group on October 6, 2006. The Regional Director asked the team to
44 reconvene and discuss the information given by the oversight group. The principle request is that
45 the team provide some options. The team has discussed the options and has scheduled additional
46 meetings through January 2007. The team is working towards publication of the final recovery plan
47 in the Federal Register by November 2007.

- 1 **STAFF REPORTS**
- 2 **Adaptive Management**
- 3 **Update on Forest Practices Applications within Spotted Owl SOSEA's**
- 4 **Rule Making Schedule**
- 5 **Compliance Monitoring Project Update**
- 6
- 7 There were no questions.
- 8
- 9 Meeting adjourned at 4:00 p.m.