FOREST PRACTICES BOARD

REGULAR BOARD MEETING
February 8, 2011
Natural Resources Building
Olympia, Washington

Members Present
Peter Goldmark, Chair of the Board, Department of Natural Resources
Bill Little, Timber Products Union Representative
Carolyn Dobbs, General Public Member
Dave Somers, Snohomish County Commissioner (absent from 9:30 a.m.-10:45 a.m.)
David Whipple, Designee for Director, Department of Fish and Wildlife
David Herrera, General Public Member
Doug Stinson, General Public Member/Small Forest Landowner
Mark Calhoon, Designee for Director, Department of Commerce (absent from 9 a.m.-12 p.m.)
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Sherry Fox, General Public Member/Independent Logging Contractor
Stephen Bernath, Designee for Director, Department of Ecology

Members Absent:
Tom Davis, Department of Agriculture

Staff
Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9 a.m. He introduced Mark Calhoon as the new Board member representing the Department of Commerce. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Norm Schaaf moved to approve the November 10, 2011 meeting minutes.

SECONDED: Doug Stinson

Board Discussion:
Goldmark noted a citation error on page 9, line 29. The RCW reference should be 76.09.040(2), not 34.05.040(2).

ACTION: Motion passed unanimously. (Mark Calhoon was absent from vote.)

REPORT FROM CHAIR

Peter Goldmark summarized the status of the forest practices budget. The governor's 2012-13 biennial budget proposes a reduction of 20 percent for the program, with the expectation of an offset in whole or in part by fees. This is in addition to the $4 million reduction already taken in the current biennium which caused a reduction of 25.7 full time equivalent staff.

He added DNR has been working with stakeholders on a Forest Riparian Easement Program bill in hopes that funding and other long-standing issues can be resolved.

PUBLIC COMMENT

Shawn Cantrell, Seattle Audubon, said he was encouraged by a renewed focus and energy within the Northern Spotted Owl Implementation Team. He read an excerpt from the soon-to-be-finalized federal Northern Spotted Owl Recovery Plan that called for a more important role for state and private lands in the owl's recovery. Norm Schaaf asked if the implementation team is the appropriate body to consider the federal plan's recommendations; Cantrell answered only if the Board broadens the team's scope of work.

Pete Heide, Washington Forest Protection Association (WFPA), said the association's goal is 100 percent compliance. He pointed out that over 90 percent of the forest practices reviewed in the recent compliance monitoring effort was carried out either within the rules, or not so far outside the rules as to cause significant resource damage. He stressed that feedback is an important tool for improvement, but it is necessary that the feedback be more immediate than it is currently. He said stream width and RMZ length are difficult to control in the natural environment, and he offered WFPA's support in developing protocols to consistently audit the stream width calls and reduce errors in stream length measurements.

Kara Whitaker, Washington Forest Law Center, commented that the appropriate identification of water types in forest practices applications is not being adequately enforced. She requested that the Board direct DNR to act on the Conservation Caucus' recommendations for solutions to improve implementation of the water typing rules.

Peter Goldman, Washington Forest Law Center, thanked the Board in advance for giving the Conservation Caucus an opportunity to make a presentation on compliance issues related to water typing. He suggested a variety of factors should be considered - base map accuracy, better process for landowners to change water types, better enforcement, and perhaps even a rule change.

Chris Mendoza, Conservation Caucus, commented on two issues with the biennial compliance monitoring report. It should distinguish between compliance rates on Type F activities and Type N activities, and not be averaged; and the "professional judgment calls" should be better defined.

Miguel Perez-Gibson, Conservation Caucus, said the Board can play an important role in the biomass issue by addressing sustainability of the feedstock and creating best management guidelines. He said the Board does not want to create a system where species can become threatened or endangered. If the Board can address the habitat associated with down woody material, it will take away some of the concerns about this evolving new industry and can help with some of the fuel reduction problems on the eastside.

STAFF REPORTS

Adaptive Management

Jim Hotvedt, DNR, said Forests and Fish Policy (Policy) is in the process of reviewing the Road Sub-Basin Effectiveness Monitoring Report and has 180 days to make a recommendation to the Board. It was independently reviewed by the Scientific Review Committee and got fairly high remarks for study design and thoroughness.

Board Manual

Donelle Mahan, DNR, said she is convening a group in February to help draft the RMAP extension portion of Section 3, Guidelines for Forest Roads. She said that manual, along with changes to sections 18 and 11 for the riparian open space and watershed analysis will go to the Board prior to the May meeting for review. Stephen Bernath asked if the timeline for the RMAPs portion was moving forward even though the rule was not on the February agenda. Mahan answered yes.

Clean Water Act Assurances

Mark Hicks summarized the past six months progress as shown in the January 2010 Clean Water Act Milestones report. He said the biggest challenges to milestone completion are the CMER research budget and the capacity of non-paid scientists to do the work.

- Sherry Fox asked if all stakeholders involved in dispute resolution are supposed to abide by the same process. Hicks answered yes, and if there are problems Department of Ecology (Ecology) needs to hear about it.
- Carolyn Dobbs asked whether the wetland milestones with an "in question" status are getting resolved. Hicks answered that the Wetlands Scientific Advisory Group (WETSAG) is rethinking the appropriate direction for the Wetland Road Mitigation study.
- Paula Swedeen asked for implications of milestones not being met, and asked about whether there is a funding strategy to ensure that CMER can carry out its research. Hicks said the 2010 milestones are still being completed, but they are operational and not the type of work that will prevent the 2011 milestones from proceeding. But the CMER issue is much more difficult because it is much larger in scope and funding. The strategy is the principals seeking long-term funding for the Adaptive Management Program, but so far the result has been a year-by-year fix.
- Norm Schaaf asked for clarification on the status of certain milestones that says, "Ecology provided suggested approach. No further action on this issue has occurred." Hicks answered this means it is a DNR staffing issue and they are just unable to tackle the work right now. Ecology suggested ways to complete the milestone, and hopefully since some ground has been broken on it, they will be able to resolve it when they can work on it.

Rule Making Activity

Marc Engel, DNR, gave a brief overview of the status of the current rule making activities, some of which the Board would be considering later in the meeting. He also mentioned staff will begin the board manual work with stakeholders very soon to incorporate the RMAPs process.

Small Forest Landowner Advisory Committee and Small Forest Landowner Office

Mary McDonald, DNR, talked about the *Family Forest Fish Passage Program 2010 Implementation Report*, and the *Forest Stewardship Notes* which is a joint Washington State University and DNR online newsletter.

- Peter Goldmark asked what percentage of small forest landowners have internet access. McDonald answered she didn't know, but less than one percent of those who do are still on dial-up.
- Sherry Fox thanked the Small Forest Landowner Office staff for all the work, and pointed out that the internet is the only cost-effective way to do this now.
- Carolyn Dobbs mentioned the importance of letting people know libraries are a good place to get internet access.
- Stephen Bernath said he wanted to remind the Board that Policy members initiated a federal request for a funding match for the Family Forest Fish Passage Program, and drew attention to a Department of Ecology publication, *Washington State Environment and Economy: Jobs in the Woods Through Proven Solutions*.

Taylor's Checkerspot Butterfly

Sherri Felix, DNR, explained the Taylor's Checkerspot Butterfly report is the third annual report since the Board approved a voluntary conservation approach for the butterfly in 2006. She reported that none of the 2010 forest practices permits within one mile of its habitat were deemed by the Washington Department of Fish and Wildlife to pose a risk to the species. She also said the Board would soon receive an updated report which will highlight this finding more clearly and better describe the location of one of the 2010 permits.

David Whipple, Washington Department of Fish and Wildlife, summarized the status of large landowner management plans. The Merrill & Ring Company plan was completed and signed on February 10, 2010, and the DNR/Clallam County plan was signed on November 1, 2010.

TFW/Cultural Resources Committee

Jeffrey Thomas, Co-Chair, reported that the committee's high-priority projects are the charter, revisions to WAC 222-20-120, and a new board manual that would contain guidance for landowner/tribal meetings.

Upland Wildlife

David Whipple, Washington Department of Fish and Wildlife (WDFW), provided a brief background of the Wildlife Work Plan which the Board endorsed in March 2003 to focus on upland species. He said during the ongoing effort to make progress on a Northern Spotted Owl strategy, WDFW may have some capacity to do some rule work on the delisted Peregrine Falcon and Bald Eagle. After that the focus will be on the gray wolf once the Fish and Wildlife Commission adopts a state management plan.

Paula Swedeen asked if WDFW is still planning to do an assessment on the Marbled Murrelet. Whipple answered yes, and it is number two on the list after the spotted owl.

REVIEW OF 2011 WORK PLAN

Marc Engel, DNR, said staff reviewed the Governor's Executive Order 10-06 on suspending non-critical rule development and adoption. He reported that all of the rules on the Board's 2011 work plan meet at least one of the circumstances listed by the Office of Financial Management as exemptions to non-critical rule making.

PUBLIC COMMENT ON PETITION FOR RULE MAKING

Ron Malley, in reference to WAC 222-24-030(9) and his petition for rule making, said the rules lack instruction on what to do with slash when crossing a stream during road construction. He said in the harvest section you cannot cross the stream because you cannot use anything that scarifies, compacts, or disturbs the soil. He also pointed out there is a difference in the definitions of debris and slash.

PETITION FOR RULE MAKING FROM RON MALLY

Marc Engel, DNR, said staff recommends denying the petition because there is adequate instruction in several rules for removal and placement of forest slash and debris when crossing a stream during road construction.

Carolyn Dobbs, Paula Swedeen, and David Whipple asked questions related to how this issue could be more clearly stated in rule or guidance. After some discussion, Engel said there could be language added to the roads board manual.

MOTION: Norm Schaaf moved that the Forest Practices Board deny the petition for rule making, but direct staff to seek ways to clarify the issue in the board manual or by other means.

SECONDED: Carolyn Dobbs

Board Discussion:

Sherry Fox pointed out the use of "debris" in WAC 222-24-030(9), and suggested the board manual could explain that "debris" includes slash.

ACTION: Motion passed unanimously. (Mark Calhoon was absent from vote.)

WATER TYPING

Jamie Glasgow, Wild Fish Conservancy, presented several examples of areas where streams are significantly misclassified, and as a result, do not receive the necessary buffer protection. He said the problem stems from DNR water typing map inaccuracies, which often underestimate the start of fish habitat or don't show any streams where streams exist. He added that the problem is amplified because most local governments have adopted the use of the DNR maps to protect critical areas from adjacent land uses. He said until there is improved water type compliance, mistyping may be the single biggest factor that contributes to loss of riparian habitat under the current rules.

Chris Mendoza, Conservation Caucus, presented information from the 2008-2009 Compliance Monitoring Report. He showed the results pertaining to inappropriate stream classifications, and drew a conclusion that Type F streams are misclassified as Type Np significantly more often than Type Np streams are misclassified as Type F.

Mendoza listed the Conservation Caucus' recommendations to improve the accuracy of water type classifications:

- Make water type modification forms mandatory, not voluntary.
- Increase DNR's enforcement of water typing rules under WAC 222-16-031.
- Update the DNR website and restore and revise the water typing "scenarios" that were posted as guidance when the Fish Habitat Model-derived base maps were first rolled out.

- Require landowners to certify they are not relying on DNR Resource and Water Type Base Maps for water type classifications.
- Require the use of LiDAR when available.
- Reprioritize Policy's task list by moving water typing back to the top; develop board manual guidance accordingly.

Stephen Bernath offered some background information about the Board's decisions regarding the water typing system. The Forests and Fish partners never expected all fish streams would be mapped, and the focus was supposed to be on prediction based on modeling. Other states had spent millions and millions mapping all streams, and the Forests and Fish partners thought a better process would be modeling with verification. DNR received funds for modeling expected fish habitat, and DNR's maps were updated with that information. A few years ago, the last time the Board addressed the issue, Policy was not able to provide a consensus recommendation to the Board for a permanent water typing rule, and the Board made a decision to keep the interim water typing rule in effect. The Board had the impression that the DNR maps were overestimating in favor of fish bearing waters, and that landowners were doing a lot of surveying to verify.

Mendoza said the level of accuracy of the model depends on the variables of basin area, channel gradient, precipitation, and elevation. He said one of the biggest limitations is the 10-meter DEM (digital elevation model), which is not very accurate when looking at channel gradient. But map accuracy is secondary to what the rule says. WAC 222-16-031 says if your land meets certain characteristics, you should treat it as such and leave the buffer, or hire someone to conduct a protocol survey. The burden is on the landowner to make a choice.

Paula Swedeen asked if focusing on the recommendation to make water type modification forms mandatory would go a long way toward fixing the problem. Mendoza said it would help by ensuring there is documentation of the landowner having verified that the water type is accurate.

Dave Somers asked for more explanation about how restoring the "scenarios" on DNR's website would help. Mendoza explained that the Board couldn't adopt the water type map as rule because it was not 95 percent accurate, but it was rolled out anyway because it was an improvement over the old hydro layer. DNR then provided guidance in "scenarios" involving mapped and on-the-ground water types so landowners could understand how to proceed in a given situation. Some had issues with the scenarios as unrealistic, so DNR took them off the website. But they could be corrected and restored, which would be helpful to everyone.

Sherry Fox said in her experience landowners go by the physical characteristics, not the map. She said she was frustrated that a fair system of water typing was never agreed to, and the interim rule remained in effect.

Norm Schaaf said he was still struggling with what the problem is. When landowners complete applications they are required to provide evidence that they have determined the correct water type designation for each stream, or they can submit a water type modification form to have a water type changed.

Doug Stinson commented that in recent water typing work done on his property, more streams were over-typed than under-typed, and it is generally known to go both ways. Peter Goldmark said in

fairness it does go both ways, and all the data in the compliance monitoring report would be discussed later in the meeting. Jamie Glasgow commented that Wild Fish Conservancy has found in almost all of the locations they surveyed there has been a significant underestimation of the upstream extent of fish habitat and many existing streams that are not on the DNR maps at all.

Carolyn Dobbs said she wanted the system to have a high level of trust, whether a certification process, a way to close a loophole, or whatever is needed. Goldmark suggested she bring that up in the last agenda item (Future Work Session Topics).

BOARD MANUAL SECTION 21 - LOW IMPACT TEMPLATE

Phil Hess and Ken Miller, Small Forest Landowner Advisory Committee, explained their progress to date on a low impact riparian management alternate plan template. Hess highlighted laws and rules that support the alternate plan process and noted it can provide flexibility for small forest landowners.

Miller explained that the core of the template is active management of riparian management zones with a combination of thinning and patch cuts of less than an acre; the compromise is longer rotations. The template uses riparian buffers required in existing rule except for some reductions if there is no summer water, and buffer increases on non-fish perennial waters. He pointed out statistics that show that the vast majority of small forest landowners own 40 acres or less with 1000 feet or less of a stream reach. Only about one-third of a percent of forest land would be managed with the use of the template in a year. The template would provide for low risk, low impact management at the site-specific level.

Hess explained the template recognizes small forest landowners on the eastside by giving them the opportunity to manage all of their forest lands including their riparian areas to remove excessive fuel loads and allow for restoration of early seral habitat types.

Miller urged the Board members to individually involve themselves in discussions with their constituents to help find a significant tool for small forest landowners that also passes the tests of alternate plans and the empowering RCWs and WACs. He said they look forward to working with Policy members and said they hoped to return to the Board at the next meeting with a template proposal for consideration or at least an update.

Peter Goldmark thanked them for the terrific effort in trying to find a workable solution for the small forest landowner community, and widening the dialogue to the other Forests and Fish constituencies. Sherry Fox thanked them for presenting the Board with solutions. David Whipple said he appreciated their efforts, and mentioned that folks in the state agencies are working really hard on a response to meet small forest landowners' needs that will still protect the resources. Paula Swedeen asked if there had been fruitful discussions with the conservation caucus. Miller said the state caucus intended to involve others once it reached some conclusions.

NORTHERN SPOTTED OWL IMPLEMENTATION TEAM UPDATE

Bridget Moran, DNR, presented a draft work plan of the Northern Spotted Owl Implementation Team dated February 2011. She said the team had met a few times since the last Board meeting, and highlighted the following work plan items:

- Approach for voluntary incentives: Bettina Van Hagan (EcoTrust) and Cindy Mitchell (Washington Forest Protection Association) have researched a variety of approaches that exist

across international boundaries. The team is in the process of identifying which sources would be best for having follow-up conversations.

- Spatial and temporal allocation of conservation efforts: The implementation team hopes to work with the U.S. Fish and Wildlife Service (USFWS) modeling team to find out if any of the modeling content could be useful for Washington State.
- Spotted Owl Conservation Advisory Group: The Board established this group a few years ago. It has not yet been convened because the Washington Department of Fish and Wildlife has not received requests for decertification of spotted owl site centers. However, group's membership needs to be updated, and the Board can do that in May.

She added that a primary issue for the implementation team is that it has no staff to help keep things moving, and the team is considering a few creative solutions. She thanked David Whipple for starting the initial draft of the work plan, which helped the team focus its conversations.

Paula Swedeen said she wanted to encourage the implementation team to take seriously the "measures of success" in the Northern Spotted Owl Policy Working Group's recommendations to the Board. Moran said the team does have the measure of success in mind, but may need to get some specificity and clarification as to what the team can actually report on.

Norm Schaaf asked what the implementation team's role would be in regards to the federal recovery plan. Moran answered the team's charter focuses directly on incentives. She added that the charter is expired, so the Board may choose to update the team's charter by adding other topics.

Swedeen said the Board could be better informed in updating the charter if it could receive a briefing from the USFWS and an update on any work the technical team may be able to achieve between this Board meeting and the next. Moran said Ken Berg of the USFWS is willing to brief the Board after the plan is released.

LEGISLATIVE UPDATE

Darin Cramer, DNR, provided an overview of currently active legislation affecting the forest practices program, and summarized the direct effects of some of the bills. He said he will provide an update at the May meeting.

COMPLIANCE MONITORING BI-ANNUAL REPORT

Walt Obermeyer, DNR, presented a summary of results from 2008-2009 compliance monitoring field assessment period. He pointed out some conclusions:

- Compliance results are 79 percent for road-related activities and 78 percent for riparian/wetland activities.
- Compliance rates have not significantly changed from the previous period (2006-2007).
- "Noncompliance" ratings vary in severity, and a "major" noncompliant level is not common.
- The rates of compliance with FPAs are about the same as rates of compliance with rules.
- Much of the noncompliance in riparian activities can be addressed with attention to area measurements affecting leave tree stocking.
- Water typing was incorrect on about a quarter of the sampled streams.

He concluded with the following recommendations:

- To catch water typing errors, review recently approved FPAs before the activities are performed.
- Design samples to provide timely feedback on whether future actions to address noncompliance are working.

Peter Goldmark explained this is the second report since the Board adopted the Forests and Fish rules. Some level of noncompliance is understandable when rules are new, but there is no statistical difference in compliance between the two reports. He said DNR's goal is 100 percent compliance, and he has decided to ask staff to provide the Board with annual rather than bi-annual reports. He said he has also asked staff for recommendations within one month on how to improve compliance across the landscape. He said it was his hope and expectation that in one year the Board will get a report showing how the adjustments are implemented across the landscape.

Doug Stinson asked if there was a way of recognizing people who exceed the rules and do more than is required. Obermeyer answered that information is noted on the individual review form, but it is not a statistic that is documented in the report.

Dave Somers asked how the Board can address all the issues needing attention. Goldmark answered staff will come back in May with recommendations for all areas needing improvement.

Stephen Bernath noted a statistic that seemed counterintuitive – there was virtually no difference between the compliance levels of large and small landowners. Also he said he hoped in the future the data could be disaggregated to make it easier to determine the differences in particular eco-regions.

Norm Schaaf said landowners want to achieve 100 percent compliance, and the results show essentially 90 percent or barely below 90 percent, indicating there are not extremely large problems to deal with. He said he wondered if there could be more consistency in the ways rules are implemented and monitored for compliance. Paula Swedeen asked if Schaaf was talking about clarification in rule language. Schaaf answered there could be a number of ways to improve this – possibly in rule, possibly in the board manual.

David Whipple asked if an annual report is achievable without taking away from normal compliance monitoring efforts. Goldmark said it is early to tell but there are major issue areas where the resources are at risk, and hopefully there is a way to work on reaching 100 percent compliance in a reasonable period of time.

FOREST BIOMASS REVIEW

Bridget Moran, DNR, said she convened a stakeholder meeting to gain insights into concerns about future rule making or guidance to ensure ecological health of the forest where biomass is removed. The meeting was attended by representatives of WFPA, the Conservation Caucus, federal and state agencies, and the Northwest Indian Fisheries Commission. Small landowner representatives were invited but could not attend.

She said participants had a common goal to ensure the ecological health of the forest. She said she gave an update of DNR's forest biomass supply assessment being done by the University of Washington (UW) and Marc Engel explained to the group that the intent of the current forest biomass rule proposal is to ensure biomass retrieval activities comply with all of the existing forest practices rules.

She said part of the meeting discussion was about the Board's possible approaches. Should the Board be proactive now before there are more capital investments and jobs created, and the possibility of the economics overtaking the discussion? Or should the Board take time to evaluate the extent of activities through forest practices application tracking, and then contemplate next steps? She said the group decided to continue by doing the following:

- Invite industry representative to future meetings.
- Evaluate current rule protections and monitor the biomass removal through activity reported on forest practices applications (FPAs).
- Take advantage of any learning opportunities, including looking at the literature review that is currently underway by the UW as part of the DNR supply assessment, touring some of the operations, and conducting a science day to have people speak to the group for a more in-depth understanding on where the science is.
- Return to the Board with new information for further guidance on next steps.

Paula Swedeen asked Moran when the Board could expect recommendations. Moran answered she was not sure, but the group could continue a dialog and formulate questions in the event that scientists are able to participate. Also, a field day could possibly be arranged for late spring, and the supply study should be ready to look at by the end of the summer.

David Whipple commented that he participated in the meeting and the discussion was very healthy. He said he was glad to hear DNR will be tracking forest biomass removal activity through FPAs, and asked if DNR has given any thought to how site visits by field foresters might be prioritized. Moran answered DNR has not determined this definitively, but it is something DNR intends to track.

PUBLIC COMMENT ON FOREST BIOMASS RULE MAKING

Peter Goldman, representing the Olympic Forest Coalition (OFC), thanked the Board for convening the forest biomass meeting. He said OFC members have asked Miguel Perez-Gibson to represent them in that process. He said they have very serious concerns that the standard rules themselves will not support the level of industry that is anticipated. He said the OFC estimates that about 2.1 million bone-dry tons of biomass are produced each year on the Olympic Peninsula, and power plants currently in the permitting phase will require about 1.35 million dry tons per year, which would affect about 31,000 acres per year and cause about 45,000 truckloads transporting the material. He said supply cannot be calculated until it is known how much material must be left on the ground, and that needs to be informed by science.

Adrian Miller, WFPA, said WFPA continues to support the current rule making process which will create a clear regulatory base for biomass activities. He said WFPA is encouraged by DNR's effort to address some of the data gaps through their ongoing supply study and to convene stakeholders to address concerns.

FOREST BIOMASS RULE MAKING

Gretchen Robinson, DNR, requested approval to file rule language with the Office of the Code Reviser to proceed with the forest biomass rule making. She said last November staff distributed the language for a 30-day review pursuant to RCW 76.09.040(2) to the Washington Department of Fish and Wildlife (WDFW), counties and tribes, and received two comment letters in support of the proposal from WDFW and the Lummi Indian Business Council. She pointed out that the preliminary cost-

benefit analysis and small business economic impact statement (SBEIS) were included in the Board's materials and the SBEIS would be filed with the language. She said staff is conducting SEPA review, and plans to schedule three public hearings to occur in late March if the Board moves forward.

MOTION: Dave Somers moved that the Forest Practices Board approve the draft rule proposal that amends WAC 222-16-010 for public review and direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making. The rule proposal adds language to the definition of "forest practice" to make it clear that harvest of forest biomass is subject to the same resource protection measures as timber harvest in the forest practices rules.

SECONDED: Carolyn Dobbs

Board Discussion:

Norm Schaaf said the rule provides clarity but does not change how DNR already is regulating removal of forest biomass, at least in the Olympic Region. All biomass removal is considered a forest practice and is subject to all of the rules that regulate all of the forest practices activities.

Stephen Bernath said the Board has the Department of Ecology's concurrence with the proposal.

Paula Swedeen said the rule making is a good step but there is a lot of public interest in the next phase, which she said she will take seriously going forward.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON RIPARIAN OPEN SPACE PROGRAM RULE MAKING

Robert Meier, Rayonier, commented that the Riparian Open Space Program created an ecosystem services market for threatened and endangered species habitat, a market that advanced conservation well beyond the riparian open space program. Over 5,000 acres of commercial forest land has been moved into conservation status even though only hundreds of acres were purchased through the program. He said the same can be done for the conservation of Northern Spotted Owl and Marbled Murrelet habitat. He urged the Board to move the rule making forward, and said everyone should work together to seek the needed funding so it can become a similarly great conservation tool for owls, murrelets and other threatened and endangered species.

RIPARIAN OPEN SPACE PROGRAM RULE MAKING

Dan Pomerenk, DNR, requested approval to file a CR-102 *Proposed Rule Making* to incorporate provisions of Substitute Senate Bill 5401 in the forest practices rules. He informed the Board that this rule proposal is exempt from SEPA analysis.

MOTION: Stephen Bernath moved that the Forest Practices Board approve the draft rule proposal that amends portions of Title 222 WAC relating to the expansion of the riparian open space program for public review and direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making. This rule making incorporates provisions of the 2009 Substitute Senate Bill 5401.

SECONDED: Paula Swedeen

Board Discussion:
Stephen Bernath asked if the program's name change, Rivers and Habitat Open Space Program, should be reflected in the motion. Pomerenk said when the rule is adopted the name will change.

Bernath said the Board has Ecology's concurrence on the action.

Sherry Fox asked Pomerenk to remind her how the rule incorporates the provisions of Senate Bill 5401. Pomerenk said it expanded qualifying lands from only avulsing channels to channel migration zones, and incorporated other threatened and endangered species habitat.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON WATERSHED ANALYSIS RULE MAKING
Scott Swanson, on behalf of West Fork Timber and WFPA, spoke in support of the rule proposal and noted that West Fork has conducted two reviews while the rule making process has taken place. He commented that there is a new generation of DNR employees who seem to know a lot about the watershed analysis process and have been very helpful in moving reviews forward.

WATERSHED ANALYSIS RULE MAKING
Sherri Felix, DNR, requested approval to move the Watershed Analysis rule proposal into the public review process. She explained the rule is intended to ensure that watershed analysis prescriptions are protective enough to warrant exemption from Class IV-special classification which requires SEPA review. She said the Board received two comment letters from the 30-day review pursuant to RCW 76.09.040(2). One was in support from the Department of Fish and Wildlife. The other was from the Lummi Indian Business Council, who commented that the prescriptions must be more protective than the rules, changes to the rules that are subsequently more protective than prescriptions must supersede those prescriptions, and alternate plans should not supersede prescriptions that are more protective than the rules. She said staff believes the rules do address these concepts and recommends no changes to the proposed language. She said staff will plan three public hearings that will coincide with the hearings for Forest Biomass and Riparian Open Space.

Stephen Bernath said he interpreted the comments in the Lummi letter as asking if there are instances where a prescription could be eliminated that actually provides for a landscape feature that wasn't identified in the Class IV-special rule for potentially unstable slopes or landforms. He asked if there is a possibility that more protective prescriptions could be lost as a result of the review process. Darin Cramer answered it is possible but unlikely. The rule-identified landforms resulted from all of the watershed analyses that were completed by landowners, so the chance is remote of a landform not being included in the list.

Bernath asked if a prescription was removed as a result of reanalysis not being done, whether DNR would use that information in the application process in that watershed. Cramer said yes.

MOTION: Dave Somers moved that the Forest Practices Board approve the draft rule proposal that amends portions of Title 222 WAC pertaining to watershed analysis for public review and direct staff to file a CR-102 with the Office of the Code Reviser to

initiate permanent rule making. This rule making amends rules to ensure that watershed analysis prescriptions continue over time to be protective enough to warrant an exemption from Class IV-special classification.

Board Discussion:
Stephen Bernath said the Board has Ecology's concurrence on this rule. He added he expected staff to use their expertise to solve editorial challenges with the language.

SECONDED: Carolyn Dobbs

ACTION: Motion passed unanimously.

WATERSHED ANALYSIS REVIEW AND PRIORITIZATION PROCESS
Leslie Lingley, DNR, gave an overview of the watershed analysis review prioritization process which she sent to the Board prior to the meeting. Five criteria were used to establish a prioritized ranking shown on Attachment A of the status report: potential threat to public safety, activity level, landslide density due to significant storm events, stakeholder input, and whether reviews have been conducted in the watershed. She explained that staff sent a letter to landowners who own ten percent or more in the watershed, asking whether they were interested in doing a reanalysis. She said she hopes DNR will receive responses by April 1.

Stephen Bernath asked how the DNR sponsored watershed analyses will be handled. Lingley answered both DNR regulatory and DNR state lands plan to go to standard rule.

Marc Engel said DNR is asking landowners to make a decision by April 1 and staff plans to provide a list to the Board at the May meeting. If the Board adopts the rules in May, the rules will be effective by July 1 and DNR will remove prescriptions in the watersheds where landowners are choosing not to conduct reanalysis.

Carolyn Dobbs asked for clarification about who actually will conduct the reanalyses. Lingley answered the sponsors will be responsible for providing the personnel and funding. DNR will provide training, notification to landowners in the watershed, and geologist review of the final products. She added there will be many opportunities for stakeholders and managers to help with prescription re-writes, and it is important for DNR to be involved to make sure the prescriptions are reasonable and implementable. She said her staff can probably handle conducting reviews at a rate of eight to ten per year. She added that all of the steps will be in a reanalysis document DNR is working on.

ROAD MAINTENANCE AND ABANDONMENT PLANNING RULE MAKING AND BOARD MANUAL UPDATE
Darin Cramer provided a summary of progress to keep RMAPs activities moving forward to support the rule making. The DNR RMAPs specialists are developing an operational plan to solve issues identified in Policy's proposal to the Board. It will include how to standardize all reporting elements for all the regions to better identify a starting point from which to collect future information annually. This will be included in the board manual which staff hopes to deliver to the Board in May.

Marc Engel said staff has begun the environmental review, and when the SEPA checklist is completed it will be forwarded to the Commissioner of Public Lands, the responsible official for the Forest

Practices Board, to make a threshold determination. The threshold determination will drive the timeline on the rule making process; a Determination of Significance requires an environmental impact statement, and that would increase the costs and lengthen the process considerably.

FUTURE WORK SESSION TOPICS

Stephen Bernath made the following suggestions:

- The Department of Ecology would like to work with the Board if it becomes desirable to discuss the 9th Circuit Court opinion, NEDC v. Brown.
- The Environmental Protection Agency is considering issuing an aquatic pesticides program. Depending on what the final permit looks like, the Department of Ecology may report back to the Board if there are any consequences for Washington State.
- Perhaps DNR could report back to the Board throughout the process of implementing the incentives process from HB 2541, 2010 legislation.

Paula Swedeen made the following suggestions:

- Northern Spotted Owls
- Water type issues
- Recommendation from the Forest Climate Workgroup, which could have SEPA implications for CO^2 emissions and forest conversion.

EXECUTIVE SESSION

No executive session.

Meeting adjourned at 3:15 p.m.