July 19, 2010

TO: Forest Practices Board

FROM: Dan Pomerenk, Natural Resource Specialist

SUBJECT: Rule Making Proposal: Riparian Open Space Program

On August 10th I will request the Board's approval to send the enclosed draft rule language to the counties and the Washington Department of Fish and Wildlife for review and comment pursuant to RCW 76.09.040(2). We also include tribes in this review.

This rule making proposal is to change the existing rules based on state legislation directing the Board to modify the rules under the provisions of Substitute Senate Bill (SSB) 5401, 2009 session. As described in RCW 76.09.370(6), because the state legislation is directing the Board to modify the rules, the changes need not be based upon the recommendation of the adaptive management process. As a result of this legislative action, DNR worked with each Policy caucus lead to assemble a stakeholder group consisting of representatives of small forest landowners, industrial forest landowners, WDFW, DOE, Federal Services, Conservation Caucus, and Tribes. This group has been meeting since December 2009.

SSB 5401 made four major changes to the existing statutes that establish the Riparian Open Space Program to:

1. expand the program to include the acquisition of conservation easements on forest land that contains critical habitat for threatened or endangered species as designated by the Board.
2. change the type of channel migration lands eligible for acquisition from "unconfined avulsing channel migration zones" to simply "unconfined channel migration zones".
3. remove the authority for the Department of Natural Resources to purchase fee title interest in forest land that is eligible under this program and only allows acquisition of permanent conservation easements.
4. give the landowner a choice to enter into a conservation easement that conveys an interest in either the trees only or both land and trees.

The proposed rule making will only affect the rules regulating the acquisition of conservation easements. No changes to rules that affect resource protection are being considered. The four changes noted above require a rule change to language in chapter 222-23 WAC. The second major change noted above will require a change to a definition in WAC 222-16-010. Of note, staff recommends changing the title of the chapter and as a result the name of the program from "Riparian Open Space Program" to "Rivers and Habitat Open Space Program."

It is felt by staff that the proposed name change gives the program a title that is a better descriptor of the purpose of the program. A result of making this name change requires additional rule changes in WAC 222-10-125 and 222-12-010 that reference the title of the program.

The Forest Practice Board Manual Section 18 that shall include guidelines for the modified Rivers and Habitat Open Space Program is currently under development. The division will assemble a stakeholder group to develop the guidelines. It is anticipated the Board Manual Section 18 will be ready for Board approval when the rule is ready for adoption.

I look forward to seeing you on August 10th.

DP/
Attachment: Proposed rule language for 30-day review

Forest Practices Board
August 10, 2010
Riparian Open Space Program Rule Making
Proposed Rule Language for 30-day Review

WAC 222-10-125 Exemption from RCW 43.21C.030 (2)(c). Decisions pertaining to the following are not subject to any procedural requirements implementing RCW 43.21C.030 (2)(c): Approval of forest road maintenance and abandonment plans, approval of future timber harvest schedules involving east-side clear cuts, acquisitions of conservation easements pertaining to forest lands in the ~~riparian~~ rivers and habitat open space program; and acquisitions of conservation easements pertaining to forest lands in riparian zones under the forest riparian easement program.

WAC 222-12-010 Authority.
These forest practices rules are adopted pursuant to chapter 76.09 RCW, RCW 76.13.100 through 76.13.130, and RCW 77.85.180 through 77.85.190. Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the ~~riparian~~ rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.370, and 76.13.120(9).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.

Those rules marked with an asterisk (*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

WAC 222-12-090 Forest practices board manual.
When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.
(2) Standards for identifying channel migration zones and bankfull channel features.
(3) **Guidelines** for forest roads.
(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.
(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird Group survey protocol dated January 6, 2003, and formally titled *Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for ~~riparian~~ rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.
(26) **Guidelines** for placement strategy for woody debris in streams.

WAC 222-16-010 *General definitions

. . .

"Unconfined ~~avulsing~~ stream" ~~means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement~~. See WAC 222-23-010 (2).

. . .

Chapter 222-23 WAC
~~RIPARIAN~~ RIVERS AND HABITAT OPEN SPACE PROGRAM

WAC 222-23-010 Policy and definitions.

(1) **Policy.** The legislature determined that it is in the public interest to acquire (by purchase or donation) ~~an interest in~~ conservation easements on forest lands within unconfined ~~avulsing~~ channel migration zones and forest lands containing critical habitat for threatened or endangered species as designated by the board, The rivers and habitat open space program (formerly known as the riparian open space program), ~~that are offered for acquisition by the landowner, and therefore~~ established ~~a riparian open space program~~ in RCW 76.09.040 ~~to~~ , is for these forest lands voluntarily enrolled by the landowner. ~~be administered by the department. The purpose of the acquisition is to provide for ecological protection and fisheries enhancement.~~ The department may acquire ~~either the fee interest in or~~ a permanent conservation easement over such lands. The purpose of this program, which will be administered by the department, is to provide for ecological protection, and fisheries and wildlife enhancement. This chapter implements the ~~riparian~~ rivers and habitat open space program (hereafter referred to in this chapter as "program"). In any circumstance where qualifying channel migration zone lands or qualifying critical habitat lands are not acquired by the department through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.

(2) **Definitions**. ~~As used in this chapter, the~~The following ~~terms~~ definitions ~~shall have the following meanings~~apply to this chapter:

(a) "Qualifying Channel Migration Zone (CMZ) land(s)" means those forest lands located within an unconfined channel migration zone. Qualifying channel migration zone land(s) are those lands eligible for easement acquisition if it meets the standards in WAC 222-23-020(5). ~~See WAC 222-23-020(1).~~

(i) An "unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. A merchantable stand of timber may exist within the zone and is considered a part of the channel migration zone. The unconfined channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.

(ii) An "unconfined stream" is generally:

(a) a fifth order or larger water;

(b) less than 2% gradient; and

(c) found in a valley more than four times wider than the bankfull width of the

channel.

(b) ~~An "unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone and are considered a part of the channel migration zone. The unconfined avulsing channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.~~ "Qualifying Critical Habitat Land(s)" means those forest lands that qualify as one or more of the critical habitats (state) described in WAC 222-16-080 including forest lands that have existing plans or evaluations described in subsection (6) of that section. Qualifying critical habitat land(s) are those lands eligible for easement acquisition if it meets the standards in WAC 222-23-020 (5).

(c) ~~An "unconfined avulsing stream" is defined in WAC 222-16-010.~~ "Unacceptable Liabilities" means those risks the department needs to consider prior to acquiring a conservation easement such as the presence of hazardous substances on the lands or by other conditions that may create a liability to the department, or that may jeopardize the department's ability to maintain ecological protection, and fisheries and wildlife enhancement of the qualifying lands. Unacceptable liabilities may exist when the applicant is unwilling or unable to provide reasonable indemnification to the department.

(d) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW 70.102.010(5), and 70.105D.020(10), and solid waste as defined in RCW 70.95.030(23).

(e) "Conservation Easement" means a voluntary, legally enforceable land preservation agreement between the landowner and easement holder to permanently limit the type and amount of alteration of identified habitat or CMZ on the subject property while the landowner retains ownership.

WAC 222-23-020 Submitting and processing of applications for the ~~riparian~~ rivers and habitat open space program.

(1) ~~**Qualifying CMZ land(s).** Lands that qualify for the riparian open space program are those lands located within an unconfined avulsing channel migration zone and are, as of the date an application is submitted to the department under this section, identified in records of the applicable county assessor as being classified or designated as forest land under chapter 84.33 RCW or as being subject to current use taxation as forest land under chapter 84.34 RCW. Qualifying CMZ lands may be placed in the riparian open space program whether they represent all or just a portion of the lands within the channel migration zone along a particular stream segment. That is, the lands to be placed in the program may include all of a landowner's lands located within the channel migration zone up to the boundary between that zone and the RMZ core area, or lands to be included may include only a portion of a landowner's lands within an unconfined avulsing channel migration zone of a given stream segment. Likewise, where more than one landowner owns land within the channel migration zone of a given stream segment, any landowner may elect to participate in the riparian open space program without regard to participation of neighboring landowners.~~

~~Land does not qualify for the riparian open space program where the department has determined that:~~

~~(a) The lack of legal access to the land is likely to materially impair the department's ability to administer the riparian open space program with respect to the land;~~

~~(b) All persons having an interest of any description in the land, including, but not limited to, joint tenancy, tenancy in common, holder of easement, or holder of lien or security interest, have not agreed to convey or subordinate such interests to the state to the extent deemed necessary by the state to transfer the fee or easement free of or superior to any such interest;~~

~~(c) The land is subject to unacceptable liabilities as defined in WAC 222-23-020(4); or~~

~~(d) There is any other circumstance making the land unsuitable for fisheries enhancement or ecological protection.~~

~~(2)~~ **Rivers and habitat open space ~~Application~~application.** An owner or owners of qualifying CMZ lands or qualifying critical habitat lands may apply to the department to place the lands within the ~~riparian open space~~ program. ~~Applications for the riparian open space program may, at the landowners' option, be submitted at the same time as a forest practices application for adjoining or nearby forestlands, or may be submitted separately (and without reference to or the requirement of a current forest practices application).~~ The department will accept or reject the program application based on eligibility. The application for the ~~riparian open space~~ program shall be in writing on a form provided by the department. ~~and shall~~The application shall contain ~~the following~~ information the department determines is necessary to assess whether the land qualifies for the program, as well as the following information (see board manual section 18 for information details):

~~(a) Name, address, and telephone number of applicant(s);~~

~~(b) Contact name and telephone number for questions concerning the application;~~

~~(c) Location and description of the land proposed for inclusion in the program, including estimated acreage,~~

(a) ~~a~~ A description of the methods ~~used by~~ the landowner used to ~~determine~~ propose that the land ~~is~~ meets the qualifying program criteria for CMZ ~~land~~ or qualifying critical habitat lands~~and a map showing the approximate boundary between the channel migration zone and the adjoining RMZ core area (and in situations were the latter is not applicable, a description of the process the landowner used to determine that the qualifying CMZ land is within an unconfined avulsing stream channel migration zone)~~;

~~(d) Tax parcel identification number(s) that contain the qualifying CMZ land;~~

~~(e) List of all persons having any right or interest in the land covered by the application for the riparian open space program and a description of such right or interest;~~

~~(f) The stumpage value area and hauling zone in which the qualifying lands lie (see map at WAC 458-40-640).~~

~~(g) A map of the qualifying CMZ land;~~

(~~h~~b) A statement indicating the landowner's desire to place the land covered by the application within the ~~riparian open space~~ program and whether the landowner wishes to ~~convey the qualifying land in fee or convey only~~ grant a conservation easement to the state on both land and trees or in trees only;

(~~i~~c) Whether the landowner wishes to receive the statutory compensation for the conveyance or wishes to donate the qualifying CMZ lands or qualifying critical habitat lands;

(~~j~~d) Whether the landowner ~~representative submitting the application~~ is aware of the presence of any hazardous substances on the lands;

~~(k) Description and documentation of the legal and physical access to the land being acquired;~~

~~(l) The type of boundary description proposed by landowner (survey or other description); and~~

~~(m) Any other information DNR determines is necessary to assess whether the land qualifies for the riparian open space program~~

(e) A statement affirming that the person or persons submitting the application believes that the information contained in the application and its supporting materials is true and complete.

(~~3~~2) **Review and processing of application.** The application process will follow the program funding cycle process described in board manual section 18. ~~Within ninety days of receipt of~~After the department receives a complete and accurate application for the ~~riparian open space~~ program, the department ~~shall preliminarily determine (and advise the applicant) whether lands proposed for the riparian open space program appear to meet the requirements of this chapter and of RCW 76.09.040 (3) and (4), and, if so, whether there is funding available for the purchase~~will make a preliminary determination whether the application qualifies for the program. This determination is subject to the department's complete review, and subsequent confirmation of all information required for the program and eligibility of the land as qualifying for the program. ~~If the~~After a preliminary determination ~~is that the land qualifies for the program and if funding is available for the proposed purchase~~of eligibility, ~~then~~ the following shall occur ~~within the ninety days following notice to the landowner of the preliminary determination~~:

(a) The landowner, in cooperation with the department, shall delineate on the ground the boundary line ~~between~~ of the qualifying CMZ lands or qualifying critical habitat lands as indicated in the application; ~~and the RMZ core area; following which,~~

(b) The department shall verify the appropriateness of ~~that~~ the delineation of qualifying CMZ lands or qualifying critical habitat lands using the procedure outlined in board manual section 18, ~~determine the standards for the boundary description (i.e., a survey or other),~~ make a final determination whether there are any unacceptable liabilities on the lands proposed for inclusion in the program, and communicate the foregoing to the landowner.

(c)The department will rate, rank, and fund, as described in WAC 222-23-025(1), the eligible applications for each category of CMZ lands or Critical Habitat lands and for each funding cycle using a consistent scoring system.

(d) The department will prepare a combined preliminary project priority list, after evaluation and scoring of all applications.

(e) The department will submit the preliminary project priority list to the state legislature for budget consideration.

(f) The department will notify the applicant in writing of the funding decision for their application, subject to available funding from the legislature.

(g) For those applications determined to be funded, and ~~If~~ if the department determines there are no unacceptable liabilities on the lands, the department shall follow the guidelines in WAC 222-23-030(2), description standards, and the landowner shall ~~mark~~ enhance the boundary (as verified) using ~~tree tags or other long-term~~ boundary marking methods specified by the department.

(h) For those applications determined to be eligible but not funded, the application will be returned to the applicant. At any time thereafter, the applicant may renew or revise the application. This renewed or revised application will be placed on the next available funding cycle and will be reprioritized under the process described in subsections (c) through (g) above.

(i) For those applications determined to be ineligible for reasons other than funding, the department must notify the landowner of the reason(s) and the application will be rejected.

(j) Once the landowner completes the boundary enhancement required in subsection (g) above, the department shall:

(i) Perform a traverse of the boundary of the qualifying CMZ lands or qualifying Critical Habitat;

(ii) Conduct and finalize a cruise of the timber on the qualifying CMZ lands or qualifying Critical Habitat lands;

(iii)Determine the statutory compensation to be paid to the landowner;
(iv) Prepare conveyance documents consistent with this chapter; and
(iv) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

(4) Unacceptable liabilities. As used in this section, unacceptable liabilities are created by the presence of hazardous substances on the qualifying CMZ lands or by other condition that creates such a liability to the department that may jeopardize the department's ability to maintain fisheries enhancement or the ecological protection of the qualifying CMZ lands, and with respect to which liability the applicant is unwilling or unable to provide reasonable indemnification to the department. If the department finds unacceptable liabilities with respect to qualifying CMZ lands, the department may reject the landowner's application.

(5) Preparation of conveyance documents. Within ninety days following placement in the field of the long-term boundary between the CMZ and the RMZ core area as provided for in subsection (3) of this section, the following shall occur:

(a) The landowner shall:

(i) Traverse the boundary to determine the acreage of the qualifying lands;
(ii) Either perform a legal land survey or otherwise document the boundaries consistent with the requirements of WAC 222-23-030(3), as applicable; and
(iii) Prepare a map of the qualifying CMZ lands suitable for recording.

(b) The department shall:

(i) Conduct and finalize a cruise of the timber on the qualifying CMZ lands;
(ii) Determine the statutory compensation to be paid to the landowner;
(iii)Prepare conveyance documents consistent with this chapter; and
(iv)Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

(63) **Timber cruise**. For the purpose of determining the compensation, The a timber cruise will be conducted by the department using a cruiser acceptable to the department and the landowner, and using a generally accepted cruise methodology determined by the department and sampling intensity acceptable to both parties. The timber cruise shall measure all trees within the lands to be conveyed that contain measurable log volume and develop all information (species and grade) with respect to those trees necessary to apply the stumpage tables developed by the department of revenue pursuant to RCW 84.33.091; this includes volume by species and grade sufficient to apply the department of revenue stumpage tables in WAC 458-40-640, 458-40-650 and 458-40-660 (1) and (2). The department will provide the cruise data to the landowner; . within Within thirty days thereafter, the landowner shall advise the department whether the cruise results are acceptable. The landowner or the department may, at their option, perform a check cruise.

(74) **Compensation for conveyances.** RCW 76.09.040(3) specifies the compensation the department shall pay for purchases the conveyance of qualifying CMZ landsa conservation easement under chapter 222-23 WAC, unless the landowner chooses to donate the property in fee or donate a conservation easement. The tables applied in the following compensation calculations shall be those in effect as of the date the complete timber cruise is received by the department. In the case of a renewed or revised application the tables applied in the following compensation calculations shall be those in effect as of the date the complete timber cruise is received by the department.

(a) Fee interests. For conveyances of fee interests, the department shall pay for both the land value and the timber value, as determined in this subsection. The land value component shall be the acreage of qualifying CMZ lands to be conveyed multiplied by the average per

~~acre value of all commercial forest land in Western Washington or the average for Eastern Washington, whichever average is applicable to the qualifying CMZ lands. The department shall determine the Western and Eastern Washington averages based on the land value tables established by RCW 84.33.120 and revised annually by the department of revenue (see WAC 458-40-540). The timber value component of the compensation shall be based on the cruise volume multiplied by the appropriate department of revenue stumpage values from the stumpage value table for the applicable stumpage value area and hauling distance zone. The stumpage value tables to be applied are those found in WAC 458-40-660(2). Except as provided in (c) of this subsection, the tables applied shall be those in effect as of the date the application under this section is submitted to the department by the landowner.~~

~~(b) Conservation easements. Conservation easements shall be perpetual and not for a term of years.~~ For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation shall only include the timber value component, as determined by the cruise volume multiplied by the appropriate stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091~~as set forth in subsection (7)(a) of this section~~.

(b) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation shall include the timber value component plus such portion of the land value component as determined just and equitable by the department. The timber value component is determined as set forth in subsection (4) (a). The land value component must be the acreage of qualifying CMZ lands or qualifying critical habitat lands to be conveyed, multiplied by the average per acre value. The department shall determine the averages based on the land value tables established by RCW 84.33.120 and revised annually by the department of revenue with separate values for western and eastern Washington.

~~(c) Adjustment in compensation. Where the department does not complete its duties as required in subsections (3) through (5) of this section within the required time period or the department is unable to complete the acquisition because of a lack of funds or other reason, the landowner has the option to require that the department recompute the compensation based on the most recently published land value and stumpage value tables.~~

(5) Land(s) Eligibility. The lands proposed in an application for the program must include qualifying CMZ lands or qualifying critical habitat lands and are eligible for easement acquisition as a conservation easement as follows:

(a) Lands that are eligible are lands that, as of the date of receipt of a complete application, are identified in records of the applicable county assessor as being assessed and taxed either under chapter 84.33 RCW as designated forest land or under chapter 84.34 RCW as current use classification timber land or open space.

(b) Lands owned by an individual, partnership, corporate or other nongovernmental entities are eligible.

(c) Lands do not qualify for the program where the department has determined that:

(i) The lack of access to the land is likely to materially impair the department's ability to administer the program with respect to the land;

(ii) The land is subject to unacceptable liabilities. See WAC 222-23-010(2) (c).

~~(8) **Management options.** In any circumstance where qualifying CMZ lands are not acquired by the department in fee or through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.~~

WAC 222-23-025 Priorities for conveyances and funding--Use of lands conveyed.

(1) **Priorities for conveyances and funding.** ~~The legislature recognized, in RCW 77.85.180(4), that the adoption of forest practices rules consistent with the forests and fish report will impose substantial burdens on forest landowners. The purpose of this program, which will be administered by the department, is to compensate landowners and provide for ecological protection and fisheries enhancement.~~ The department shall ~~prioritize~~ rate, rank and fund applications ~~under this section~~ of eligible CMZ applications separately from critical habit applications based on ~~the following criteria (not in priority order): Order of receipt, ecological value~~ conservation benefits and landowner management options. ~~(including importance to salmonids, water quality benefits, quality of habitat, site significance, etc.), and immediacy of need~~. ~~If funding is or becomes unavailable to consummate a conveyance with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option) be kept on file at the department pending the future availability of funding.~~ See board manual section 18 for the rating, ranking and funding details for CMZ or critical habitat lands. The department will consult with representatives of affected Indian tribes, department of fish and wildlife, and department of ecology as necessary for technical expertise. ~~The board will include, in its reports to the legislature required in RCW 76.09.380, a review of this program with recommended amendments, as necessary, to accomplish the goals of this program.~~

(2) **Use and management of lands and easement interests acquired under ~~riparian~~ rivers and habitat open space program.** Subject to the exceptions set forth in this subsection (or as otherwise provided in the ~~conveyance or~~ easement documents), the lands ~~conveyed or~~ subject to the conservation easements under this chapter shall be managed by the department only in a manner necessary for ecological protection, ~~or~~ and fisheries and wildlife enhancement. The ~~conveyance of lands~~easements under the ~~riparian open space~~ program shall not create a right of public access to ~~the conveyed lands~~or across adjoining or other lands owned by the landowner ~~conveying property or~~granting an easement under the ~~riparian open space~~ program.

(3) **Transfer of ~~fee or~~ easement interest or management responsibility.** After acquisition of ~~a fee or~~ an easement interest in qualifying CMZ lands or qualifying critical habitat lands, the department may transfer its interest in such lands by a recorded instrument to another state agency, a local governmental entity within which the lands lie, or a private nonprofit nature conservancy corporation (as defined in RCW 64.04.130). Alternatively, the department may contract with one or more of the foregoing entities to exercise the department's management authority over the qualifying CMZ lands or qualifying critical habitat lands. Any such contract will include provisions fully advising the contracting party of the rights of the landowner under this chapter and the conveyance instrument. The department shall notify the landowner of any transfer of its interest in the qualifying CMZ lands or qualifying critical habitat lands or any transfer of management responsibilities over those lands, provided that failure to so notify the landowner shall not affect the validity of the transfer.

WAC 222-23-030 Conveyance forms and procedure.

(1) ~~**Fee interest.** Conveyance of a fee interest in qualifying lands shall be by deed with limited warranties. Deeds will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved and shall be in a form acceptable to the department and the landowner. Prior to closing, the landowner shall procure a title report or title history for the lands being conveyed, provided that in the case of qualifying CMZ land being donated to the department, the department shall pay the cost of the report.~~

~~(2)~~ **Conservation easement.** Conveyances of a conservation easement shall be through execution by the landowner and the department of a conservation easement in a form acceptable to the department and the landowner. The easement shall be perpetual and not for a term of years. The

easement will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved. Prior to closing, the landowner shall procure a ~~litigation guarantee or~~preliminary title ~~history~~ insurance report from a title company, provided that in the case of an easement being donated to the department, the department shall pay the cost of the ~~guarantee or other~~ report.

(~~3~~2) **Description standards.** The description of the qualifying CMZ lands or qualifying critical habitat lands being conveyed shall be a legal land survey description ~~or~~unless the cost of securing the survey would be unreasonable in relation to the value of the lands conveyed. When the department determines~~, if~~ a survey is not being performed, the description ~~shall include the township, range, section, and legal subdivision, and utilize a map at a scale of 1:400 indexed either to one legal land survey point or two geopositional system points plus a GPS traverse of the boundary between the CMZ and the RMZ core area, tied to one legal land survey point or two geopositional system points, or other description~~shall be in a form that can depict the location of the lands conveyed without relying on verbal evidence, or other forms acceptable to the department.

(~~4~~3) **Closing and recording**. Upon execution of the conveyance documents and other documents required for closing, the department shall pay any compensation owed to the landowner and record the conveyance documents. The department shall pay the recording fees. No compensating taxes under chapters 84.33 and 84.34 RCW shall be owed. ~~Any~~ Title Insurance premiums and any real estate excise tax owed shall be paid by the landowner conveying the ~~property or~~ easement.