October 19, 2010

MEMORANDUM

To: Forest Practices Board

From: Gretchen Robinson, Natural Resource Specialist
Forest Practices Division

Subject: Rule Making Proposal: Forest Biomass

On November 9th I will request the Board's approval to distribute the enclosed rule language to the counties and the Washington Department of Fish and Wildlife (WDFW) for review and comments pursuant to RCW 76.09.040(2). We also include tribes in this review.

On August 10, 2010 the Board directed staff to file a CR-101, *Preproposal Statement of Inquiry*, to inform the public that the Board is considering rule making to include forest biomass in the "forest practice" definition in WAC 222-16-010.

Department of Natural Resources (DNR) staff held three rule development meetings in October. We received input from people representing landowner, conservation, tribal, and state and federal agency interests. We communicated that the objective of the rule making is to ensure public understanding that activities related to forest biomass harvest are forest practices activities, and are subject to the resource protections provided by all of the forest practices rules in Title 222 WAC.

In general, participants agreed that adding forest biomass to the "forest practices" definition is a good idea for the short-term. More than once, participants asked how DNR intends to implement the rule if it is adopted. We answered that the Forest Practices program will:

- Continue to comply forest biomass harvest the same as any harvest activity;
- Expect landowners to follow all of the rules to ensure resource protection;
- Add forest biomass harvest in appropriate parts of the application/notification instructions. This will prompt applicants to provide information about all of their proposed activities. In reviewing forest practices applications and notifications, DNR can use conditioning authority to protect public resources.
- Conduct educational outreach opportunities for staff, landowners, and operators.

There was quite a lot of discussion, and a sense of urgency on the part of some participants, that there should be a "phase two", or a parallel effort to determine the need for any additional rule changes. Furthermore, participants believed this effort should take place within the Adaptive Management Program arena, and expressed that questions need to be answered about sustainable practices related to harvest of biomass: What and how much should be left on the forest floor? What methods of harvest and transport will protect soils and prevent public resource damage?

As for the rule making at hand, DNR Forest Practices staff determined that the rule language enclosed meets the Board's August 10th direction and takes into account the input we received from the participants of our rule development process.

With the Board's approval, staff will distribute the language to WDFW, counties, and tribes shortly after the November 9th Board meeting. The review and comment period is 30 days, and staff will inform the Board of comments received prior to the February 2011 Board meeting. Staff will also begin the cost-benefit and environmental (SEPA) analyses in preparation for the next step, which is to distribute a rule proposal for public review and hearings.

I am available at (360) 902-1705 if you have questions.

GR/

Enclosure: Rule proposal

Forest Practices Board
November 2010
Forest Biomass Rule Making

WAC 222-16-010 Definitions

. . .

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:

Road and trail construction;
Harvesting, final and intermediate;
Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

""Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

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