Washington FARM FORESTRY ASSOCIATION

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October 14, 2010

To: Washington State Forest Practice Board

Re: Forest Practice Board Meeting, November 9, 2010

Dear Chairman Goldmark and members of the Board,

Attached you will find the draft "Small Harvest Rule" legislation (H-0074) that the Washington Farm Forestry Association (WFFA) plans to submit to the 2011 Legislature. With this draft, we will present a 15 minute power point at November 9, 2010 Forest Practice Board meeting describing the importance of this legislation. That would allow 5 minutes for Q & A, if needed.

We would like to remind any members of the Forest Practice Board who would like to learn more about this legislation, to check out the TVW link of the House Natural Resource Committee (HNRC) work session by the WFFA and by Chuck Turley and Heath Packard of the DNR. HNRC Chairman, Representative Brian Blake (19th) (D), agreed to sponsor this legislation, at the end of that work session.

To easily view this link go to the WFFA website at www.wafarmforestry.com and click on the HNRC work session link or for an abbreviated article of this work session click on 'Landowner News' and go to the July/Aug issue page 5.

Thank you for the opportunity to present to the Forest Practice Board

Respectfully,

Steve Stinson, 1st Vice President
Rick Dunning, Executive Director

Washington Farm Forestry Association

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #:	H-0074.2/11 2nd draft
ATTY/TYPIST:	ML:crs
BRIEF DESCRIPTION:	Ensuring the viability of small forest landowners.

AN ACT Relating to helping to ensure the viability of small forest landowners; amending RCW 76.13.130 and 76.13.120; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature finds that the forestry riparian easement program, as authorized by RCW 76.13.120, has evolved into such a costly program that the state is unable to fulfill its financial promise as previously declared in RCW 77.85.180. It is in the state's best interest to revise RCW 76.13.130 in a way that encourages more small, low-impact harvests, as a way to reduce the state's future payments under the forestry riparian easement program.

(2) The legislature further finds that the processes established in RCW 76.13.100 and 76.13.110 and WAC 222-12-040 and 222-12-0403 have failed to provide efficient, low-cost alternative plans and alternative restrictions for smaller harvests as envisioned by the 2002 legislation. Further, the legislature reaffirms the findings in RCW 76.13.005 and declares that it is now timely to craft amendments

to RCW 76.13.130 and WAC 222-30-023 in order to help maintain and improve the economic viability of two hundred fifteen thousand family forest owners managing approximately three million two hundred thousand acres of forest land across the state and provide incentives to keep their land in long-term forestry.

(3) The legislature further finds that the shade rules in WAC 222-30-023 are overly complex for these small harvests and relatively short stream reaches, and are beyond comprehension for nearly all small forest owners who wish to use this rule.

(4) The legislature further finds that rules to protect stream water from summer heat do not need to apply to stream segments that typically do not have surface water in the summer months. The changes to RCW 76.13.130 in this act will create a regulatory incentive that, in the long term, will benefit all the resources inherent to a forested landscape, including riparian function.

Sec. 2. RCW 76.13.130 and 1999 sp.s. c 4 s 505 are each amended to read as follows:

(1) On ((~~parcels~~)) harvest units of twenty contiguous acres or less, small forest landowners ((~~with a total parcel ownership of less than eighty acres~~)), as that term is defined in RCW 76.13.120, shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than fifteen percent of a volume of timber contained in a stand of well managed fifty-year old commercial timber covering the harvest area. The additional fifteen percent maximum leave tree level shall be computed as a rotating stand volume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet optimal combinations of economics, forest health, and riparian functions.

(2) On ((~~parcels~~)) harvest units of twenty contiguous acres or less the small forest landowner office shall work with landowners ((~~with a total parcel ownership of less than eighty acres~~)) to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to public resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, ((~~parcels~~)) harvest units must be twenty acres or less in contiguous ownership, and owners ((~~cannot have ownership interests in a total of more than eighty acres of forest lands within the state~~)) must qualify as a small forest landowner as that term is defined in RCW 76.13.120.

Sec. 3. RCW 76.13.120 and 2004 c 102 s 1 are each amended to read as follows:

(1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and

76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated. A small forest landowner can include

an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to

trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(7) Except as provided in subsections (8) and (9) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for

qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(9) Small forest landowners choosing to conduct a harvest under the authority provided in RCW 76.13.130 and the associated rules may not participate in the forestry riparian easement program for the affected harvest units.

(10) The forest practices board shall adopt rules under the

administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forest riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and

(i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section.

NEW SECTION. **Sec. 4.** (1) By July 1, 2012, the forest practices board shall initiate and complete a process to revise the forest practices rule currently codified as WAC 222-30-023 to reflect the following changes:

(a) Properties affected by WAC 222-30-023 must be excluded from the shade requirements of WAC 222-30-040;

(b) Except as otherwise provided in this section, all streams must be required to be buffered if the stream flows year round as surface water. Buffer sizes for type F and type Np streams, as those stream types are classified in WAC 222-16-030, must be limited as follows:

(i) Buffers for type F seasonal stream segments that are dry during parts of the year, and type Np stream segments with year round flowing water, may not be required to exceed thirty feet; and

(ii) Subterranean stream segments in both type F and type Np streams and all intermittent dry portions of the perennial channel below the uppermost point of perennial flow on type Np streams may not be required to have a buffer, except for areas within fifty feet of a type Np stream's perennial initiation point and areas where type F and type Np streams connect, in which case the buffer may not be required to exceed thirty feet;

(c) Rewriting of any forest practices rules necessary for the implementation of RCW 76.13.120, 70.13.130, and this section must be done in language that makes the requirements more understandable to a person who is not a forestry professional. In rewriting the language, the forest practices board shall make efforts to create buffer requirements that are able to be identified on the landscape without the assistance of forestry professionals.

(2) The forest practices board shall, in the execution of this section, give significant consideration to any pertinent recommendations from the small forest landowner advisory committee

created in RCW 76.13.110 and any private organizations that represent the interests of small forest landowners.