WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

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TO: Forest Practices Board

FROM: Marc Engel, Assistant Division Manager – Policy and Services
Forest Practices Division

SUBJECT: **Forestry Riparian Easement Program Proposed Legislation**

The Legislature created the Forestry Riparian Easement Program (FREP) in 1999 to help offset the diminishing economic viability of small forest landowners from disproportionate impacts of increasing regulatory requirements (RCW 76.13.100). FREP purchases 50-year conservation easements along riparian areas from small forest landowners who have provided riparian protections required by the Forest Practices Rules. Since 2001 the program has purchased 278 easements on more than 4,300 riparian acres.

In the Supplemental Capital Budget for the 2010 Legislative session (ESHB 2836§ 3041(6)), the legislature directed the Department of Natural Resources (DNR) to work with interested stakeholders to develop recommendations for changes to the FREP. The legislature requested FREP reform to clarify eligibility provisions, add prioritization criteria to ensure funding of highest priority easements first, and to find efficiencies in the acquisition process. Recommendations were to be in the form of draft legislation.

DNR provided draft recommendations to interested stakeholders, and solicited participation via mail and email invitations to three open house public meetings. The overwhelming stakeholder response was to not add prioritization or eligibility criteria to the FREP. Stakeholders believe FREP is a mitigation commitment made by the legislature to all small forest landowners with the adoption of the Forests and Fish Report (FFR), to offset the disproportionate economic impacts the FFR rules would have on small forest landowners. As such, they believe FREP should have a dedicated funding source.

In addition, small forest landowners believe prioritization already has occurred in that FREP focuses on riparian areas determined to be necessary for sustaining and restoring aquatic species covered by the Forest Practices Habitat Conservation Plan.

In making recommendations for revisions to the FREP, DNR considered stakeholder comments, DNR's own experience implementing FREP over the last nine years and the stated intent from RCW 76.13.100. The final FREP recommendations are in the form of legislation, see attachment. The recommendations have revised the eligibility, prioritization and acquisition process as follows:

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Added Eligibility Requirements:

- Applicant(s) must have had legal majority ownership of the land associated with the easement area prior to July 1, 2011, or have the property legally transferred from a lineal ancestor meeting this condition;
- Applicant has no outstanding violations of the Forest Practices Act and rules; and
- Applicant's small forest landowner status is verified at easement transaction.

Amended Qualifying Timber Requirements:

- Trees on unstable slopes outside riparian areas do not qualify; and
- Trees with harvest restrictions from conditions of an existing conservation easement do not qualify.

Added Prioritization Element:

- Priority shall be given to small forest landowners whose land is under a long- term forest stewardship plan that is recognized by DNR.

Amended Processing Efficiencies:

- Initiate cruising contracts and establish the dollar value of easement after receipt of documentation of harvest completion.

RCW 76.13.120 Findings — Definitions — Forestry riparian easement program.

(1) The legislature finds that along forested riparian and other sensitive aquatic areas, 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 forest trees within riparian areas and channel migration zones 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 by those rules 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~~ or those trees for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules pertaining to riparian areas or channel migration zones. "Qualifying timber" is forest trees bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board for which the small forest landowner is willing to grant the state a forestry riparian easement. Examples of trees excluded from qualifying timber are trees restricted from harvest for potentially unstable slopes and landforms outside riparian and other sensitive aquatic areas or trees with harvest restrictions from conditions of an existing conservation easement.

(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 prior to July 1, 2011 or the applicant is a lineal descendant of a landowner meeting this condition 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~~ An entity that has harvested from its own lands in this state during the three years prior to the year ~~of application~~ the department offers compensation for the forestry riparian easement, an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) ~~an~~ An entity that ~~certifies~~ at the time ~~of application~~ the department offers compensation for the forestry riparian easement certifies 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~~ their forestry riparian easement transaction. 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~~ offers compensation for 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 to occur.

(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 that the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is voluntarily 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 receiving the small forest landowners forestry riparian easement application ~~of a~~ the following shall occur:

(a) The small forest landowner office shall determine what constitutes a completed application for a riparian easement ~~that is associated with a~~. Such an application shall include documentation of the owner's status as a small forest landowner, an approved forest practices application and ~~the landowner's marking~~ documentation of ~~the qualifying~~ completion of harvest, or a disapproved forest practice application if the small forest landowner is unable to obtain an approved forest practices application for timber ~~on the qualifying lands, the~~ harvest for any of his or her land because of restrictions under the forest practices rules pertaining to riparian area, and channel migration zones.

(b) 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.~~ for qualifying timber, subject to available funding, after a completed application is received and the landowner has completed marking the qualifying timber. 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.

(c) 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 that 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~~ forestry riparian easement application is received. 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.

(d) Small forest landowners whose land is under a long term forest stewardship plan, recognized by the department, shall have priority for payment under this section.

(7) Except as provided in subsection (8) 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~~ within a commercially reasonable harvest unit with which the forestry riparian easement is associated for an approved forest practices application or if a forest

practices application cannot be obtained because of restrictions under forest practices rules; (b) verification that ~~there~~ the landowner has ~~been compliance with the~~ no outstanding violations under the Forest Practices Act or 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~~ for which the regulatory impact is greater than the average percentage impact for all small forest 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~~ is considered for all trees identified as qualifying timber. 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) 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.