

1 **FOREST PRACTICES BOARD**
2 November 9, 2005
3 Natural Resource Building, Room 172
4 Olympia, Washington
5

6 **Members Present:**

7 Pat McElroy, Designee for Doug Sutherland, Chair of the Board
8 Alan Soicher, General Public Member
9 Toby Murray, General Public Member
10 David Hagiwara, General Public Member
11 Doug Stinson, General Public Member/Small Forest Landowner
12 Eric Johnson, Lewis County Commissioner
13 John Mankowski, Designee for Director, Department of Fish and Wildlife
14 Lee Faulconer, Designee for Director, Department of Agriculture
15 Sherry Fox, General Public Member/Independent Logging Contractor
16 Sue Mauermann, Designee for Director, Community, Trade and Economic Development
17 Tom Laurie, Designee for Director, Department of Ecology
18

19 **Absent:**

20 Bob Kelly, General Public Member
21

22 **Staff:**

23 Lenny Young, Forest Practices Division Manager
24 Paddy O'Brien, Assistant Attorney General
25 Patricia Anderson, Rules Coordinator
26

27 **CALL TO ORDER**

28 Pat McElroy called the meeting to order at 9:00 a.m. Self introductions were made by Board
29 members, staff, and attendees. Patricia Anderson provided an emergency safety briefing.
30

31 **ACKNOWLEDGMENTS**

32 Karrie Brandt was recognized with a Certificate of Appreciation for her work in support of the
33 Board.
34

35 Paddy O'Brien was recognized for her service as Board counsel. Pat McElroy wished her well in
36 her new position.
37

38 Pat McElroy announced the resignation of Board member Eric Johnson and thanked him for his
39 diligence and the thoughtful and considered ways he has approached issues presented to the Board.
40 McElroy presented Johnson with a letter of appreciation from Commissioner Doug Sutherland.
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PUBLIC COMMENT

Josh Weiss – Washington Forest Protection Association (WFPA)

Weiss commented on the idea of an “owl crisis” in Washington State. If there is an owl crisis, the U.S. Fish and Wildlife Service would not have made a decision a year ago to retain the status of threatened and would have upgraded the status to endangered. Weiss requested that the Board consider whether the words “free fall”, “severe”, “sick patient”, “crash”, “stop the bleeding”, and “crisis” should be used in advocating for deliberate, science-based resource management.

Regardless of whether the Board believes population decline is worthy of being considered a crisis, there isn’t anything to suggest that placing further restrictions on private forest lands will avert it.

Private landowners are concerned about the decline albeit the fact that it was anticipated.

Landowners and rural communities have already made a huge contribution to the recovery of the owl. It is frustrating to think that the painful sacrifices have not paid off. It’s also disconcerting because the effort appears not to be proportionally placed on understanding and addressing all factors contributing to the decline.

Weiss presented a photograph of suitable owl habitat by the Board’s definition in the young forest marginal, which is one-third of the definition. Much of the argument pertains to “old trees.” The photograph depicts much of the habitat on private lands, which is young forest marginal habitat. Of the young forest marginal habitat, much of it is unoccupied. There is a very minimal amount of habitat on private land within the state. WFPA believes the regulatory options under proposal are completely out of proportion to the part of the problem facing the Board. This is especially true when other states are not doing what Washington has been doing since 1996. The state has been at a competitive disadvantage for the last nine years. Further regulations will only add to the disadvantage.

Weiss suggested several ways to proceed. One is to react when confronted by cries of crisis and threats of litigation. It is WFPA’s experience that this results in reactionary and extreme solutions that are not sustainable. The other way is to use deliberate science-based processes, which the WFPA believes is the proper manner the Board should pursue. WFPA commits to delivering results through proper landscape planning and committing to a voluntary moratorium on decertification of owls that has been in place for several months.

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2 David Jennings, Gifford Pinchot Task Force

3 Jennings provided the Board with a copy of a map of the Gifford Pinchot National Forest with white
4 areas highlighted as reserves for owls. When the task force completed analysis on the habitat, the
5 results demonstrated the reserve system on federal lands in southwest Washington do not provide
6 adequate habitat for owls in the short-term. In the meantime, owl populations must be maintained
7 on private and state lands as well as federal lands.

8

9 Jennings displayed a map and indicated he believes the state is facing a crisis. The map depicts
10 breeding owl pairs known to be detected since 1996. In 1995, there were over 1,000 owl pairs.
11 Today, there are less than 600 owl pairs, which is a precipitous decline, and biologically speaking is
12 very serious and not sustainable. Since 1996, the state, under the current rules, has allowed 44
13 percent of the habitat to be logged. This is not appropriate. Logging occurrences in southwest
14 Washington reflect that one out of three was located in spotted owl habitat. A similar picture occurs
15 in the southern Cascades.

16

17 Jennings suggested the Board should initiate emergency rule making. There should be a
18 moratorium on spotted owl decertification so that nesting buffer areas cannot be logged during non-
19 nesting seasons. The Board needs to require interim protection for spotted owls until new, long-
20 term rules are in place, including a complete moratorium on spotted owl habitat and a State
21 Environmental Policy Act (SEPA) review for logging or management that will impact spotted owl
22 habitat.

23

24 Jim MacCracken, Longview Fiber Company

25 MacCracken said in 1996, negotiations were undertaken to develop a rule with the Department of
26 Fish and Wildlife (WDFW) and other stakeholders. After passage of the landowner landscape
27 planning option legislation there was a decision to pursue that option, which included spotted owls
28 and other species. Longview Fiber Company was one of few companies that were successful in
29 crafting a plan based on biology. However, there were several regulatory and institutional barriers
30 that prevented the plan's implementation, problems with agency and landowner attitudes and
31 expectations. Agencies believed it must be better than the current forest practices rules at the time
32 and of course the landowners did not want a set of overly restrictive and burdensome regulations.

1 There appeared to be an agency desire to maintain control of the situation, particularly with the
2 issues that were developed in the plan despite having covered the issues within the plan. There
3 were also issues with the State Environmental Policy Act (SEPA) and the Environmental Impact
4 Statement (EIS) requirements that required an additional amount of funds and time for issues that
5 were already covered and agreed to within the plan.

6
7 If habitat changes due to logging are a major factor, which is somewhat at dispute both in the
8 national and the federal reserves, there is no reason to expect that the current conservation strategy,
9 including the Northwest Forest Plan and rules adopted by the Board in 1996, will achieve any
10 substantial progress. MacCracken suggested the Board should stay the course with the current plan
11 and let it play out on the landscape.

12
13 Lisa Remlinger, Kittitas Audubon
14 Remlinger read a letter on behalf of Gloria Baldy, Kittitas Audubon, who was unable to attend the
15 meeting. The letter addressed the declining population of the Northern Spotted Owl, which may be
16 declining even greater than the statewide average of 7 percent. Baldy spoke of the harvesting
17 practices of old growth forests in the region and noted the total population of spotted owls will be
18 extinct in less than five years if harvesting practices continue. The forest practice rules adopted in
19 1996 have been greatly deficient. She asked why it has taken so long to address the crisis, much
20 less put into practice regulations to attempt to curb the decline. Baldy questioned the logging of
21 owl circles. The new threats from fires and the Barred Owl have been magnified and exaggerated.
22 The major contributor to the owl population decline is the loss of habitat. Owls have been left
23 without homes or dense forests to which they can retreat for protection. Today is the day to make
24 the decision to protect the spotted owl and to immediately implement emergency rule making to
25 slow the owl's rate of decline while long term practices are put into place based on best available
26 science. Baldy asked the Board to declare a temporary moratorium on logging in or near all spotted
27 owl designated circles and consider requiring forest landowners to submit a SEPA review or other
28 strong documentation for any taking of trees and all old growth owl habitat. Documentation should
29 include data collection on the spotted owl. Due to the dangerous rate of decline, the implementation
30 needs to be now, not several months from now. It is time for all parties to take responsibility to
31 preserve the last fragments of old growth habitat, which is the best insurance to preserve the
32 Northern Spotted Owl.

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Cindy Mitchell, WFPA

Mitchell displayed and described a chart depicting the chronology of the Board’s rule making activity since 1991 specific to owls and fish. Federal and state listings are reflected in the 1990s with the owl and with the fish. Mitchell pointed out the emergency rules the Board passed from 1991 to 1996. She said the chart demonstrated a deliberative process of science, consensus, and of discussion before the Board rendered a decision. The owl listings in the 1990s prohibited the taking of any individual owl. The Board adopted a goal for its rule that complemented the Northwest Forest Plan, and that the rule would protect the owl species and meet both state and federal requirements. The rule was adopted after many committee and stakeholder meetings. It was based on science and the key decision point was the SEPA trigger. The Board set the SEPA trigger at the circle.

Hudson Dodd, Conservation Northwest

Dodd reported forests that support spotted owls are those most healthy and productive and are sources of the most pure and clean water. Everyone is aware of the federal scientific review that determined spotted owl populations in the state are in freefall toward extinction. Not in Oregon, nor in California, but in Washington State where owls and forest health are in peril. Scientists point out that habitat loss from logging was the primary driver of owl extinction ten years ago. Although there are new threats today, habitat loss on state and private lands remains a major threat. Studies completed by WDFW document why this is true. The state’s forest practices rules for owls are not scientifically defensible. The rules do not provide sufficient habitat around nest sites to support owls or sufficient habitat within spotted owl special emphasis landscapes to contribute to regional conservation efforts. As a result, tens of thousands of acres of owl forest were cut down under the rules. The situation needs to change dramatically today. Science is clear – wildlife requires habitat to survive. The higher the extinction risk, the higher the value of any remaining habitat. Dodd asked the Board on behalf of the people of Washington State, both present and in the future, to support an emergency rule protecting remaining habitat in Spotted Owl Special Emphasis Areas (SOSEAs) and habitat that supports nesting sites in the state. Dodd asked the Board to protect the habitat until new rules can be developed. Conservation Northwest will continue to work with the state and other organizations for solutions that will secure a better future for all Washington inhabitants.

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2 Tim McBride, Hancock Forest Management
3 McBride reported that Hancock manages approximately 50,000 acres. Approximately, 11,200 acres
4 are located in the I-90 west SOSEA where forest management activities are conducted in
5 accordance with a federally issued Incidental Take Statement. It obligates the company to
6 accelerate the growth of forest habitat necessary to support the dispersal and foraging habits of the
7 Northern Spotted Owl. The remaining acreage is subject to current forest practices rules. The
8 company values the Incidental Take Statement in the more favorable and unchanging operating
9 environment existing today. The Incidental Take Statement provides certainty in the company's
10 operating environment by having resource targets to be attained 30 years from the date of initiation
11 of the landscape plan. It brings further value by creating a regulatory certainty through 2046 as
12 long as the company maintains the resource over the managed land. It is a considerable benefit to
13 the company when the operating environment is not one of apprehension or constant annual risk
14 assessment as to how the regulatory environment will negatively affect the company's bottom line.

15
16 McBride also reported that the Incidental Take Statement is not an exception in the long-range
17 planning but rather the norm. The federal service is likely interested in looking 30 to 40 years into
18 the future. This is contrary to the current regulatory environment where after a nine year time span
19 there is a perceived crisis of the loss of spotted owl habitat on the extremely narrow portion of the
20 bird's overall range in the state. Regulatory agencies are proposing drastic changes to the forest
21 practices rules which is not creating a favorable operating environment for forest landowners. The
22 state needs to take the example from the federal service and develop an approach that is founded on
23 the structure of the habitat conservation plans and not a system that implements rule changes every
24 few years or forces circle by circle management.

25
26 Stan Parker, Mount Baker Sierra Club

27 Parker said the Board has done much for the spotted owl. The spotted owl is still in a rapid decline
28 and "crisis" is the appropriate description of the situation. The Board needs to do more. It's been a
29 learning process, and to date not enough has been done to protect the owl.

30
31 Don Schwendiman, Rayonier

32 Rayonier's timberlands in the state are primarily located on private lands on the western Olympic

1 Peninsula. Current science depicts that owl populations are declining but not due to the loss of
2 habitat or the loss of habitat on private lands. Schwendiman cited copies of the last two years
3 reports from Olympic National Park, which undertakes annual monitoring of known spotted owl
4 sites within the park. The reports reflect that Barred Owls are continuing to invade the park and
5 previously occupied spotted owl territories. Within the park there has been no change to the spotted
6 owl habitat, yet the reports document that as of 2005, only 42 percent of the known spotted owl
7 territories continue to be occupied by spotted owl. Approximately 75 percent of the known spotted
8 owls' territories have detected Barred Owl presence. Of those, only 36 percent of the spotted owl
9 territories where Barred Owls have been detected continue to be occupied, and 62 percent of spotted
10 owl territories where there has been no Barred Owl presence, continue to be occupied.

11
12 A table lists the survey results of the circles from 1986 through 2004. The surveys reveal that 65
13 percent of the circles have had no response for the last three years of consecutive surveys. Only 35
14 percent of the circles within the SOSEA continue to have owls.

15
16 Colby Chester

17 Chester cited his involvement in the Northern Spotted Owl debate for nearly 15 years and is more
18 concerned now as to the future of the shy and threatened animal. The spotted owl is an indicator
19 species. Its well being is intricately connected to its natural habitat of old growth forest. Its value
20 to this unique and vanishing ecosystem may seem trivial to economists fixated on the bottom line
21 but its role in helping scientists measure the health of its habitat cannot be argued. While there
22 continues to be sightings of the owl in trailer parks and Christmas tree lots, it is indisputable that the
23 species is indigenous to and thrives in large stands of undisturbed forests with old growth
24 characteristics. It is not the time to relax and reduce hard won protections for the spotted owl. If
25 anything, the state should increase protection, for in doing so the state declares that its needs for
26 fresh water and clean air is more important than the short-term profits that might be reaped from the
27 indiscriminate harvesting of private habitat-rich timberlands. The state cannot allow the remaining
28 postage-stamp sized pockets of old growth habitat to diminish. It would be prudent to take the bold
29 step of stewarding the remains of the intact natural world with wisdom and respect. Chester
30 appealed to the Board to ensure for the people and future generations the conditions vital to the
31 proliferation of this maligned species and enact a moratorium on spotted owl decertification.

32

1 Ken Risenhoover, Port Blakely Tree Farms

2 Risenhoover reminded the Board that habitat loss is not the only issue. During the past 50 years,
3 the Barred Owl, a close relative of the Northern Spotted Owl has expanded its range westward
4 through the Canadian provinces and is now known to inhabit British Columbia, Washington,
5 Oregon, and California. The Barred Owl has common habitat needs and food sources and is
6 capable of utilizing the same habitat. Washington is near the northern limits of the spotted owl. It
7 is widely believed that more severe winters and low prey abundance are primary factors in the
8 spotted owl's limited distribution within the state. It is a reason for lower productivity in the state.
9 The outlook for both species will be telling through time. In most instances where species
10 introduction has occurred, there has been rapid increase in population numbers followed by declines
11 as the introduced species depletes the available food supply. Eventually the species will stabilize if
12 the prey population is stable. He noted it is difficult to predict how the Barred Owl population
13 impacts spotted owls because there is insufficient data about the competitive relationship between
14 the owls and how they influence prey populations. Most species are expected to persist where they
15 are best adapted to the available conditions. However, it is certain that Barred Owls in Washington
16 will negatively impact Northern Spotted Owls and could greatly impact productivity and survival.

17
18 Dave Atcheson

19 Atcheson spoke about his gratefulness for the Northern Spotted Owl not only for its inherent value
20 as a species and the role it plays in old forest ecosystems but also for clearly showing how poorly
21 we have provided for the healthy functioning of the system. He cited the 7 percent annual decline
22 in spotted owls in the state that demonstrates how the state must change course to avoid extirpation.
23 He urged the Board to institute an immediate moratorium on logging of spotted owl habitat pending
24 development of comprehensive spotted owl rules grounded in science. He also urged the Board to
25 act as though it is possible to eventually reverse the decline in spotted owls. He asked the Board not
26 to decertify owl sites around nest sites that may be temporarily abandoned. The nest sites and
27 habitat within owl circles are needed for eventual repopulation.

28
29 Court Stanley, Port Blakely Tree Farms

30 Stanley referred to the report published by WDFW. He complimented WDFW for its efforts and
31 noted a report of such substantial size will include some errors. Port Blakely Tree Farms has a
32 habitat conservation plan within southwest Washington that analyzed the Pierce report versus the

1 company's data. The original habitat in 1996 consisted of 2,722 acres, the same amount as the
2 Pierce report. In 2004, the measurement is 2,868 acres of habitat, reflecting a gain. The Pierce
3 report calculates 1,095 acres reflecting a difference of 1,775 acres. The most accurate way to
4 determine existing habitat is to measure it on the ground. The company has timber stands that are
5 approximately 35 years old that contain habitat characteristics for the spotted owl. The increase has
6 occurred while the company has actively managed its property. The company has harvested over
7 2,200 acres and thinned over 2,000 acres. The company also owns land in the Mineral Block
8 SOSEA and is applying the same forest techniques in that area. The company wants to develop
9 habitat and can manage for habitat as well as for timber production. He asked the Board not to
10 penalize the company for doing the right thing.

11
12 Laura Livingston
13 Livingston stated she supports the moratorium on the decertification. Habitat is an important key in
14 the preservation of the species.

15
16 Peter Heide, WFPA
17 Heide reported that WFPA reviewed the final briefing report on the spotted owl status in forest
18 practices rules and reviewed the Pierce report and assessment of spotted owl habitat on nonfederal
19 lands between 1994 and 1996. Heide provided written comments to the Board and urged the Board
20 to consider the information. There are a number of federal documents and other information that
21 are referenced in the report, which will be supplied electronically to the Board.

22
23 Nina Carter, Audubon Washington
24 Carter provided some historical information about the organization's involvement in the protection
25 of the spotted owl. Three years ago, several Audubon chapters alerted the organization about the
26 issues concerning the owls. A sixty-day notice was filed three years ago. Approximately 18
27 months ago, Carter said she was asked to participate on a negotiating team panel about the current
28 regulations. Carter reported she attended many meetings with colleagues and attempted to reach an
29 agreement, but the effort did not result in a consensus. Consequently, nothing happened. Three
30 months ago the Board received a briefing about the spotted owl. Efforts have been underway to
31 negotiate the issues and nothing has occurred, leaving potential action to the Board. The Board
32 needs to take action on an emergency rule to enable stakeholders to return to the negotiating table.

1 The law dictates balancing the public interest and the private interests. Currently, there is 3 percent
2 habitat for owls, which is not a balance.

3

4 Dennis Creel, Hampton Tree Farms

5 Creel reported Hampton Tree Farms has 70,000 acres in the state and three sawmills in Morton,
6 Randle, and Darrington. The Board needs to balance the biology with the economics. There has
7 been a huge shift in the number of sawmills and the type of timber industry. The industry
8 undertook the Forests and Fish negotiations and believed things had stabilized. The company has
9 made a huge financial commitment in the communities. It is very important for the Board to ensure
10 the stability of the raw material supply. Additionally, stability in the owl population is in Oregon
11 where thinning is occurring and where the land is adjacent to private land where management
12 activities are occurring. However, in the Olympic Peninsula where no logging is occurring and
13 most of the old growth forest and habitat is located, there appears to be a decline in the owl
14 population, which must also be considered.

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16 Marina Skumanich, Seattle Audubon

17 Skumanich spoke on behalf of 5,500 members who care deeply about the economic and
18 environmental well being of the state. Skumanich urged the Board to abide by its duty to the
19 Endangered Species Act (ESA) to prevent harm to the Northern Spotted Owl. It is recognized the
20 situation faced by the owl is complicated, and that the risks are mired and some emerging threats
21 are poorly understood. It is also understood that outcomes cannot be known with certainty.
22 However, the difficulties cannot be a justification for no action or even slow or delayed action. She
23 urged the Board to do its part. As recently affirmed by the Armstrong ruling, WEC vs. Doug
24 Sutherland 2005, the State of Washington has a duty to consider the role of habitat in the recovery
25 of the owl and the state cannot proceed under business as usual practices. The Society fully
26 recognizes that the state, scientists, and stakeholders have difficult work ahead to evaluate existing
27 roles and make decisions about policy changes. It is within the collective abilities to solve the
28 problems and divide roles that address the common need to have both healthy ecosystems and a
29 healthy economy. Skumanich referred to the DNR memo recommending adjustments to forest
30 practices rules and said the Society considers them to be a good starting base for action by the
31 Board. It is imperative that interim measures are put in place to improve conditions on the ground.
32 She urged the Board to adopt the measures immediately.

1

2 Jan Pauw, Weyerhaeuser Company

3 Pauw referred to background on the legal framework of the spotted owl rules provided in written
4 testimony to the Board. Pauw described the Board's authority, state and federal laws, which all
5 emphasize balance in finding some solution that serves the public interest. The Attorney General
6 provides guidance to state agencies. The most recent guidance was provided by Attorney General
7 Gregoire on May 21, 2004. He referred to copies of the guidance and urged the Board to read the
8 guidance. Weyerhaeuser believes the Board has worked hard on the issues in the past and that it
9 takes time. The issues are complex and scientifically difficult in terms of public policy and the
10 necessary trade-offs. Weyerhaeuser does not believe there is an emergency, and nothing has
11 changed that would create the need for an emergency rule. Finally, timber management and forest
12 management provides opportunities to benefit the owl and not all forest management activities are
13 bad for owls. Weyerhaeuser urges the Board to look for ways to encourage the kinds of timber
14 management that is good for owls as one way to reconcile the current conflict.

15

16 Shiva Paramswaran

17 Parameswaran quoted Shakespeare and stated the butchers are all of us. Humans are the super
18 predator that dominates the universe by wanton consumption and contribution to the extinction of
19 all living things in the universe. Hundreds of years ago, one could argue that we did not have the
20 scientific knowledge to understand and appreciate the importance of how wilderness and wildlife
21 are key to our quality of life. Now, we know better and we know that our lives are sustained by
22 functioning ecosystems. He said he cannot understand why logging old growth forests continue
23 today. Old growth forests protect our clean air and clean water. He said he has yet to meet
24 someone who wants to breathe dirty air or drink dirty water. Therein lies the simplicity of the entire
25 problem. The Northern Spotted Owl is the touchstone for our lives and if it is not protected, we will
26 lose our future. Unless changes are made to protect the environment, there will be no change to the
27 economics or to long-term or short-term sustainability. He thanked the Board for the opportunity to
28 comment and urged the Board to do its best to protect the habitat and ecosystem that nurtures the
29 spotted owl.

30

31 Norm Schaaf, Merrill & Ring

32 Merrill & Ring has owned and operated timberland in the Port Angeles area since the late 1980s to

1 include continuous management and sustained yield harvest. The company will soon close on a
2 purchase that will add approximately 10 percent more land to the land base. The purchase includes
3 young growth that will not be harvestable for another 20 to 30 years due to the continued dedication
4 to management and investment in the land. Since the initiation of the current spotted owl rules,
5 none of the company's harvests have occurred within a spotted owl circle and only one within a
6 SOSEA in that entire period of time. Habitat is not an issue in terms of the company's harvest.
7 Schoof commented on the presence of Barred Owls within multi-structured old growth forest many
8 miles from any opening that might encourage other species that would be invasive. It's not just
9 habitat that is the issue. It's much more complex. He thanked the Board for considering all aspects
10 that need to be part of the decision.

11

12 Mark Buckley, Seattle Audubon

13 Buckley said the Seattle Audubon believes in protecting owl habitat and maintaining older forests;
14 the source of clean water and pure air. What happens to the spotted owl will also happen to all
15 inhabitants in western Washington. Buckley said he is hopeful as the Board members have an
16 opportunity that is based on science to address the Northern Spotted Owl issue. Last week the
17 environmental caucus received a copy of Leonard Young's recommended adjustments to the
18 Washington State Forest Practices Spotted Owl rules and their implementation. While the Society
19 has four concerns, which were provided to the Board, Seattle Audubon believes the November 2,
20 2005 draft to be a credible document and as a conservation organization, Seattle Audubon supports
21 Mr. Young's recommendations. Seattle Audubon is asking the Board to initiate emergency rule
22 making including a moratorium on spotted owl decertification, a complete moratorium on harvest of
23 spotted owl habitat, and a SEPA review requirement for any logging or management that would
24 impact owl habitat. The Board is requested to take action immediately and to not let the
25 opportunity slip away.

26

27 Dave Nunes, Olympic Resource Management

28 Nunes commented on the company's ownership of 115,000 acres of timberland in western
29 Washington and management of 228,000 acres of timberland on behalf of third party investors.
30 Nunes spoke about the investment climate in the state of Washington and provided his perspective
31 from his own career within the industry. Because the industry and partners within the state
32 recognize the importance of regulatory stability and have worked in good faith to create a healthy

1 environment with laws such as Forests and Fish the company finds now that there is stability within
2 the regulatory environment that helps the company maintain a healthy industry to provide jobs. The
3 company has seen for the first time in decades, a tremendous inflow of capital into the state both in
4 terms of manufacturing (sawmills) and the timber side. It has occurred because there is a stable
5 regulatory environment. The level of regulation is high and it is one of the most regulated forest
6 practice areas in the country. The state should continue working proactively with the industry and
7 continue to stay the course and maintain the healthy environment that has been created from hard
8 work by the industry.

9

10 Thomas Schmitz, Seattle Audubon

11 Schmitz referred to a *Seattle Times* news article from five years ago and explained how in
12 anticipation of the Forests and Fish law, the forest industry rushed to submit applications,
13 grandfather tracks of land under the older rules, and continue logging trees that shaded salmon
14 streams for an additional two years. Back then, Senator Ken Jacobson observed that the timber
15 industry did not stick to the spirit of the Forests and Fish. At Seattle Audubon, a fair and
16 transparent process that balances tribal, environmental, and timber interests is vital. Today, the
17 Board has a unique opportunity. It has been provided with an unbiased opinion by DNR. It is
18 science, not rhetoric. Seattle Audubon asks that the Board initiate emergency rule making and place
19 a moratorium on spotted owl decertification to stop a repeat of what happened with the Forests and
20 Fish law.

21

22 Keith Simmons, Green Diamond Resource Company

23 Simmons reported Green Diamond is a privately held company managing 320,000 acres of
24 timberland on the southern Olympic Peninsula. Field personnel and contractors are instructed to
25 report all owl siting encounters. All the sightings have been of Barred Owls. In 2000, Green
26 Diamond received approval for habitat conservation plan (HCP) covering 51 species. The HCP
27 does not include the Northern Spotted Owl. However, over 16 percent of the company's ownership
28 has been committed to conservation representing over 52,000 acres. Over the long-term, much of
29 the land has the potential to develop as spotted owl habitat. Directly north of the company's
30 ownership is the Olympic National Forest. Should the spotted owl decide to leave the national
31 forest and take residence in a Green Diamond conservation area, the company's ability to manage
32 its timber would not be severely impacted. Green Diamond requested that the Board:

- 1 1. Consider action that is well-reasoned given the many issues surrounding the spotted owls.
2 There are more than just timber management and the preservation of owl habitat.
 - 3 2. Base decisions on collaboration as undertaken in developing Forests and Fish rules.
 - 4 3. Consider that the federal recovery plan is not completed.
 - 5 4. Don't place owners such as Green Diamond at risk for doing the right thing – preserving and
6 growing future habitat under current regulations.
- 7 Green Diamond has gone the extra mile in meeting all regulatory responsibilities and in developing
8 a landscape approach to species management. The socially responsible action should not pay the
9 price of further regulations.

10
11 Toby Thaler, Washington Forest Law Center (WFLC)
12 Thaler referred to previous discussion about adaptive management over the last several years. The
13 basic point of adaptive management is to follow science when new information shows there are
14 issues, and changes are then made in management practices. Thaler reported he was involved in the
15 development of the current spotted owl rules during the 1990s. The current rules were a negotiated
16 compromise, and many of the components of the rules are not based on science. Now is the time to
17 respond to the volume of work that shows it is not working. Thaler said habitat is a necessary
18 element in spotted owl recovery. The first amendment to the U.S. Constitution guarantees the right
19 to petition the government to include access to the Executive Branch, the Legislature, and the
20 Judicial Branch. Litigation is not a weapon but rather a right of access to the government. He
21 reminded the Board that the timber industry sues the government often. It was litigation by the
22 timber industry that initiated the process that led to the development of the science that is now
23 showing the Board that it has to act.

24
25 Melinda Riddle, Cairncross & Hempelmann
26 Riddle reminded the Board that the planning and efforts that have been made on behalf of
27 Washington State and its regulated landowners and other stakeholders who manage and utilize
28 timber forest lands has taken place in the context provided by the federal government's plan to
29 recover the spotted owl. Discussions about what habitat exists and what habitat might be are
30 incomplete without reference to and observation of what has happened through planning provided
31 by the Northwest Forest Plan. Discussions about the level of remaining habitat that omit references
32 to those federal lands are incomplete, inaccurate and not a sufficient or proper basis for Board

1 action.

2

3 Eric Harlow, WFLC

4 Harlow addressed several points raised by previous testimony. The first concerned whether the
5 issue is an emergency. The burden of recovery is placed on federal forest lands, in particular, the
6 Northwest Forest Plan. However, the Northwest Forest Plan scientists who crafted the recovery
7 plan stated in the EIS that if the average decline projected (4.5 percent annually) from the
8 demographic studies at that time (1993) were to continue in the future, the population would be
9 reduced by half in approximately 15 years. This rate of decline could set very serious consequences
10 in the near future. The Northwest Forest Plan assumes there will be a 1 percent decline over the
11 next 40 years. In Washington, the rate of decline has been approximately 7.3 percent per year for
12 the past 10 years. The population has declined 50 to 60 percent in the last decade. This has
13 exceeded the worst case scenario predicted in the Northwest Forest Plan. The reason the U.S. Fish
14 and Wildlife Service did not change the status of the species to endangered involves the policy of
15 distinct population segments. Washington, as a state, does not qualify as a distinct population
16 segment and therefore could not be uplisted despite the threat of extirpation. This is a serious issue
17 and is justification that there is an emergency.

18

19 Secondly, almost 20 percent or one-fifth of suitable habitat on non-federal lands was harvested in
20 the past eight years. In the southwest region, 44 percent of suitable habitat was harvested. The
21 Pierce report indicated that the loss of 4 to 6 percent of spotted owl habitat on non-HCP lands inside
22 owl circles within SOSEAs magnifies the potential impact on spotted owl sites that use habitat on
23 nonfederal lands. They concluded that the loss of habitat documented in the study may be an
24 important contributor to the documented declines in owl populations using these landscapes.

25 Finally, a temporary SEPA trigger for habitat inside SOSEAs and circles and habitat outside of
26 SOSEAs is reasonable. The request is for a temporary SEPA trigger, which is not a moratorium. If
27 environmental review indicates the habitat is not contributing to an owl or the owl population, it
28 could be harvested after due review through the SEPA process. As a temporary trigger, it would
29 only be in place until the federal recovery effort and Washington's contribution have determined the
30 importance of those lands. An emergency rule protecting the habitat is unlikely to cause undue
31 burden.

32

1 Kevin Godbout, Weyerhaeuser Company

2 Godbout addressed several issues that if approved by the Board will dramatically shift the current
3 regulatory balance that might deprive Weyerhaeuser of any reasonable economic benefit from its
4 properties. Weyerhaeuser opposes any authorization of a temporary, emergency, or permanent rule
5 that would expand the application of suitable habitat as state critical habitat. Approximately 40
6 percent or over 500,000 acres of Weyerhaeuser's timberland might be subject to an expanded
7 application of the suitable habitat definition. Many of the lands are not old growth but are second
8 growth, and in some cases, are plantations or forests harvested several times. Approximately 60
9 percent of the Forest Practices Applications (FPAs) submitted by Weyerhaeuser (250-300 annually)
10 would likely need further field verification to properly classify the FPAs. If the Board considers
11 imposing rules on lands inside SOSEAs but not located inside a circle, the impact is estimated at
12 approximately 20,000 acres of the company's timberlands that might be subject to an expanded
13 SEPA review. Weyerhaeuser currently owns 31,000 acres within two SOSEAs. Within those
14 SOSEAs, 66 percent and 48 percent, respectively, of the land is located outside of existing circles.
15 Regardless of the actual size and scope of any potential expanded SEPA triggers, landowners will
16 be forced to manage large blocks with ever increasing regulatory uncertainty and expend time and
17 energy to clarify proper FPA classifications, and state agencies will likely incur considerable time
18 and costs processing FPAs. Some landowners will react to the unknown regulatory process by
19 managing for shorter rotation planning and simply not growing habitat because of the potential risk
20 of losing the asset investment.

21
22 In Weyerhaeuser's managed landscape, Spotted Owl presence has declined, but at half the rate of
23 the projected 7 percent decline. Nesting pairs are declining at a marginal rate of 1 percent and for
24 juveniles there is no significant trend in the change of juvenile populations. There has been an
25 increase in Barred Owl presence of approximately 3 percent. It is important that the company
26 continues to have the ability to collect and use data to protect species that occupy timberlands and if
27 those species are not protected, the company must be able to derive economic benefit from those
28 lands.

29
30 Peter Goldman, WFLC

31 Goldman addressed potential rule changes. On November 3, 2005, three members of the
32 conservation caucus met with DNR staff. DNR presented the caucus with a 14-point memorandum

1 dated November 2, 2005 entitled, “Recommended Adjustments to Washington State Forest Practice
2 Spotted Owl Rules and their Implementation.” The document was marked “draft” but the document
3 was clearly the culmination of thoughtful DNR staff consideration on what’s necessary and
4 appropriate for the Board to pursue to protect the owl. The memorandum also addressed things that
5 did not occur, such as landowner plans and the need to address decertification. The Caucus did not
6 know the meeting would be futile. As reported in the *Seattle Post Intelligencer*, the day before
7 WFPA representatives met with DNR staff and in WFPA’s own words, DNR staff agreed to
8 appease the industry and to discard or modify the 14-point memorandum. It was not known by
9 caucus members that there was a tacit agreement to not even share the 14-point memorandum with
10 the conservation caucus and possibly even the public. It is time for the Board to cease control of the
11 process. Goldman submitted the news article into the record.

12

13 John Hempelmann, Cairncross & Hempelmann

14 Hempelmann commented about his engagement in litigation over the last 15 years regarding forest
15 practices. Most of the time, he has agreed with assistant attorneys general and US attorneys general
16 in defending the Board, DNR and the Department of Ecology (DOE). The good news about the
17 litigation is that the actions of the DNR and the Board have been upheld by the courts. More recent
18 litigation was a direct challenge to the Board over its decision with respect to cumulative effects
19 rules. Requested by WFLC, the litigation resulted in the court referring to the intent of the
20 Legislature in the Forest Practices Act. The court pays attention to the mandate from the
21 Legislature when considering cases brought against the Board. The courts also consider the record.
22 In prior cases where DNR has been sued, the record has been substantial and conclusive. The
23 Board does not have a record to support any of the things that are being requested from the Board,
24 particularly concerning an emergency rule that will significantly impact interim rules. The Board’s
25 decisions regarding SEPA rules and DOE’s SEPA rules have been under attack in the courts for the
26 last five years. The courts have upheld the decisions of DOE and the Board. He asked the Board to
27 stay the course. There is no question the owl is declining, but there is no consensus from the
28 scientists for the reasons for the decline. The Board does not have the necessary records to take the
29 actions that are being requested.

30

31 Heath Packard, Audubon Washington

32 Packard asked the Board to consider some facts during deliberations on possible actions. Any

1 species survival is dependent on suitable and sufficient habitat. Over the past 10 years, the spotted
2 owl population has dropped by 50 percent with an annual average of 7 percent. The next nesting
3 season for spotted owls begins in March 2006. The rules appear not to be achieving the intended
4 consequences. According to John Pierce, the total harvest within SOSEAs and circles,
5 approximately 33 percent of the harvest has been suitable habitat. There has been virtually no
6 landscape planning occurring within SOSEAs. The Board's duty is to balance and promote
7 adaptive management. The Barred Owl information has suggested spotted owls may be reticent to
8 respond to calls when Barred Owls are present. The protocol used for decertification and for
9 evaluating the location of owls may be flawed. The environmental caucus is doing everything it can
10 to address every risk and every venue that has jurisdiction over the owl solution. The Society is not
11 singling landowners and is working to be constructive and is willing to engage in negotiations about
12 ways to provide interim protections for habitat within SOSEAs and circles while due diligence is
13 undertaken to evaluate the factors leading to the owl's decline. It is also prudent and practiced by
14 many conservation biologists to pursue the precautionary principle: In the absence of conclusive
15 reasoning, provide conservation efforts to protect habitat until conclusive data is available. He
16 urged the Board to consider the alternative question of demonstrating how protecting habitat within
17 SOSEAs in the interim will not help the owl.

18
19 Ken Miller, WFPA, Washington Farm Forestry Association and Washington Farm Bureau
20 Miller commented that having the chance for reasonable, financial rewards during his lifetime
21 makes it possible to continue providing all the non-timber benefits of forest landownership. He said
22 he is angry and disappointed that apparently the Board is creating another lose-lose situation by
23 restarting the spotted owl wars again. Miller said he has come to know many of the
24 environmentalists and finds them likeable, dedicated, well-intentioned, idealistic, and very
25 dedicated to their version of a perfect world. However, he said he wishes their vision was a little
26 more holistic and less myopic to avoid the obvious and unintended consequences of a steady, if not
27 accelerated loss of private forestland. Big companies are being forced to split off or manage lands
28 more aggressively. Small forest landowners, representing more than half of private forestland in the
29 state, are invisible. Never-ending disputes around spotted owls and other technical issues put
30 agencies in positions of "dammed if they do and dammed if they don't." Elaborate and well-
31 intended processes have been created that practically ensure the status quo. Imagine the potential
32 societal and environmental benefits if all the resources expended were directed to keeping forest

1 lands forested. State agencies should be advocating for policies that increase total habitat rather
2 than be referees or devoting most of its resources to decisions that are bullet-proof. To their credit,
3 the environmental community seemingly wins most of their lawsuits and just as importantly, they
4 generally have the hearts of the general public. Yet, habitat is lost to development permanently
5 every day. Miller urged the Board to proceed slowly and reminded members that when increase set
6 asides occur for one species, there will be impacts to other species.

7
8 Pat McElroy reported DNR has received approximately 500 plus e-mails concerning the protection
9 of spotted owl.

10

11 **SPOTTED OWL RECOMMENDATIONS**

12 **Rules and Implementation**

13 Lenny Young briefed the Board on recommendations for consideration of permissible
14 administrative actions, Board process, or other appropriate actions to improve the current spotted
15 owl rules and their implementation leading to strengthening conservation of spotted owl habitat on
16 lands under the Board's jurisdiction. Young acknowledged and thanked everyone who shared ideas
17 and opinions with him as he undertook the process of drafting the recommendations. Young
18 referred the Board to recommendations within the meeting packet.

19

20 Alan Soicher asked whether the process would result in a laundry list of options suggested by the
21 various caucuses with staff flagging recommended actions. Soicher said he assumed the November
22 2, 2005 list of 14 items is the "laundry list." Young noted the November 2 draft was not a laundry
23 list, as staff received more ideas and different interpretations than what was included in the
24 November 2 draft. The November 2 draft was generated specifically for discussions with the
25 WDFW, WFPA, and the conservation caucus. Additionally, staff does not have a comprehensive
26 list of all the recommendations offered during the last several months.

27

28 Board asked staff to address only those items that were not recommended by staff or items that were
29 regrouped into another recommendation.

30

31 1. Change the definition of critical habitat sites for the Northern Spotted Owl to include all suitable
32 spotted owl habitat within the SOSEAs. *Staff recommends against the option because of the*

1 *need for additional evaluations and assessments without guidance, criteria, or tools. The topic*
2 *needs to be added to a list of important topics to be addressed in concert with federal recovery*
3 *planning.*

4 5. Item was retitled “FPA.” *Currently, there is a rule for what #5 sought to attain.*

5
6 Soicher inquired about distances within the rule and whether it will provide a comprehensive
7 database of owl locations. Young referred to chapter 222-30 WAC, Timber Harvesting under
8 “Wildlife habitat (WAC 222-30-020(10)).” The applicant should make every reasonable effort to
9 cooperate with the WDFW to identify critical habitat state as defined by the Board, and where these
10 habitats are known to the applicant they shall be identified in the application or notification. The
11 definition for critical habitat for spotted owls contains the distance information. Staff believes the
12 rule accomplishes the intent of #5.

13
14 Soicher asked whether there may be owls further away that the Department may not know of.

15 Young said potentially it is possible but they would be located outside the scope of an FPA and not
16 within the authority to require landowners to bring forward data that is outside the scope of an FPA.

17
18 Soicher asked whether it puts WDFW at a disadvantage. John Mankowski indicated he doesn’t
19 believe it will impact WDFW.

20
21 8. *Item is not moving forward because staff did not believe that changing WAC 222-16-*
22 *080(1)(h)(iv), small parcel exemption rose to the level of significance that the Board needs to*
23 *consider at this time.*

24
25 Lenny Young reviewed each recommended proposal for consideration as outlined in
26 “Recommended Adjustments to the Washington State Forest Practices Spotted Owl Rules and their
27 Implementation, November 9, 2005”.

28
29 The first recommendation is for the Board to address decertification. Two options are available:

30 A. Recognize a voluntary moratorium offered by the WFPA on behalf of its member companies to
31 not request that any status 1, 2, or 3 owl sites be reclassified as status 5 based on the three years
32 of surveying without detecting any spotted owls. The recommendation is to only consider a

1 regulatory moratorium if requests to decertify sites continue to come in after a volunteer
2 moratorium has been enacted.

3 B. Direct staff to file a Rule Making Order to change the definition of “Northern spotted owl site
4 center.”

5
6 The second recommendation is to address “virtual habitat” by directing staff to file a Rule Making
7 Order to strike the last paragraph of WAC 222-10-041(4)(b) that extend the benefit of an HCP or
8 similar agreement to lands that are not managed according to the terms of the agreement. It is
9 difficult to maintain the logic for counting habitat that does not exist.

10
11 The third recommendation concerns reporting by changing WAC 222-16-080(8) as part of the
12 permanent rule making. This WAC requires DNR, in consultation with WDFW, to report annually
13 to the Board on the status of the Northern Spotted Owl. Young reported that staff does not
14 recommend emergency rule making as the reporting requirement does not rise to the level of an
15 emergency and does not meet the definition. It is not practical or helpful to attempt to
16 comprehensively reevaluate the status of the owl and report to the Board every year. Staff provided
17 a comprehensive analysis to the Board at its workshop and recommends reporting on a five year
18 interval with the next scheduled in 2010. The recovery plan will be in place for approximately three
19 years and adaptive management will likely be underway as part of the recovery plan
20 implementation, and there is likely the chance of having new information on the status of the owl
21 that would be helpful for the Board to consider.

22
23 The fourth recommendation is a request from the Board to DNR to conduct an “operational review”
24 of procedures used by DNR to evaluate FPAs involving the harvest of suitable spotted owl habitat
25 within the median home range circles.

26
27 The fifth recommendation is derived from the Northern Spotted Owl Policy Group’s deliberations
28 facilitated by Dan Silver. The recommendation is to request that DNR convene a stakeholder group
29 to review and recommend changes to WAC 222-16-100 governing landowner option plans and
30 WAC 222-16-105 governing cooperative habitat enhancement agreements with a goal of promoting
31 the development of landscape plans to conserve spotted owl habitat and develop future habitat.

1 The sixth recommendation is to direct staff to work with WDFW, tribes, and stakeholders to acquire
2 funds to carry out a comprehensive, landscape-level wildlife habitat assessment.

3
4 The last recommendation is for the Board to request DNR and WDFW to meet with U.S.
5 Department of Interior and U.S. Fish and Wildlife Service to explain Washington State’s approach
6 to spotted owl habitat conservation and request an active role in developing the federally-led spotted
7 owl recovery plan. Young reviewed topics 7A through 7D and indicated the topics that need to be
8 addressed in concert with federally-led recovery planning. (In summary, 7A-7D are: 7A) review
9 SOSEA boundaries; 7B) develop and implement a Northern Spotted Owl adaptive management
10 program; 7C) review the Northern Spotted Owl survey protocol; and 7D) review Northern Spotted
11 Owl habitat definitions in WAC 222-16-085)).

12
13 Pat McElroy deviated momentarily from the agenda to allow additional public comments.

14
15 **PUBLIC COMMENT**

16 Bob Dick, American Forest Resource Council

17 Dick referred to DNR’s use of the “Notice to Comply.” The “Notice to Comply” is the minimum
18 form of regulatory action, but it is also being used by field personnel to memorialize routine
19 changes to an FPA. He said it is becoming a serious problem.

20
21 Dick introduced Gary Hanson, a retired consultant and Mike Davis, Hampton Tree Farms, who
22 explained the concerns.

23
24 Davis said that for a number of years he has been involved in administering DNR timber sales and
25 contracts. During the course of a timber sale, Hampton receives many different forms of
26 correspondence from DNR contract administrators and the state. The forms are effective
27 administrative tools used to communicate during the course of a timber sale, but because the
28 “Notice to Comply” is an enforcement tool according to the WAC, it is perceived as threatening and
29 intimidating. He indicated he has had to explain more than once that the correspondence is neither
30 a violation nor an indication of unauthorized activity, but simply a response to a request for an
31 amendment. Hampton Tree Farm supports DNR’s efforts to separate the regulatory and
32 administrative differences surrounding the “Notice to Comply” form.

1
2 Hanson explained that occasionally modifications are required for FPAs, a common irritant is the
3 use of the “Notice to Comply” or “Stop Work Order.” FPA amendments over the years range from
4 changing the size of a culvert to lengthening a road. The forms can generate confusion with clients
5 requiring more explanation that the form was not meant to be negative or intimidating. He asked
6 the Board to consider resolving the situation by modifying the form and use it only for flagrant and
7 repetitive violators. He asked the Board to review the concerns with the various forest practice
8 regions to determine if they have similar concerns.

9
10 Pat McElroy mentioned the problem of initiating a rule change on the Notice to Comply is that its
11 the legal mechanism DNR must use under the current rules to address what is probably best
12 described as an amendment or change to an approved forest practice. McElroy suggested that the
13 Board consider finding a better alternative and prioritize accordingly on the Board’s 2006 work
14 plan.

15

16 **SPOTTED OWL RECOMMENDATIONS (Continued)**

17 *Decertification*

18 Eric Johnson asked about the impact on the landscape if only WFPA is engaged in the voluntary
19 moratorium. He asked about other companies that could be seeking a decertification. Lenny Young
20 said it is unlikely that any entity that is not a WFPA member would seek such action. Possible
21 entities could include small or medium-sized companies. John Mankowski acknowledged there
22 have been some requests from individuals that are not long-term forest managers. Johnson asked
23 whether there would be a written commitment from WFPA. Young replied at this time it is a verbal
24 commitment. Mankowski inquired about situations where decertification requests continue to be
25 received after the Board approves the voluntary moratorium. Young said the Board could revisit
26 the issue and proceed with filing a Rule Making Order containing a sunset date of June 30, 2007.

27

28 Discussion ensued about the impact of any decision with respect to the federally-led recovery
29 planning process and completion of the draft recovery plan. Mankowski commented on the
30 confusing nature due to the involvement of different agencies with respect to decertification. He
31 said his preference for the Board’s action is to send a strong, clear message about what the state is
32 doing between now and the completion of a recovery plan. He indicated he is somewhat concerned

1 about a cooperative program that leaves open, mixed signals about responsibilities and authorities if
2 a company requests decertification.

3

4 ***Reporting***

5 Mankowski said he hoped the decision for review every five years does not speak to the Board's
6 potential necessity to relook at its rules based on the outcome of the other actions. Young said the
7 action states that the "Department" shall report on the status of the Northern Spotted Owl.

8 Discussion followed about resource management issues, the recovery plan, and possibly connecting
9 the recommendation to the required federal reporting process. The issue is not how the rule is
10 working but about the status of the owl. A concern was expressed about the length of the reporting
11 period. McElroy suggested the Board continue reviewing the recommendations to determine if
12 there are any linkages with reporting.

13

14 ***Operational Review***

15 McElroy suggested an operational review six months following the beginning of each biennium
16 rather than a one-time review. Mankowski said the review is an important priority in helping
17 understand how the Board is implementing the current rule, which could also possibly address the
18 question of habitat declining in circles. Additionally, linking that with one of the recommendations
19 from the Pierce study that suggests by doing an in-depth analysis there is a lack of accurate habitat
20 maps that coincide with the specifics of the state. One of the scientists' conclusions was the need to
21 make progress on establishing a high-quality habitat map for the purpose of implementing the day-
22 to-day aspects of the rule but also for periodic policy review.

23

24 ***Landscape-Level Management***

25 Board questions included whether the stakeholder group would be led by a facilitator, the scope of
26 the work, and whether the plan is primarily focused only on spotted owls. Young suggested the
27 stakeholder group would determine the scope of the plan, whether landscape planning can become
28 more than just a concept, and whether it works within a regulatory environment.

29

30 ***Wildlife Habitat Assessment***

31 Johnson asked how the recommendation differs from what the Board has tried to accomplish for the
32 last several years. Young said the assessment has been identified as part of the wildlife work

1 program that could be done in the future. The recommendation focuses on directing DNR and
2 WDFW to begin efforts to take specific action and collaborate with the tribes and the stakeholders
3 to seek funding and work with the Governor's Office and Legislature to pursue the assessment.
4 McElroy said the recommendation provides direction to move in a comprehensive mode involving
5 all stakeholders.

6

7 ***Recovery Planning***

8 McElroy said the Board previously passed a motion and he is unsure if an amendment is required.
9 Young said the Board's August 10 action said the Board will monitor the progress of U.S. Fish and
10 Wildlife Service in developing a spotted owl recovery plan and will engage in the process wherever
11 and as soon as appropriate. That Board action appears to be more reactive and in a spectator role.
12 With the weight and importance of the issues, staff recommends a more proactive role with WDFW
13 and DNR becoming engaged and involving stakeholders rather than just monitoring a federal
14 agency's progress. Doug Stinson asked about current progress on the recovery plan. Young said a
15 "Request for Proposals" has been released to contract at least part of the recovery plan
16 development. Mankowski said the state expects a letter from the U.S. Fish and Wildlife Service
17 inviting the state to determine how it will participate in the recovery planning process. He
18 suggested adding the Governor's Office. Also, it's important that the state conveys its interest in
19 the science and the policy. The state may have specific questions to ask U.S. Fish and Wildlife
20 Service to address. McElroy suggested providing direction to whomever would engage in the
21 discussions with the federal government to have the Board's recommendation as a punch list as the
22 process is undertaken. There appears to be a policy committee comprised of high-level personnel
23 with work to be completed by a team of biologists and other professionals. For policy-level issues,
24 the Board should ensure the state's representative is knowledgeable. Tom Laurie said it's important
25 to ensure the federal process addresses all the issues and for the Board to detect whether the federal
26 government will sufficiently look at survey protocols, which is critical for the state.

27

28 Board members agreed it will take a united and collaborative effort by the state to make a
29 difference.

30

31 Board members individually offered final comments about the recommendations by staff, potential
32 impacts, public testimony received to date, and staff efforts in response to the Board's request at its

1 August meeting. Board members discussed the declining owl population and their struggle in
2 considering the need to pass additional rules as well as the anticipation of what comes from the
3 federally-led recovery planning effort. They conveyed a thank you to staff for their efforts in
4 developing the recommendations. Topics addressed included the recognition that there is a decline
5 in the spotted owl population, that the state needs to take a leadership role, that the process is an
6 open public process and that the Board's efforts is open and collaborative, and the social and
7 economic impacts to rural counties must be considered.

8
9 Pat McElroy thanked citizens for taking the time to attend the meeting and speaking about the issue.
10 He noted Washington State provides the greatest protection for the Northern Spotted Owl,
11 particularly compared to Oregon. McElroy referred to a chart depicting a comparison of spotted
12 owl protection between Washington and Oregon. McElroy spoke about correlation and causation.
13 The correlation is that in Oregon where 70 acres of protection is provided, the owls are doing better
14 than in Washington. Perhaps the state should protect only 70 acres? However, in reality, there are
15 many other contributing factors, such as the Barred Owl which is not as prevalent in Oregon as it is
16 in Washington. The balance is considering the causation and what the connection is between cause
17 and effect.

18
19 **MOTION:** John Mankowski moved to direct staff to file a Rule Making Order (CR-103)
20 with the Office of the Code Reviser to change the definition of "Northern
21 Spotted Owl site center" in WAC 222-16-010 as amended:

22 ***Northern Spotted Owl site center" means:***

23 (1) *Until June 30, 2007, the location of Northern spotted owls:*

24 (a) *Recorded by the department of fish and wildlife as status 1,2, or*
25 *3 on November 1, 2005, or*

26 (b) *Newly discovered and recorded by the department of fish and*
27 *wildlife as status 1, 2 or 3 after November 1, 2005.*

28 (2) *After June 30, 2007, the location of status 1, 2 or 3 Northern spotted*
29 *owls based on the following definitions:*

30 *Status 1: Pair or reproductive – a male and female heard and/or*
31 *observed in close proximity to each other on the same visit,*
32 *a female detected on a nest, or one or both adults observed*
33 *with young.*

34 *Status 2: Two birds, pair status unknown – the presence or response*
35 *of two birds of opposite sex where pair status cannot be*
36 *determined and where at least one member meets the*
37 *resident territorial single requirements.*

38 *Status 3: Resident territorial single – the presence or response of a*
39 *single owl within the same general area on three or more*

1 *occasions within a breeding season with no response by an*
2 *owl of the opposite sex after a complete survey; or there or*
3 *more responses over several years (i.e., two responses in*
4 *year one and one response in year two, for the same*
5 *general area).*

6 In determining the existence, location, and status of Northern
7 Spotted Owl site centers, the Department shall consult with the
8 Department of Fish and Wildlife and use only those sites
9 documented in substantial compliance with guidelines or protocols
10 and quality control methods established by and available from the
11 Department of Fish and Wildlife.

12
13 The Forest Practices Board finds that immediate amendment of this rule is
14 necessary for the preservation of the public general welfare, and that
15 observing the time requirements of notice and opportunity to comment upon
16 adoption of a permanent rule would be contrary to the public interest.
17 Specifically, the Board finds that this immediate rule change is necessary
18 because:

- 19 1. the amount of suitable habitat within Spotted Owl Special Emphasis
20 Areas, outside areas that are being managed under the aegis of a habitat
21 conservation plan or similar agreement, has declined by an average of 16
22 percent since this rule was adopted
- 23 2. habitats recently occupied by spotted owls are potentially important to
24 spotted owl recovery and should be maintained until a draft recovery
25 plan has been completed and the Board has had the opportunity to
26 consider ramifications of decertifying additional sites in light of recovery
27 strategies and goals,
- 28 3. fewer plans to conserve spotted owl habitat at a landscape level have
29 been developed than was anticipated when this rule was adopted, and
- 30 4. with few landscape-level plans, the forest practices rules continue to rely
31 heavily upon the regulation of timber harvest at individual spotted owl
32 sites to provide habitat conservation.

33
34 **SECONDED:** Eric Johnson
35

36 **Board Discussion**

37 Mankowski said he appreciated the offer by industrial landowners for the voluntary moratorium.

38 However, he said he understands what it means to give guidance to an agency and take actions if
39 voluntary measures do not work. The motion offers clarity and definitive policy direction to DNR
40 and to the state and is not intended to reflect a refusal of the voluntary measures. It is an important
41 issue and the Board must show a clear and decisive position on decertification until the recovery
42 plan is completed.

43
44 Doug Stinson acknowledged the comment and suggested the issue speaks to trust that is currently

1 lacking. He indicated he believes the industry will police itself to ensure it works. The Board
2 should consider extending an opportunity to the industry. Mankowski said his comments do not
3 pertain to the lack of trust of the offer by the industry but rather reflects that any landowner can
4 submit decertification requests. It is a clearer and effective direction for the Department while
5 acknowledging it may also send a mixed message to industry. Johnson said if he was convinced it
6 only involved WFPA lands he would also prefer to weigh in favor of the trust factor. However, it is
7 a broader set of landscape that the Board must consider. Stinson asked staff about other
8 landowners. Lenny Young replied that landowners who are purchasing land and converting it to
9 housing developments are also interested in decertifying sites.

10
11 Murray asked about the permanence of an emergency rule. McElroy reported emergency rules
12 remain in effect for 120 days during which the Board proceeds on a permanent rule making basis.
13 The emergency rule has a termination date. John Mankowski clarified the intent of the motion.

14
15 David Hagiwara offered a suggestion to consider adding language recognizing the volunteer efforts
16 by the industry.

17
18 **AMENDMENT:** David Hagiwara moved to amend the motion by adding the following
19 language to the beginning of the last full paragraph:
20 *...While acknowledging the offer from private forest landowners to agree to*
21 *a voluntary moratorium on decertification, the Forest Practices Board finds*
22 *that immediate amendment of this rule is necessary ...”*

23
24 **SECONDED:** Mankowski and Johnson accepted the amendment.

25 **ACTION:** Motion passed unanimously.

26
27 **MOTION:** Pat McElroy moved that the Forest Practices Board directs staff to file a Rule
28 making Order (CR-103) with the Office of the Code Reviser to strike the last
29 paragraph of WAC 222-10-041(4)(b) that currently states:

30 *Suitable spotted owl habitat harvested by a landowner shall*
31 *continue to be counted as part of the total acres necessary under*
32 *(b) of this subsection for other landowners within the median home*
33 *range circle if the harvest is conducted pursuant to agreements or*
34 *plans approved under subsection (6) of this section or WAC 222-*
35 *16-080 (1)(h)(iv), (6)(a)(iv), or (f).*

36
37 *The Forest Practices Board finds that immediate amendment of this rule is*
38 *necessary for the preservation of the public general welfare, and that*

1 observing the time requirements of notice and opportunity to comment upon
2 adoption of a permanent rule would be contrary to the public interest.
3 Specifically, the Board finds that this immediate rule change is necessary
4 because:

- 5 • the amount of suitable habitat within Spotted Owl Special Emphasis
6 Areas, outside areas that are being managed under the aegis of a habitat
7 conservation plan or similar agreement, has declined by an average of 16
8 percent since this rule was adopted
- 9 • fewer plans to conserve spotted owl habitat at a landscape level have been
10 developed than was anticipated when this rule was adopted,
- 11 • with few landscape-level plans, the forest practices rules continue to rely
12 heavily upon the regulation of timber harvest at individual spotted owl
13 sites to provide habitat conservation,
- 14 • in light of spotted owl population declines and reductions in the amounts
15 of habitat in areas intended to provide conservations, it is not logical to
16 continue the practice of counting habitat that has actually been harvested
17 when calculating the amount of habitat remaining within a median home
18 range circle.

19
20 **SECONDED:** John Mankowski
21

22 **Board Discussion**

23 Pat McElroy said while there may have been some justification regarding the issue, the Board has
24 been unable to clearly understand the issue. The motion allows non-participating forest landowners
25 to benefit at the cost of those who are engaged and have conservation planning. McElroy said in his
26 discussions with others he has not heard of any strong pushback regarding the issue and that on its
27 face it appears to be illogical. Toby Murray agreed that it seems illogical on its face and that it
28 appears the Board is adopting a rule that will impact an amount of habitat that can't be defined or
29 estimated, which leads him to believe the Board is writing a rule that is not warranted. The Board
30 can't demonstrate a need for the rule and consequently Murray said he is opposed to the motion.
31 McElroy said there is one situation where 200 acres of suitable owl habitat is proposed for harvest
32 under the rule. However, the Department does not know what the actual measurement is. The
33 concern of delaying action may open up doors that might be undesirable. Additionally, staff has not
34 had the resources to complete the work. Bottom line, owls cannot use habitat that has been
35 harvested. Mankowski said his concern is that the action does not really solve a problem that has
36 been a major dilemma. However, when considering the rule and trying to understand what is
37 prompting the harvest within circles below 40 percent, which is a serious threshold, this action is
38 one way to address the issue.
39

1 ACTION: Motion passed. 10 support/1 oppose

2

3 The Board discussed the recommendation for changing the reporting requirement. Mankowski said
4 reporting every year is too often while every fifth year is presumptive. After the recovery plan is in
5 place is probably a more appropriate time to determine what will be measured and how often. The
6 Board did not act on the reporting recommendation.

7

8 MOTION: Eric Johnson moved that the Forest Practices Board requests DNR to carry
9 out an operational review of procedures used to evaluate Forest Practices
10 Applications and Notifications involving the harvest of suitable spotted owl
11 habitat within median home range circles, with the objectives of determining
12 whether sound procedures are being consistently applied to calculate habitat
13 amounts and assessing the quality of data used to make these calculations.

14

15 SECONDED: Lee Faulconer

16

17 AMENDMENT: Pat McElroy moved to amend the motion with the following language added
18 to the end.

19

20 *. . . calculations and make necessary adjustments to procedures. Include in*
21 *the report proposals to address any data gaps identified, and report to the*
22 *Board at its February meeting.*

22

23 SECONDED Johnson and Faulconer accepted the amendment.

24

25 ACTION: Motion passed unanimously.

26

27

28 MOTION: Sherry Fox moved that the Forest Practices Board requests staff convene a
29 stakeholder group to review and recommend changes to WAC 222-16-100
30 (landowner option plans) and WAC 222-16-105 (cooperative habitat
31 enhancement agreements), with the goal of stimulating development and
32 implementation of single-landowner landscape-level plans to conserve
33 current spotted owl habitat and develop future habitat.

34

35 SECONDED: Doug Stinson

36

37 Board Discussion

38 John Mankowski said the proposal is narrowly focused and suggested consideration of a facilitated
39 process because of the importance of the process. Additionally, there may be some broader topics
40 missing that could make the effort successful. He added that a facilitated process should consider
41 discussing the role of tax incentives, safe harbor agreements, long-term permits or certification, and
42 conservation easements. These types of things can prompt landowners to manage owl habitat at a

1 higher level. He suggested reworking the proposal. Tom Laurie agreed the direction should be
2 broader but was unsure whether the list of incentives offered by Mankowski is precluded from
3 staff's recommendation. Mankowski said based on his experience, there should be a stronger
4 emphasis placed on the incentives to ensure there are individuals with experience, capacities, and
5 background to participate in the process. Mankowski asked the Board to also pay some attention to
6 considering alternative regulatory approaches where landscape planning is not used or not possible
7 within SOSEAs, consistent with achieving SOSEA objectives of the recovery planning.

8
9 David Hagiwara cautioned against unfunded mandates pertaining to a facilitated process. Lenny
10 Young responded that a facilitated process can be expensive. Pat McElroy offered that if the Board
11 passes the motion as modified, the Department would consider the direction and would do the best
12 job with the existing resources. The Department may have to return to the Board and request
13 further direction on the commitment of resources not just from DNR and WDFW but also from
14 landowners, the environmental community, and others that are engaged. Young offered that DNR's
15 budget includes resources for facilitation and negotiation assistance with respect to the Board's
16 entire Wildlife Work Plan. If the Board chose to devote those resources to the request, the
17 Department could cover the cost of facilitation. McElroy offered that from the Board's perspective,
18 the most important focus be the decertification and virtual habitat rule making elements, landscape-
19 level management, and recovery planning.

20

21 **ACTION:** Fox withdrew the motion.

22

23 **MOTION:** John Mankowski moved that the Forest Practices Board requests staff to
24 convene a facilitated stakeholder group to review and recommend changes to
25 WAC 222-16-100 (landowner option plans) and WAC 222-16-105
26 (cooperative habitat enhancement agreements), and other WACs, statutes,
27 and programs as necessary to meet the goal of stimulating development and
28 implementation of single-landowner landscape-level plans to conserve
29 current Spotted Owl habitat and develop future habitat. This group will also
30 consider alternative regulatory approaches consistent with achieving SOSEA
31 goals or contribute to recovery planning where landscape planning is not used
32 or not possible. Further, the Board requests that DNR provide a status report
33 at the February 2006 Board meeting.

34

35 **SECONDED:** Sherry Fox

36

37 **Board Discussion**

1 Soicher referred to the “Silver process” and asked whether the process recommended convening
2 such a group to undertake the process. Mankowski said the Silver process looked at many elements
3 of the owl rule and clearly identified that making landscape-level planning work is a priority. The
4 process also identified several barriers to landscape-level planning such as incentives, SEPA, and
5 connections to the Endangered Species Act (ESA). The proposal under consideration is to take it
6 to the next step.

7
8 McElroy said the motion is a critical action to move the Board’s rules and responsibilities forward.
9 However, in the process, there clearly must be some benefit to participating landowners. To expect
10 landscape planning to occur without substantial reasons to engage will be another process that is not
11 effective.

12
13 Soicher suggested including an end date for bringing recommendations to the Board. McElroy said
14 that with some of the additional elements included in the motion, staff will return for additional
15 direction.

16
17 **ACTION:** Motion passed unanimously

18
19 The Board deferred discussion on “Wildlife Habitat Assessment” until a later agenda item.

20
21 McElroy asked staff whether the Board’s previous motion was sufficient to address recovery
22 planning. Young requested the Board offer more specifics and more direction. In August, the
23 Board stated that it will monitor U.S. Fish and Wildlife Services progress in developing a spotted
24 owl recovery plan and will engage in this process wherever and as soon as appropriate. Staff
25 recommends the Board to be more proactive than reflected in the Board’s August motion.

26
27 **MOTION:** John Mankowski moved that the Forest Practices Board requests the DNR
28 and WDFW to meet with the U.S. Department of Interior and U.S. Fish and
29 Wildlife Service to explain the State of Washington’s approach to spotted
30 owl habitat conservation and request an active role in the development of a
31 federally-led Spotted Owl Recovery Plan.

32
33 **SECONDED:** Eric Johnson

34
35 **AMENDMENT:** Pat McElroy offered an amendment that the Board further requests that DNR

1 write a letter on behalf of the Board to the Department of Interior and U.S.
2 Fish and Wildlife Service listing the ingredients listed in 7A through 7D in
3 staff's memo (Lenny Young) as the basis for consideration by them in their
4 recovery planning efforts.

5
6 **SECONDED:** Mankowski and Johnson accepted the amendment.

7
8 **ACTION:** Motion passed unanimously.

9
10 **MOTION:** Alan Soicher moved that the Forest Practices Board directs staff to file a Rule
11 Making Order with the Office of Code Reviser to change the definition of
12 critical habitat (state) for Northern Spotted Owl to include all suitable spotted
13 owl habitat within Spotted Owl Special Emphasis Areas (SOSEAs).

14 Specifically:

- 15 1. change WAC 222-16-080(1)(h)(i) to read as follows: "Within a SOSEA
16 boundary (see maps in WAC 222-16-086), except as indicated in (h)(ii)
17 of this subsection, harvesting, road construction, or aerial application of
18 pesticides on suitable spotted owl habitat ~~within a median home range~~
19 ~~circle that is centered within the SOSEA or on adjacent federal lands."~~
- 20 2. Change WAC 222-16-080(1)(h)(ii) to read as follows: "Within the Entiat
21 SOSEA, harvesting, road construction, or aerial application of pesticides
22 within the areas indicated for demographic support (see WAC 222-16-
23 086(2)) ~~on suitable habitat located within a median home range circle~~
24 ~~that is centered within the demographic support area."~~

25
26 **SECONDED:** John Mankowski

27 28 **Board Discussion**

29 Soicher referred to the recovery planning that will consider whether there is a need for additional
30 SOSEAs. The motion is an opportunity not to foreclose options until the work is completed. Tom
31 Laurie asked whether the motion is for an emergency rule or a permanent rule. Soicher indicated it
32 is an emergency rule and an interim measure to stabilize the situation until longer-term solutions are
33 worked out.

34
35 Johnson asked about the reasons for staff's removal of the recommendation from the proposal.
36 Young said at the time the proposal was drafted staff did not want to change any of the SEPA
37 guidance regarding how an application is reviewed under SEPA. Staff concluded it would put
38 foresters in a very difficult position having to make decisions on habitat outside of circles where
39 judgment calls would involve interpretation of principles of conservation biology and without
40 specific criteria that would be difficult to develop. Staff further believed if the extra step was
41 pursued to develop SEPA guidance outside of the context of recovery planning, it would overlap

1 into concepts that would be better addressed during recovery planning.

2
3 Mankowski commented that he had the same reaction in terms of timing and suggested the Board
4 may want to consider an approach after work is pursued on the motion for landscape-level
5 management. He recommended that careful consideration of the step is crucial in sending the right
6 message to non-industrial landowners and industrial landowners as well as accomplishing the goals
7 that the Board wants to achieve for owls. The motion conflicts with the Board's motion on the
8 landscape-level management concerning alternative approaches where landscape planning is not
9 used. It may create problems in terms of rightness of applications and collaborative processes the
10 Board envisions.

11
12 Soicher said he assumed the small acreage exemption is still in place and that the motion would not
13 impact small landowners with property less than 500 acres.

14
15 Laurie requested additional clarification on the intent of the motion. Soicher described the intent of
16 the motion and noted inherent in the motion is for experts at WDFW to work cooperatively with
17 DNR over the next several weeks to establish SEPA guidelines for use by DNR field foresters.
18 McElroy said SEPA guidance is a Forest Practices Board rule and that in order to change it requires
19 an additional rule. Young said if the Board wants to change the SEPA guidance and add criteria, it
20 will require a change by the Board. It is possible for staff to develop an internal guidance memo for
21 field foresters, but staff must be careful not to put something in place as operational guidance within
22 the agency that amounts to illegal rule making. Without clear and concise objective criteria that the
23 forest practice forester can use to evaluate whether there is a probable, significant impact on the
24 environment, the decision can appear to be subjective and could be appealed. Laurie said the
25 dilemma is setting up a review without guidelines. It is doubtful the goal can be accomplished. The
26 best approach is to pursue the process already approved. Laurie asked how much land would be
27 involved that would be expanded in terms of a SEPA trigger. Young replied an estimate could
28 likely be obtained from the John Pierce report. Soicher said it would likely be a fraction of the
29 FPAs that come to the Department that are within SOSEAs. Young said based on his discussions
30 with WFPA on the draft recommendations, there is a fairly large number of applications that may
31 be, in the near future, suitable habitat outside of circles but within SOSEAs. Young said he believes
32 it is more than just a handful of applications that could be affected if the change is made.

1
2 Sherry Fox said during the Silver process, the SEPA trigger was the most favored disincentive for
3 not doing LOPs within the industrial and non-industrial communities. For the Board to take action
4 on a SEPA trigger, which is a very costly, time-consuming process, it would be something that the
5 Board is moving too quickly on. Fox agreed with John Mankowski's collaborative approach on
6 how the regulation is enforced on the ground. She encouraged the Board not to approve the motion.

7

8 **ACTION:** **Motion failed. 1 support/9 oppose**

9

10 Tom Laurie suggested the Board should consider the application of SEPA and definitions and asked
11 whether the group to be convened on landscape planning could look at the application of SEPA on
12 additional lands and the definitions. John Mankowski said it was his intent that the group will
13 consider alternative regulatory approaches. Laurie said he would like the subject considered by the
14 group. Pat McElroy cautioned everyone about due diligence of the process and that the Board will
15 be monitoring progress and the issue could be revisited if conditions warrant. Mankowski invited
16 discussion about the extent WDFW can implement a program for tracking FPAs in habitat in
17 SOSEAs outside of circles. McElroy replied that as part of the overall review the Board has
18 requested the issue could be incorporated asking whether the Department has the wherewithal to
19 monitor or measure and report the amount of habitat. Soicher asked whether it would be possible to
20 include circles outside of SOSEAs in the request. Young confirmed it was possible.

21

22 **SEPA Process**

23 Jed Herman directed the Board to information concerning options for streamlining SEPA for
24 landowners undertaking landscape plans. Herman reviewed a list of options based on the Board's
25 direction to identify strategies to alleviate SEPA process obstacles that are disincentives for
26 landowners to undertake landscape planning. At the Board's September retreat, further direction
27 was provided to staff to add long-term permits.

28

29 The options developed by staff are not mutually exclusive and should be viewed as a suite of
30 options and that any number of options may be used to meet any number of objectives depending on
31 the landowner and the situation. It also became clear during discussions, that a streamlined SEPA is
32 dependent upon having clear resource objectives. The streamlined process does not mean there are

1 elements of SEPA not completed; it pertains to who does the work and when.

2 Herman outlined the options, caveats for each option, whether a rule applies, and what objectives
3 are to be met. The options included:

- 4 • Watershed Analysis
- 5 • Rule “Pick List”
- 6 • Long-Term Plan and Permit
- 7 • No Programmatic SEPA
- 8 • No New Rule Option
- 9 • No Change

10

11 Pat McElroy asked: If the Forest Practices Board were to amend the landscape option plan and
12 Class IV-Special rules in a way that clearly articulates resource objectives and processes to
13 undertake SEPA analysis, then the Board would undertake a programmatic EIS and thereafter any
14 landowner who operates under that would complete a SEPA checklist? Herman said yes. Steve
15 Bernath and Paula Sweeden provided additional information. Sweeden confirmed one idea is to
16 develop resource objectives for each SOSEA that would be processed through one EIS.

17

18 Herman said if the Board completed the bulk of the SEPA work, it would be streamlined for
19 landowners.

20

21 McElroy said the Long-Term Plan and permit option appeared to provide the Board with a set of
22 rules that are applied application by application; however, if an applicant chose to undergo a long-
23 term management plan process, then the actions would be tiered against the resource objectives and
24 processes. Paula Sweeden said staff envisioned the option as working well later in the Wildlife
25 Work Plan, after the landscape assessment work is completed and species and species by science is
26 more developed. Resource objectives could potentially be developed from background work
27 completed by stakeholders and presented to the Board. If chosen as a pathway now, it would only
28 streamline the process if the plans were limited to doing something different for Northern Spotted
29 Owls and completing all other processes under current rules for all other resources. It has greater
30 potential after the completion of the Wildlife Work Plan because there would be better information
31 about how to establish the resource objectives.

32

1 Herman noted the options are not necessarily in priority order but that the top two are the potential
2 options for streamlining SEPA.

3
4 McElroy said under the current system, there is a substantial amount of SEPA analysis that needs to
5 be completed on a landscape plan. This can be accomplished through a programmatic approach
6 where the state undertakes much of the work that might or might not require an EIS. Herman
7 acknowledged that as the issues become more complex there is the greater likelihood of an EIS.
8 McElroy asked about who will bear the costs. Herman said the question is who does the analysis
9 and who will pay for it.

10
11 McElroy said the initial direction to staff was to determine if there is a way to streamline the SEPA
12 process.

13
14 Johnson suggested that at some point it would be beneficial for the Board to pursue SEPA experts
15 who are users of the system to offer additional ideas on how to improve SEPA efficiencies. The
16 Board could benefit from peer review. Toby Murray said that users are the people who will decide
17 if it is in fact an incentive. Sweeden said during the Silver process there were several discussions
18 about how SEPA was a disincentive from a planning perspective for landowners. The first two
19 options built on feedback received from landowners received during the Silver process. It is not to
20 say that the option does not need further work and input from landowners and other users.

21
22 Fox reported that she and Tom Robinson worked on the "Pick List" option approximately 10 years
23 ago. She suggested contacting him for more information. The option was not difficult to develop
24 because there are two willing parties that want to complete the process.

25
26 McElroy asked Mankowski whether the options should be folded into upland wildlife planning and
27 perhaps having a conversation with conservation attorneys and others knowledgeable in SEPA.
28 Mankowski said the options have more relevance to the process the Board previously approved
29 regarding landscape planning for owls.

30
31 McElroy suggested the Board consider the streamlining process as a work in progress and
32 incorporate the work with the earlier motion, with the understanding that there will be a wider array

1 of professionals weighing in on options and alternatives. The Board agreed with the suggestion.

2

3 **UPLAND WILDLIFE PLANNING**

4 John Mankowski directed the Board to a two-page draft of Upland Wildlife Planning Discussion
5 Concepts, an update and progress report on two topics. One is responding to the motion and
6 statements by the Board in August that the WDFW would instigate its commitment to initiating the
7 landscape assessment project. Coincidentally, there have been a number of discussions with fellow
8 Board members, parties from various caucuses, and directors of agencies that appear to lead to the
9 same direction. Mankowski referred to the list of principles and outcomes based on input from
10 others about how the Board's Wildlife Work Plan should proceed:

- 11 1. Increased priority on the landscape assessment element (Element 2 of work plan).
- 12 2. Increased collaboration among caucuses.
- 13 3. Increased use of the TFW process.
- 14 4. Clearly identify budget and implementation schedule to ensure progress.
- 15 5. Open process; level playing field.
- 16 6. Tighten the connection between the Board's Wildlife Work Plan and the Cooperative
17 Monitoring, Evaluation and Research Committee's (CMERs) ongoing and future
18 wildlife projects.

19 Mankowski suggested the following strategy:

20 **Spotted Owls:** Continue to implement Board direction.

21 **Landscape Assessment:** Conceptual project design is complete and funding strategies are
22 being developed. Progress on this element is essential before an adequate assessment can be
23 made for certain aspects of the current wildlife rules (or necessity for additional rules.)

24 *Approach:*

- 25 • Board request state agencies work with the Governor's Office, tribes, landowners, and
26 the conservation caucus to reinvigorate the TFW process to take up as a priority the
27 Upland Wildlife Planning work, and manage and report on the Landscape Assessment
28 Project's progress and results, similar to FFR Policy's role on Forests and Fish.
- 29 • Policy will serve as policy support and guidance, and CMER's Wildlife Committee
30 (LWAG) will conduct technical duties.
- 31 • As part of expanding the Policy's focus to include wildlife, seeking funding to ensure
32 full collaborative participation by all caucuses (e.g., conservation and family forest

1 caucuses).

2 **Review of remaining wildlife rules:** Mankowski referred to a list of rules. Some of the
3 items are linked to the landscape assessment project and other items on the list may be
4 appropriate for the Board to consider irrespective of the Wildlife Work Plan. Mankowski
5 suggested the Board's approach should be to request TFW Policy, when they convene, to
6 facilitate a special session or a series of workshops and report back to the Board on which
7 elements of those habitat rules are linked to the landscape assessment and which ones are
8 not. There may be some aspects of the wildlife rules where no assessment is needed. He
9 suggested a sorting process undertaken in a collaborative forum under TFW Policy guidance
10 to help sort and reformat the Wildlife Work Plan. Another element is to continue working
11 on the landscape planning process and family forest management plans.

12 **Adaptive Management:** Mankowski outlined the options and a diagram showing the
13 process and links between the work and groups.

14
15 **PUBLIC COMMENT**

16 Heath Packard, Audubon Washington

17 Packard urged the Board to consider the proposal and recommendation by John Mankowski. He
18 suggested moving forward on some of the work of the Board and the caucuses in a more
19 constructive, conciliatory fashion. The proposal moves the effort in that direction. Landscape is
20 definitely the way to approach wildlife management and timber management. He said there are
21 some individuals within his caucus that have some nervousness about these types of approaches and
22 there is some distance to go in trusting the process. The process could become more transparent
23 and help to provide some need based grants for the small family foresters and environmental
24 caucus. The technical tools that will help inform the upland wildlife assessment and landscape-
25 level assessment are under development by WDFW technical staff and the caucus has been in
26 contact about a peer review.

27
28 Josh Weiss, WFPA

29 Weiss said he agreed with Packard. For some time, there has been agreement that the Board should
30 spend some time looking at the work plan to determine if it is realistic. The proposal appears to be
31 moving the process forward. He commended Mankowski and the Department in shaping the
32 proposal as it is a substantial step forward in the process. It appears there is a tie-in for the

1 landscape-level planning discussion on owls in the process. If a collaborative TFW process can be
2 established like it has in Forests and Fish, there would be a better forum for some of the tough
3 discussions not currently available. He cautioned that the effort is an incredible amount of work,
4 and adding wildlife issues to the format makes complete sense and will likely save some time. At
5 some point, it might be possible to integrate the policies to have the ability to work on both wildlife
6 and fish issues.

7
8 Pat McElroy referred to a list of unanswered questions known as Schedules L1 and L2 that formed
9 the basis that Forests and Fish Policy that directed CMER to evaluate on the basis of risk to
10 resources. He asked John Mankowski if he envisioned a similar list such as “W1” and “W2”.
11 Mankowski said possibly at some point in the future. There are 30 stated resource objectives for
12 Forests and Fish expressed in WACs and there are uncertainties that are expressed in L1 and L2.
13 The challenge is taking the wildlife rules and crosswalking them to Forests and Fish. In some cases,
14 there are resource objectives that can be extrapolated. Where there are no resource objectives but
15 legitimate policy calls, the Board will have to work on these. The short answer is yes but it will
16 take much work.

17
18 **MOTION:** John Mankowski moved that the Forest Practices Board requests DNR and
19 WDFW work with stakeholder policy leads to further the transition of the
20 Board’s wildlife strategy to a more TFW-like approach along the lines
21 depicted in the handout presented titled, “DRAFT FPB Wildlife Work Plan
22 Discussion Concepts.”
23

24 **SECONDED:** Sherry Fox
25

26 Tom Laurie inquired about the status of the previous budget request. Mankowski said that was the
27 first draft of what it will take to fund the entire package. Mankowski said the budget request has
28 been crafted by WDFW in concert with DNR staff, conservation caucus and the landowner groups.
29 The effort is still in progress.

30
31 Discussion followed about funding the effort. Mankowski provided additional information about
32 the approach, timelines, and funding probability. Murray expressed concern about the motion with
33 respect to funding. Mankowski reported on the existence of a wildlife committee of SEPA. The
34 proposal would be the committee’s next priority. Mankowski described the current funding
35 environment. McElroy described previous efforts to move forward on the work and the importance

1 of continuing to work on the proposal.

2

3 **ACTION:** Motion passed unanimously.

4

5 McElroy referred Board members to material on 2004 Water Quality Assessment and Water Quality
6 Standards and recommended that members contact Stephen Bernath with any questions.

7

8 Pat McElroy expressed appreciation to members of the conservation caucus who stepped forward
9 and agreed to meet and have thoughtful and constructive conversations. John Mankowski echoed
10 similar comments.

11

12 The meeting was adjourned at 4:29 p.m.

13

14

15

16 Prepared by: Valerie Gow, Recording Secretary
17 Puget Sound Meeting Services

18

19