WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Commissioner of Public Lands

October 29, 2012

MEMORANDUM

TO: Forest Practices Board

FROM: Gretchen Robinson Gretchen
Forest Practices Division, Policy and Services Section

SUBJECT: Rule Making for Conversions and Applications

On November 13, 2012 I will request that you adopt forest practices rules to incorporate several Forest Practices Act amendments, and make other corrections and clarifications. Enclosed for your review are the proposed rule changes and a Draft Concise Explanatory Statement that contains a summary of the rule proposal.

At the August 14, 2012 meeting, the Board directed staff to file proposed rule language with the Office of the Code Reviser. The language was published in the Washington State Register on September 5 and was available for public review and comment until October 10.

The Board did not receive any comments on this rule proposal. One hearing was held in the Natural Resources Building in Olympia on October 10 in which one person provided a comment which was then subsequently withdrawn.

However, staff recommends that the language proposed for changes in WAC 222-16-050(4) "Class II" and (5) "Class III" be simplified for easier reading. In the proposed rule, language was inserted to explain that certain FPAs for forest lands within UGAs should not be classified Class IV-general. The final rule language in those subsections serves the same purpose as the proposed rule language, except:

- It is made more succinct by using cross references (i.e., eliminating unnecessary language repetition) and using an acronym for urban growth areas (UGAs) where practical; and
- It now includes "involving timber harvest or road construction" in the opening sentences of (4)(f) and (5)(q) for consistency with RCW 76.09.050(1) Class IV(c).

The final rule also contains some additional corrections to existing language in WACs 222-12- 0401 and -0402, WAC 222-16-050, and WACs 222-20-010, -015, and -020.

For your information, the analysis required pursuant to WAC 222-20-016(4) for certain rule making activities regarding small forest landowner long-term applications was not required for this rule making. This analysis is required when the rule amendments are intended to directly achieve resource protection objectives. This rule proposal only incorporates changes to statutes regarding the classification of forest practices applications (FPAs) and the jurisdiction of FPAs within UGAs, and makes minor corrections.

I look forward to seeing you November 13 when you consider rule adoption.

GR/
Enclosures: Rule Proposal for Conversions and Forest Practices Applications
Draft Concise Explanatory Statement

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FOREST PRACTICES BOARD
Rule Proposal for Conversions and Forest Practices Applications – CR-103
October 2012

CHAPTER 222-08 WAC

WAC 222-08-032 Function, organization, and office.

(1) The forest practices board was created by chapter 76.09 RCW to adopt forest practices rules as described in WAC 222-12-010.

(2) The board's membership as described in RCW 76.09.030(1), consists of thirteen members to include:

- (a) The commissioner of public lands or the commissioner's designee;
- (b) The director of the department of ~~community, trade, and economic development~~commerce or the director's designee;
- (c) The director of the department of agriculture or the director's designee;
- (d) The director of the department of ecology or the director's designee;
- (e) The director of the department of fish and wildlife or the director's designee;
- (f) An elected member of a county legislative authority appointed by the governor so long as that member serves as an elected official;
- (g) A member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and
- (h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(3) The governor-appointed members are appointed to four-year terms.

(4) The commissioner of public lands or designee shall chair the board.

(5) General public members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) Staff support is provided to the board as provided in RCW 76.09.030(6). Staff shall perform the following duties under the general authority and supervision of the board:

- (a) Act as administrative arm of the board;
- (b) Act as records officer to the board;
- (c) Coordinate the policies and activities of the board; and
- (d) Act as liaison between the board and other public agencies and stakeholders.

(7) The administrative office of the board is located at 1111 Washington Street S.E., Olympia, Washington. The board may sit or hold hearings anywhere in the state. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays and during board meetings. The board may be contacted at:

Forest Practices Board
c/o Department of Natural Resources
Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012
Phone: 360-902-1400
Fax: 360-902-1428

E-mail: forest.practicesboard@dnr.wa.gov

(8) Any person may contact the board as indicated in subsection (7) of this section to obtain information on board activities.

CHAPTER 222-12 WAC

WAC 222-12-035 *Small forest landowner long-term applications. In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners ~~as defined in WAC 222-21-010(13)~~ are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of ~~three~~ four to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

WAC 222-12-0401 *Alternate plans--Process.

(1) **Application.** A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with a ~~two~~three-year, multiyear, or small forest landowner long-term application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See board manual section 21.

(2) **Plan preparation.** The landowner is responsible for preparing and submitting an alternate plan. Small forest landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) **Contents of alternate plans.** Alternate plans must contain all of the following:

(a) A map of the area covered, at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) **Review of proposed plan.** Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team.

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within five business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner ~~under WAC 222-21-010 (13)~~, copies should also be provided to the small forest landowner~~s~~ office.

(5) **Interdisciplinary team.**

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least three days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner ~~under WAC 222-21-010 (13)~~ submitted the alternate plan using a template contained in board manual section 21 and is a low impact alternate plan and the team determines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) **Approval standard.** An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) **Approval, conditions, or disapproval.** Upon receipt of the interdisciplinary team's recommendation, the department shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

WAC 222-12-0402 *Assistance available for small forest landowners.

(1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. ~~A small forest landowner is defined in WAC 222-21-010 (13).~~ The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest ~~landowner's~~ landowners' economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office to assist small forest landowners in preparing alternate plans appropriate to small forest

landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using board manual section 21 for alternate plans, assistance in developing an individualized alternate plan for the small forest landowner, and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

CHAPTER 222-16 WAC

WAC 222-16-010 *General definitions

. . .

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. ~~The following definitions apply only to road maintenance and abandonment planning:~~

~~(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.~~

~~(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:~~

- ~~Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;~~
- ~~Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;~~
- ~~Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.~~

~~However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.~~

. . .

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than ~~two~~ three years but no longer than five years.

. . .

"Small forest landowner" means an owner of forest land who, at the time of submission of required documentation to the department:

- Has harvested no more than an average timber volume of two million board feet per year from their own forest lands in Washington state during the three years prior to submitting required documentation; and
- Certifies they do not expect to exceed that average timber volume for ten years after the department receives the required documentation.

However, a landowner who exceeded or expects to exceed those harvest limits may still be deemed a "small forest landowner" under circumstances described in RCW 76.09.450.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of ~~three~~ four to fifteen years. Small forest landowners ~~as defined in WAC 222-21-010(13)~~ are eligible to submit long-term applications if they meet the definition of "small forest landowner."

. . .

WAC 222-16-050 Classes of forest practices.

*There are four classes of forest practices created by the act. All forest practices (including those in Classes I and II) on non-federal forest lands must be conducted in accordance with the forest practices rules. The department determines the classification of each forest practices proposal.

(1) **"Class IV-special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be ~~conducted~~approved.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five ~~MBF~~ thousand board feet within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (d)(i) ~~below~~ of this subsection that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potentially unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports, review of approved watershed analysis

mass wasting prescriptions according to WAC 222-22-090(6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a watershed administrative unit (WAU) that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with approved prescriptions from the watershed analysis; and

(C) The applicable prescriptions are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*(e) Timber harvest, in a ~~watershed administrative unit~~WAU not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan).

*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV-general."** Applications involving the following circumstances are ~~"~~Class IV-general~~"~~ forest practices unless they are listed in "Class IV-special." Forest practices applications classified Class IV-general are subject to the SEPA review process described in (1) of this section.

(a) ~~Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~(b)~~ Forest practices (other than those in Class I) on lands that ~~have been or~~ are being converted to another use;

(~~c~~b) Forest practices ~~which~~ that would otherwise be Class III, but ~~which~~ are taking place on lands ~~which~~ that are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(~~d~~c) Where the regulatory authority for forest practices has not been transferred from the department to the local governmental entity pursuant to RCW 76.09.240(1), ~~Forest~~ forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial ~~forest products~~timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with ~~the~~ SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030(2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a ~~license~~ permit from a ~~county/city~~local governmental entity acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable ~~county/city~~local governmental entity under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the ~~county/city~~local governmental entity is the lead agency for purposes of compliance with SEPA.

(3) **"Class I."** ~~Those operations~~ Operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV-~~Special~~special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. ~~(~~See WAC 222-38-020 and 222-38-030.~~)~~

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary

potential to damage a public resource and may be conducted as Class II forest practices: Provided~~, That~~ that no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.~~100~~021) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a ~~"~~Class II~~"~~ forest practice if it takes place on lands ~~platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands~~ that ~~have been or~~ are being converted to another use. Unless the conditions described in (f) or (g) of this subsection are met, ~~No~~ no forest practice enumerated below involving timber harvest or road construction may be conducted as a ~~"~~Class II~~"~~ if it takes place within urban growth areas designated pursuant to chapter ~~37~~36.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application;

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal; and

(iv) The application is not a multiyear permit that is located within an area subject to reanalysis of a watershed analysis under WAC 222-22-090(6).

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

*(d) Salvage of logging residue, if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

*(f) Forest practices involving timber harvesting or road construction listed in (a) through (e) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

*(g) Forest practices listed in (a) through (e) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class II forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in (4)(f)(i) or (4)(f)(ii) of this section.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are ~~"~~Class III~~"~~ forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.~~100~~021).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over one acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*(n) Any filling of wetlands, except where classified as Class IV forest practices.

*(o) Multiyear permits.

*(p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

*(q) Forest practices involving timber harvesting or road construction listed in (a) through (p) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides documentation described in (4)(f)(i) or (4)(f)(ii) of this section.

*(r) Forest practices listed in (a) through (p) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class III forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in (4)(f)(i) or (4)(f)(ii) of this section.

CHAPTER 222-20 WAC

WAC 222-20-010 Applications and notifications - Policy.

(1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application and the information required for the department to approve or disapprove the application.

(3) **Except as provided in ~~subpart~~ subsection (4) ~~below~~of this section, applications and notifications** shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the former landowner or timber owner to the department and should include the original application or notification number. This written notice shall

be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature, the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) **Applications and notifications**, if complete, will be considered officially received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. The department will immediately provide a dated receipt to the applicant. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the Columbia River Gorge National Scenic Area Act (CRGNSA) special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within forty-five days.

(b) ~~An~~ A complete environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that ~~have been or~~ will be converted to a use other than commercial timber ~~production~~ operations ~~or on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW,~~ if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511, or unless the application is a small forest landowner long-term application which requires a roads assessment.

(8) **An operator's name**, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within forty-eight hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(9) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

WAC 222-20-015 Multiyear permits.

Landowners may apply for multiyear permits to conduct forest practices for four or five years in the following situations:

(1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, a landowner~~(s)~~ may apply for a multiyear permit. The information provided and level of detail for the application must be comparable to that required for a ~~two~~three-year permit. At a minimum, the applications for these permits must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) ~~A~~ Where a ~~landowner with an approved~~ road maintenance and abandonment plan (other than a checklist road maintenance and abandonment plan) has been approved under WAC 222-24-051, a landowner may apply for a multiyear permit to perform road maintenance, road abandonment, and/or associated right of way timber harvest, if the schedule for implementing the plan is longer than ~~two~~ three years.

(3) ~~A~~ Where an alternate plan has been approved under WAC 222-12-0401, a landowner may apply for a multiyear permit to perform ~~an approved~~the activities in the alternate plan.

WAC 222-20-016 Small forest landowner long-term applications.

(1) **Application.** A small forest landowner may submit a forest practices application that includes planned forest practices activities on all or part of a landowner's ownership within one of the department's geographic region boundaries. The application can be for terms of ~~three~~ four to fifteen years at the discretion of the landowner. The landowner will submit the application to the department in two steps.

(2) **Review of proposed application.**

(a) **Step 1: Resource and roads assessment review.** The landowner will submit the resource and roads assessment portion of the application. As part of the review, the department will determine any additional known resources or threats to public safety and initiate one or more site reviews in consultation with the department of ecology, the department of fish and wildlife, and the affected Indian tribes. The department will notify the landowner and the landowner's representative to attend the site review(s). Within forty-five days of receiving the complete assessment, the department will notify the landowner in writing of its validation or rejection of the assessment. If rejected, the department will provide a written statement to the landowner explaining why the assessment was rejected.

(b) **Step 2: Resource protection strategies review.** The department will accept for review the resource protection strategies portion of the long-term application after the department validates Step 1. The required elements of Step 2 will include a description of proposed forest practices activities and strategies for protection of all resources identified in Step 1. The department will approve, condition, or disapprove Step 2 within forty-five days of receiving the complete Step 2 portion, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required. If disapproved, the department will provide a written statement to the landowner explaining why the proposed strategies were disapproved.

(3) **Activity notice.** At least five business days before a landowner starts an approved forest practices activity the landowner will submit to the department an activity notice in a format acceptable to the department.

(4) **Amendments to long-term applications.**

(a) The department may authorize nonsubstantial amendments as authorized in WAC 222-20-060.

(b) If the board considers new or amended rules to achieve resource protection objectives, the department and the board will do the following regarding existing approved long-term applications:

(i) The department, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes will review, and if necessary analyze the effects of approved long-term applications on the public resources the proposed rules are intended to protect.

(ii) The department will report the results of its review and/or analysis to the board prior to rule adoption.

(iii) Upon rule adoption, the board may direct the department to condition existing approved long-term applications to protect resources.

(iv) The department will notify impacted landowners in writing of the board's decision.

WAC 222-20-020 Application time limits.

(1) **When the department officially receives an application,** the department will approve, condition or disapprove it within thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For ~~"~~Class IV~~"~~ applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i), (ii), ~~through~~ or ~~(iv)~~(iii) of this subsection, the applicable time limit shall be no less than fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) ~~Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~(ii)~~ Lands that ~~have been or~~ are being converted to another use;

(~~iii~~ii) Lands ~~which~~ that ~~are~~ will not ~~to~~ be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-~~24~~20-050); or

(~~iv~~iii) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(e) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(2) ~~**Unless the local governmental entity** has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted to another use until at least fourteen business days from the date of transmittal to the local governmental entity.~~

~~(3)~~ **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided~~, That~~ that no damage to a public resource resulted from such operations, and the operations commenced more than five days from receipt by the department of the notification.

(~~4~~3) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands ~~platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands~~ that ~~have been or~~ are being converted to a use other than commercial timber operations where the ~~county's~~ local governmental entity's right of objection is fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(~~5~~4) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

WAC 222-20-040 Approval conditions.

(1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions - Class IV-general applications.**

(a) RCW 76.09.240(~~4~~6) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to ~~Class IV-general~~ applications on lands that ~~have been or~~ are being converted to a use other than commercial timber ~~production~~ operations~~or to Class IV-general applications on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW~~.

(c) ~~The~~ After determining that an application is Class IV-general, the department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) ~~Local~~ The local governmental entity ~~conditions~~ shall ~~be filed~~ file its conditions with the department within twenty-nine days of the department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) **Lead agency mitigation measures.**

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under the State Environmental Policy Act. ~~(~~See WAC 197-11-758.~~)~~

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of twenty-nine days of the official receipt of the application by the department, fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must disapprove the application or require an environmental impact statement. ~~(~~See WAC 197-11-738.~~)~~ DNR will review the forest practices applications and the mitigation measures to ensure that they are consistent. If the application and the lead agency's mitigation measures are not consistent, such that the application proposes forest practices that go beyond the required mitigation, the department will disapprove the application or incorporatate the applicable lead agency conditions with the department's approval.

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall disapprove the application.

(5) **Small forest landowner approval conditions.** The department shall not disapprove a small forest landowner's application or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(a) Any barriers on their forest roads located within the boundaries of their application or notification; and

(b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application or notification.

(6) **CRGNSA special management area.**

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control.

Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on conditioning an application or notification within the CRGNSA special management area.

WAC 222-20-050 Conversion of forest land to nonforest use.

(1) If an application to harvest signed by the landowner indicates that within three years after completion, the forest land will be converted to a specified active use ~~which~~ that is incompatible with a use other than commercial timber ~~growing~~ operations, the reforestation requirements of ~~these rules~~chapter 222-34 WAC shall not apply, and the information relating to reforestation on the application form need not be supplied. However, if ~~such~~ the specified active use is not initiated within three years after ~~such~~ the harvest is completed, the reforestation requirements ~~(see chapter 222-34 WAC)~~ shall apply and ~~such~~ reforestation shall be completed within ~~1~~ one additional year.

(2) ~~For Class II, III, and IV-special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber growing, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan. This plan, if approved by the local governmental entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local governmental entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local governmental entity from charging a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)~~ If a landowner who did not state an intent to convert decides to convert to a nonforestry use within six years of receiving an approved forest practices application or notification, the landowner must:

(a) Stop all forest practices activities on the parcels subject to conversion;

(b) Contact the department of ecology and the applicable local governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any related applications or notifications, or request a new application for conversion.

Upon request from the local governmental entity, the department will provide the status of the landowner's related applications and notifications, and any final orders or decisions.

~~(3) If the application or notification does not state that any land covered by the application or notification will be or is intended to be converted to a specified active use incompatible with commercial timber growing, or if the forest practice takes place without a required application or notification, then the provisions of RCW 76.09.060 (3)(b)(i) regarding the six-year moratorium apply.~~

~~(4) A notice of a conversion to a nonforestry use issued by the department under the provisions of RCW 76.09.060 (3)(b) may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.~~

NEW SECTION

WAC 222-20-051 Conversion option harvest plans.

(1) For Class II, III, and IV-special forest practices, if a landowner wishes to maintain the option to convert forest land to a use other than commercial timber operations, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan.

(2) If a local governmental entity approves a plan, the landowner must attach it to the forest practices application or notification.

(3) The plan will be a condition of the approved application or notification.

(4) Violation of the plan will result in the development prohibitions or the conditions described in RCW 76.09.460.

(5) Reforestation requirements will not be waived regardless of the existence of a conversion option harvest plan.

NEW SECTION

WAC 222-20-052 Notice of conversion to nonforestry use.

(1) Under the provisions of RCW 76.09.060(3)(b), if harvest takes place without an approved application or notification, or the landowner did not state that any land covered by the application or notification is intended to be converted to a use other than commercial timber operations, then the department and the appropriate local governmental entity will follow the process described in subsections (2) and (3) of this section.

(2) When the department or local governmental entity becomes aware of conversion activities the department will send to the department of ecology and the appropriate local governmental entitities the following documents:

(a) A notice of conversion to nonforestry use;

(b) A copy of the applicable forest practices application or notification, if any; and

(c) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(3) When a local governmental entity receives a notice of conversion to a nonforestry use from the department, it will follow the requirements of RCW 76.09.460.

(4) A notice of a conversion to a nonforestry use issued by the department under the provisions of RCW 76.09.060(3)(b) and this section may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

WAC 222-20-080 Application and notification expiration.

(1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of ~~two~~ three years from the date of approval, with the following exceptions:

(a) Multiyear permits are effective for ~~three to~~four or five years.

(b) Small forest landowner long-term applications are effective for terms of ~~three~~ four to fifteen years.

(2) A notification is effective for a term of ~~two~~ three years beginning five days from the date it is officially received.

(3) An application or notification may be renewed for one additional three-year term by submitting a renewal in a form acceptable to the department.

STATE OF WASHINGTON
FOREST PRACTICES BOARD

PO Box 47012
Olympia, WA 98504-7012

As required by the
Administrative Procedure Act
Chapter 34.05 RCW

DRAFT CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapters 222-08, 222-12, 222-16, and 222-20 WAC
"Conversions and Forest Practices Applications"

Prepared by: Gretchen Robinson
October 2012

Table of Contents

1. Introduction 1
2. Differences between proposed and final rule 2
3. Summary of Comments 3
4. Rule Making Timeline, Notices, and Opportunities to Participate 3

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1. Introduction

Several forest practices rules in Title 222 WAC are inconsistent with the Forest Practices Act (chapter 76.09 RCW) due to changes in law that occurred in 2007, 2011, and 2012. The proposed rules eliminate those inconsistencies, and make additional corrections and clarifications to certain WACs.

Eliminating inconsistencies with the Forest Practices Act

- Affected rules: WAC 222-20-050(2) and WAC 222-20-052 (new)
  Pertinent laws: RCWs 76.09.060, -.460, and -.470

  2SSB 5883 (2007) replaced the mandatory six-year building moratorium with a process involving a **notice of conversion to nonforestry use**. Under the amended law if a landowner begins conversion activities without an approved forest practices application (FPA), or fails to state in an FPA that the land subject to the application will be converted, DNR must send a notice of conversion to nonforestry use to the Department of Ecology and the local governmental entity (LGE) where the land is located, and the landowner must follow specific steps to begin the permitting process.

- Affected rule: WAC 222-16-050
  Pertinent law: RCW 76.09.240

  SHB 1409 (2007) changed RCW 76.09.240. This law relates to the transfer of forest practices regulatory authority within urban growth areas (UGAs) from DNR to LGEs. One of the changes in 2007 was to exclude ownerships of 20 or more contiguous forest land acres from the transfer to the LGE **if the landowner documents the intent not to convert to a nonforestry use**. DNR maintains regulatory authority in these cases.

  The proposed rule changes in "Class IV-general", "Class II", and "Class III" show that classifications of FPAs on this category of forest land are not Class IV-general, and can be Class II, III, or IV-special.

- Affected rules: WAC 222-16-050 and WACs 222-20-010, -020, and -040
  Pertinent law: RCW 76.09.050

  HB 1582 (2011) eliminated "lands platted after January 1, 1960" as a criterion for Class IV FPA classification.

- Affected rules: WACs 222-12-035 and -0401; WAC 222-16-010; WACs 222-20-015, -016, and -080
  Pertinent law: RCW 76.09.060

  2ESSB 6406 (2012) added a year to FPA effective terms.

<u>Corrections and clarifications</u>

In addition to the rules amended for consistency with the Forest Practices Act, corrections and clarifications are proposed in the following rules: WAC 222-08-032; WACs 222-12-035, -0401, and -0402; WACs 222-16-010 and -050; WACs 222-20-010, -015, -020, -040, -050, and -051 (new).

2. Differences between proposed and final rule

The language in WAC 222-16-050(4) "Class II" and (5) "Class III" is simplified. In the proposed rule, language was inserted to explain that certain FPAs for forest lands within UGAs should not be classified Class IV-general. The final rule language in those subsections serves the same purpose as the proposed rule language, except:

- It is made more succinct by using cross references (i.e., eliminating unnecessary language repetition) and using an acronym for urban growth areas (UGAs) where practical.; and
- It now includes "involving timber harvest or road construction" in the opening sentences of (4)(f) and (5)(q) for consistency with RCW 76.09.050(1) Class IV(c).

The final rule also contains some additional corrections to existing language in WACs 222-12-0401and -0402, WAC 222-16-050, and WACs 222-20-010, -015, and -020.

3. Summary of Comments

One verbal comment was received at the October 10, 2012 hearing and subsequently withdrawn. No other comments were received.

4. Rule Making Timeline, Notices, and Opportunities to Participate

2/14/12 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for conversion-related forest practices rules. There was a public comment opportunity at the meeting prior to the Board action.

3/7/12 CR-101 published in the Washington State Register (WSR 12-05-084 filed 02/17/12).

5/8/12 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for rule making related to hydraulic projects and forest practices within urban growth areas. There was a public comment opportunity at the meeting prior to the Board action.

6/6/12 CR-101 published in the Washington State Register (WSR 12-11-112 filed 05/22/12).

8/14/12 Forest Practices Board approved filing *Proposed Rule Making* (form CR-102) and the draft rule language for public review and comment. There was a public comment opportunity at the meeting prior to the Board action.

9/5/12 CR-102 published in the Washington State Register (WSR 12-17-152 filed 8/22/12). Public comment period was from September 5, 2012 through October 10, 2012, including one hearing on October 10, 2012 in Olympia.

9/5/12 Notice of Rule Making Activity #12-03 distributed via the Board's list of interested parties, GovDelivery notice, and website at http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx

9/10/12 Hearing notice distributed via GovDelivery notice and website at http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx

10/10/12 Public hearing in Olympia.

(insert date after adoption) Forest Practices Board meeting; rules adopted.