

1 **FOREST PRACTICES BOARD**
2 February 19, 2003
3 Natural Resource Building, Room 172
4 Olympia, Washington
5

6 **Members Present:**

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

18 **Absent:**

19 Bob Kelly, General Public Member

20 **Staff:**

21 Lenny Young, Forest Practices Division Manager
22 Ashley DeMoss, Forest Practices Assistant Division Manager
23 Paddy O'Brien, Assistant Attorney General
24 Patricia Anderson, Rules Coordinator
25 Karrie Brandt, Board Coordinator
26
27

28 **CALL TO ORDER**

29 Pat McElroy called the meeting to order at 9:00 a.m. Karrie Brandt gave an emergency briefing.
30

31 McElroy introduced the new Board members and announced that the Forest Practices Board, herein
32 referred to as the Board, had plaques to present to Judy Turpin, Lloyd Anderson, and Robin Pollard
33 in recognition of their service on the Board. He then facilitated introductions of the Board, staff, and
34 attendees.

35
36 McElroy announced that the public comment period would be moved to the beginning of each
37 meeting in an attempt to have a more definitive time for public comments. He then asked that
38 requests for time on meeting agendas come to the Board well in advance of meetings to make timely
39 adjustments to agendas.
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1 MOTION: Tom Laurie moved to approve the June 19, 2002, meeting minutes.

2 SECONDED: Sherry Fox

3 ACTION: Motion passed unanimously.

4

5 MOTION: John Mankowski moved to approve the August 7, 2002, meeting minutes.

6 SECONDED: Tom Laurie

7 ACTION: Motion passed unanimously.

8

9 MOTION: Toby Murray moved to approve the October 9 & 10, 2002, meeting minutes.

10 SECONDED: Eric Johnson

11 ACTION: Motion passed unanimously.

12

13 MOTION: Eric Johnson moved to approve the November 12, 2002, meeting minutes

14 SECONDED: Toby Murray

15 ACTION: Motion passed unanimously.

16

17 **PUBLIC COMMENT**

18 Alan Pleus, Northwest Indian Fisheries Commission (NWIFC), requested the Board to direct the
19 Department of Natural Resources (DNR) to reconvene a channel migration zone (CMZ) technical
20 work group pursuant to WAC 222-12-090 for the purpose of revising Section 2 of the Board Manual.
21 He said that channel experts have not been able to agree using the guidance in Section 2, and that the
22 tribes have done a comprehensive review and believe there are technical flaws. Revisions should
23 include short-term guidance to improve the accuracy of the methodology based on field experience
24 and an elevation metric to adequately assess vertical bed movement when delineating CMZs.

25

26 Paul Kriegel, small family tree farm owner, requested that the Board broaden the definition of
27 “qualified expert” in WAC 222-10-030 to include the foresters who have extensive experience and
28 spend the most time on the ground. Kriegel also requested the Board to clearly define “small
29 landowner” as there are several different definitions being used.

30

31 Dan Varland, Rayonier, summarized a Five Year Wildlife Area Plan which describes the company’s
32 success in facilitating spotted owl dispersal habitat while also realizing financial return. The plan
33 area on the Olympic Peninsula is associated with the Hoh-Clearwater/Coastal Link Spotted Owl

1 Special Emphasis Area. The plan is a 30-year agreement between Rayonier and Washington
2 Department of Fish and Wildlife (WDFW).

3
4 Peter Goldman, Washington Forest Law Center (WFLC), said a 1992 poll conducted by the
5 Washington Environmental Council (WEC) indicated that 53% of the Board's constituents believe
6 that salmon recovery is very important, 51% believe that environmental laws need better
7 enforcement, 81% believe that much of the forests, land, and water that give Washington the unique
8 quality of life had been harmed, 49% are extremely concerned with timber companies harvesting in
9 ways that harm salmon and wildlife, and 91% want logging conducted in a manner that did not harm
10 the land and water. The public wants their natural resources laws to be strong and to be enforced.

11
12 Goldman then referred to WFLC's CMZ and cumulative effects petition and urged Board Members
13 to convene a technical advisory group and have DNR rewrite Section 2 of the Board Manual. He
14 stated that the Board should instruct that group to write the Manual in a way that scientifically
15 implements the terms "prone to move in the near-term." Goldman also requested that the Board not
16 refer this issue back to Adaptive Management for further consideration. The cumulative effects
17 petition for rule making is based on the protection of whole places like watersheds and view sheds
18 from the cumulative impacts of multiple physically and geographically related approved forest
19 practices. The Forest Practices Appeals Board has held that WAC 197-11-305 is a tool that
20 implements that principle as Forest Practices Applications (FPAs) are received. Because the
21 Department of Ecology is looking to amend WAC 197-11-305, the WFLC petitioned the Board to
22 take responsibility for affirming that the forest practices rules provide the tools to look at watersheds
23 at a larger scale rather than each time a landowner files an FPA.

24
25 Toby Thaler, WFLC, summarized the history of addressing cumulative effects, which, he said, has
26 been an issue for forest practices regulation since the 1980s. The SEPA 305 rule does apply to forest
27 practices to require consideration of cumulative effects--past, present, and reasonable foreseen future.
28 Watershed analysis rules were adopted in 1992 and today there is no watershed analysis, no
29 landscape plans, and no mechanisms for cumulative effects, and yet WAC 197-11-305 is now going
30 away.

31
32 Eric Harlow, WFLC, stated that historically the Teanaway Basin had large runs of salmon species
33 and at least 16 owl circles that intersected the basin. It was logged using splash dam methods and

1 Coho and Chinook salmon have been killed off. The eastside owl population has also declined.
2 Timber harvest has since increased as US Timberlands acquired the land, potentially affecting fish
3 habitat and water quality. DNR keeps approving the FPAs in the Teanaway block; and 57% of the
4 block has been approved for harvest. This is a 329% increase of volume harvested compared to
5 harvesting that occurred in the early 1990's. It is a 27% increase in miles of road effecting increased
6 sediment and road erosion rates.

7
8 Angela Emery, WFLC, focused on how the logging is happening in the Teanaway Basin by showing
9 a large map of even aged and uneven aged harvests. She asserted that several of the FPAs are
10 operationally linked and have not gone under a SEPA evaluation for cumulative effects. Under the
11 FPAs, 19,000 feet of roads were maintained but were not included in the FPA. Another FPA was
12 approved one year later with no road activities included and it is evident that roads are being used
13 under previously issued FPAs.

14
15 Nels Hanson, Washington Farm Forestry Association, complemented DNR on the reform effort for
16 the road maintenance and abandonment plans rules, and added that he hopes that House Bill 1095
17 moves through the legislature and becomes law. The cost under the current rules is \$350 million
18 dollars for alternate plans. The trees left behind in buffers zones are money that the small landowners
19 will not get, and alternate plans will help allow them to stay in business.

20
21 Peter Heide, Washington Forest Protection Association (WFPA), provided a history of CMZs and
22 how the rules defined in the Manual are a direct result of the Forests and Fish Agreement.
23 Landowners agreed to the CMZ concept because it was a reasonable way to identify them, but with
24 the assumption that CMZs would be identified in a similar manner as watershed analysis. The Board
25 approved the Manual and has a good monitoring system with CMER to ensure the CMZ rule is
26 working. Heide urged the Board to reject the current WFLC petition.

27
28 Ann Goos, WFPA, said she disagrees with WFLC's assertion in the petition that the Board has acted
29 unlawfully or ineffectively. The Board has discussed cumulative impacts with numerous rule
30 packages dating back to the 1980s. WFLC noted the Teanaway: the North Fork watershed analysis
31 is the direct result of the Board's work in 1992 in addressing cumulative effects. Goos encouraged
32 the Board to review its own record in addressing cumulative effects. She said that the two main
33 issues for the legislature when developing the Forests Practices Act was that the Board protect public

1 resources and that forest practices permitting be predictable and quick. Goos stated that the
2 legislative direction given to the Board has been upheld many times in court and encouraged the
3 Board to work with the Office of Attorney General in reviewing past cases, especially how the CMZs
4 cases have been described.

5
6 Guy McMinds, Quinault Indian Nation, stated they support the NWIFC recommendations presented
7 today on developing Section 2 of the Board Manual.

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9 **LEGISLATIVE UPDATE**

10 Lenny Young provided a summary of legislation having the potential to affect Forest Practices if
11 passed. Young said he will provide an update of these bills at the May meeting.

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13 **ALTERNATE PLAN UPDATE**

14 Jed Herman provided a written progress update on the development of alternate plans. Work is
15 underway by the Small Forest Landowner Advisory Committee to complete the templates. The
16 Small Forest Landowner office is compiling information to develop a process that can be used in the
17 Board Manual.

18

19 **RULE MAKING – CHAPTER 222-21 WAC**

20 Gretchen Robinson presented the proposed rule changes to chapter 222-21 WAC and asked the Board
21 to adopt the proposal. Legislation passed in 2002 made it necessary to amend chapter 222-21 WAC.
22 The proposed changes to implement the legislation are to eliminate a reduce compensation factor for
23 valuing easements in cases where there is approved re-entry into easement areas, and to clarify the
24 Department’s authority to reimburse small forest landowners for their costs in preparing riparian
25 easements.

26

27 The Board initiated the rule making on October 10, 2002 and held a public hearing on January 15,
28 2003. As a result of the public comment process, staff suggested two changes to the initial rule
29 proposal. The first change is to delete a sentence in the easement contract language under “Multiple
30 Entry Easements.” This sentence is no longer relevant because the legislation eliminated the separate
31 valuation methodology for multiple entry easements. The second change is to not delete the scaling
32 bureau log grade information from the tax return method of valuing forestry riparian easements. This

1 was originally suggested as a minor rule clarification but staff have determined it a substantive
2 change and not appropriate for this rulemaking.

3

4 Robinson concluded that the rule, if adopted, would become effective 31 days after filing.

5 **MOTION:** John Mankowski moved that the Forest Practices Board adopt the proposed permanent
6 rule for Chapter 222-21 WAC, as presented today and direct staff to file the CR103
7 with the Office of the Code Reviser.

8 **SECONDED:** Sherry Fox

9

10 **Board Discussion**

11 Pat McElroy asked whether a recommendation will come forward from staff on the scaling bureau
12 log grades. Robinson replied that this issue would be discussed when another rule making on chapter
13 222-21 WAC occurs.

14 **ACTION:** Motion passed unanimously.

15

16 **MARBLED MURRELET SURVEY PROTOCOL UPDATE AND DISCUSSION**

17 David Whipple and Eric Cummins, WDFW, gave a presentation on the new Pacific Seabird Group
18 (PSG) marbled murrelet survey protocol, the differences between the 1994 PSG protocol currently in
19 effect and the 2003 revised protocol, and an approach for developing rule changes for the Board's
20 consideration in May.

21

22 Fox asked how small forest landowners are meeting the survey requirement. Cummins replied there
23 is a 500-acre exemption in the rule and there have been very few marbled murrelet issues with small
24 forest landowners. For those few landowners above 500 acres, WDFW has provided assistance,
25 consultation and even completed the survey for them.

26

27 The PSG's revised survey protocol is based upon analysis of ten years of survey data. The revised
28 protocol was released January 6, 2003.

29

30 McElroy asked how the increase in survey visits per year was determined. Cummins responded that
31 the 1994 protocols identified a minimum number of surveys and many research projects and
32 landowners elected to do more surveys than current information reflected.

33

1 McElroy also asked about any differences in degree of accuracy between the 1994 protocol to the
2 2003 protocol. Cummins said he would report back to the Board with this information and the
3 percent of the population that was used in the 4-inch platform.

4
5 Whipple stated that WDFW proposes to conduct stakeholder meetings to best determine the final
6 recommendations to the Board. He said some technical and policy meetings had begun and he would
7 like to provide either a status update on the process or final recommendations to the Board at the May
8 meeting.

9
10 McElroy asked what the consequences would be if the new protocol was not used in the coming
11 season. Whipple responded that there are a few options that will be discussed in the stakeholder
12 meetings to determine the best approach.

13
14 John Mankowski added that three aspects need to be addressed in the stakeholder meetings: survey
15 methodology, habitat definition, and transition.

16

17 **CMER WORKPLAN AND PROJECT PRIORITIZATION**

18 Geoff McNaughton presented the program priorities and workplan for the Cooperative Monitoring,
19 Evaluation, and Research Committee (CMER) for the Board to consider for approval. These were
20 approved by Forests and Fish Policy on January 29, 2003.

21
22 He explained that new program rankings and budget projections were reorganized into a new format
23 based on various types of monitoring identified by the Monitoring Design Team.

24

25 The CMER effectiveness monitoring programs are (in order of priority)

- 26 1. Type N Buffer Characteristics, Integrity, and Function
- 27 2. Eastside Type F Desired Future Range
- 28 3. Type N Amphibian Response
- 29 4. Road Basin-scale Effectiveness Monitoring
- 30 5. Type F Statewide Prescription Monitoring
- 31 6. Mass Wasting Effectiveness Monitoring
- 32 7. Eastside Type F Temperature
- 33 8. Wetlands Revegetation Effectiveness

- 1 9. Road Site-scale Effectiveness Monitoring
- 2 10. Hardwood Conversion
- 3 11. Wetland Mitigation
- 4 12. Fish Passage Effectiveness Monitoring
- 5 13. Wildlife Program
- 6 14. WMZ Effectiveness Monitoring
- 7 15. CMZ Effectiveness Monitoring
- 8 16. Forest Chemicals

9 The top three were identified as higher priority because of risk to resources and scientific uncertainty.

10

11 Both CMER and Forests and Fish Policy agreed that DNR should take the lead in prioritizing rule
12 implementation tools since it is DNR's responsibility to implement the rules. DNR is currently
13 working with CMER to rank the tools identified by CMER. Once the Board approves the overall
14 ranking of the programs, the budget estimates will be refined and brought to the Board for approval.

15

16 McNaughton highlighted the funding modifications to the list of current Board-approved projects:
17 increase Landform Hazard Classification System and Mapping Protocols from \$20,000 to \$76,860;
18 allocate \$200,000 for a new Intensive Monitoring program; and allocate \$60,000 to develop protocols
19 for a new Compliance Monitoring program.

20 **MOTION:** Pat McElroy moved that the Forest Practices Board approve the CMER program
21 priorities as presented.

22 **SECONDED:** Toby Murray

23 **ACTION:** Motion passed unanimously.

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25 **MOTION:** Pat McElroy moved that the Forest Practices Board approve:

- 26 ▪ the budget increase of \$60,000 for the Landform Hazard Classification System and
27 Mapping Protocols project
- 28 ▪ the budget of \$200,000 for the Intensive Monitoring program
- 29 ▪ the budget of \$60,000 for Compliance Monitoring program.

30 **SECONDED:** John Mankowski

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1 **Board Discussion**

2 Mankowski said this Board has the luxury of a \$4 million/year research and monitoring budget,
3 which is a significant commitment to adaptive management. Mankowski encouraged Board members
4 to attend a CMER or Forests and Fish Policy meeting to see the intensive ranking of the projects.
5 David Hagiwara asked McNaughton if he had the flexibility to move money around. McNaughton
6 replied that there is some flexibility in moving small amounts of money but the majority is brought to
7 the Board for approval.

8 **ACTION:** Motion passed unanimously.

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10 **CMZ DELINEATION AND VERTICAL BED MOVEMENT**

11 Lenny Young said at the November meeting the Board asked the Adaptive Management Program to
12 review the CMZ petition for changes to Section 2 of the Board Manual. Geoff McNaughton
13 presented the Adaptive Management Program’s findings and recommendations.

14

15 He explained that he collected statewide information on the number and proportion of FPAs
16 containing CMZs, and how they were reviewed and approved. He interviewed DNR foresters, DNR
17 scientists, consultants, and others that had substantial regulatory CMZ field experience. He also
18 interviewed DNR policy specialists, NWIFC, WFPA, and others to help clarify the main issues.

19

20 He said he found that DNR’s South Puget Sound (SPS) Region has the best records available for
21 CMZs. The SPS Region has received 71 FPAs that required CMZs; all received a site visit from the
22 DNR regulatory forester, and most were later inspected by a DNR scientist. Over half of the CMZs
23 in SPS Region generated interest from tribes, state agencies, and others outside the DNR. Other
24 DNR regions had far fewer CMZs, and nearly all were field inspected. Many of the field inspections
25 resulted in CMZ boundaries being modified. In Northeast (NE) Region, 100% of the CMZ
26 boundaries initially submitted in FPAs were modified after field inspections.

27

28 McNaughton said his review identified four main issues associated with CMZs: risk to public
29 resources; adding two meters to measure bankfull height to better address vertical bed aggradation;
30 guidance for when to request stream channel experts; and credentials required for channel experts.

31

32 He said CMER ranked their programs based on the potential risk to public resources and scientific
33 uncertainty; CMZ effectiveness monitoring was ranked very low in priority. CMZ effectiveness

1 monitoring is scheduled to begin in 2005, with most of the program deferred until after 2006. CMZ
2 boundary delineation was considered as a rule implementation tool that would be the responsibility of
3 DNR, and so was not ranked by CMER. DNR is currently working with CMER to review the needs
4 and rankings for all proposed rule implementation tools such as CMZ delineation.

5
6 He noted that his information was incorrect in stating that the petition from the WFLC suggested
7 adding two meters to the bankfull height presently used in delineating CMZs. The suggestion was in
8 the supporting documentation not the petition. However, this approach is assumed to adequately
9 account for vertical bed aggradation resulting from increased large woody debris (LWD) loading
10 expected to occur over time from the new forest practices rules. Two meters has apparently been
11 observed as a commonly found height of LWD jams in many river systems. He said science on this
12 topic is not definitive and he had difficulty locating scientific literature that specifically addressed the
13 basis for using the two meter figure.

14
15 McNaughton concluded that CMER has CMZ effectiveness monitoring and boundary delineation
16 included in their work plan but has identified higher priorities to address in the short term. Nearly all
17 known CMZs are being inspected in the field and many boundaries are being modified as a result.
18 This high proportion of boundary modifications indicates the Board Manual does need improvement,
19 and that CMZ training would be very beneficial to landowners and others. This is a new program
20 that has only been implemented for a short time. It may be premature to make any substantive
21 changes at this time.

22 McNaughton presented the following recommendations:

- 23 1. The Board Manual language should be clarified to acknowledge the Board's recent finding
24 that the Board Manual does indeed address vertical bed aggradation.
- 25 2. The Board should not add two meters or any other distances to the bankfull height presently
26 used for delineating CMZs. The Board may wish to request the Adaptive Management
27 Program Administrator to convene a multi-stakeholder technical working group that
28 represents the full range of technical viewpoints to address this issue.
- 29 3. Guidelines should be developed to recommend when a channel expert should be consulted to
30 delineate CMZs. Experts requested to assist with CMZ delineation should have credentials as
31 both a forest practices qualified expert, and a licensed geologist.
- 32 4. The Forest Practices Division should continue with plans to offer CMZ delineation training to
33 landowners and other stakeholders.

1 5. The DNR should continue close cooperation with, and participation in CMER for
2 effectiveness monitoring and rule implementation tool development for CMZs. This will
3 allow new information to be effectively incorporated via the Adaptive Management Program.

4 **MOTION:** McElroy moved that the Board acknowledges receipt of a petition by the
5 Washington Forest Law Center dated August 7, 2002, to modify the Board Manual,
6 Section 2, dealing with Channel Migration Zones. The Board takes the following
7 action with respect to the petition, in addition to the action taken at the last Board
8 meeting acknowledging the section does address vertical bed movement:

9 The Board recognizes that the DNR has the responsibility to develop the
10 Board Manual, and revisions thereto, in consultation with relevant
11 stakeholders. The Board notes that the Board Manual process has
12 languished for too long. The Board requests DNR fill the Board Manual
13 Coordinator position expeditiously and re-engage in developing the Board
14 Manual and revisions. The Board requests that the DNR direct the
15 Adaptive Management Administrator and Board Manual Coordinator give
16 the highest priority for work on the Board Manual to engaging the relevant
17 stakeholders, with particular emphasis on field practitioners with
18 experience in identifying where the active stream channel is prone to move
19 in the near term, in reviewing Board Manual Section 2 and make such
20 recommendations to modifying that section as may be appropriate to meet
21 the intent of the underlying rule.

22 **SECONDED:** Wendy Holden

24 **Board Discussion**

25 McElroy said he supported the motion because it identifies short and long-term goals by moving
26 forward with hiring a Board Manual Coordinator to work with stakeholders to revise Section 2 of the
27 Board Manual.

29 Eric Johnson said he believed there should be some guidance on the definition of “near term.”

31 Mankowski suggested that the Board follow the recommendation in the motion, however provide
32 some guidance to ensure the science discussion does not move away from Forests and Fish or change
33 the WAC.

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Wendy Holden said she did not want to add undue hardship on small landowners by requiring them to pay for a qualified expert if a certified forester was not able to be the expert. McElroy clarified that the qualified expert that is addressed in the rules relates to unstable slopes. The recommendation is geared to the more complex situations and an expert is brought in for consultation.

Tom Laurie said he likes the approach and believes it is consistent with statements from NWIFC, however he had concerns about the time frame. Young said that he would move forward and work with the Adaptive Management Program rather than waiting for a Board Manual Coordinator to be hired. Laurie requested a progress report at the next meeting. McElroy agreed to include a written status report for each quarterly meeting.

Fox said she supported the motion, and that it was a good example of how Forests and Fish is being tested and how issues are to be resolved. The intent of Forests and Fish, she said, was to use the Adaptive Management Program to find the best science available to make the best decision possible.

Alan Soicher stated that normally he would agree with Fox, however in this situation consensus had not been achieved before the Board approved Section 2 of the Manual. The Board approved it with the understanding that it would be revisited. He said the Board is dealing with a Manual section that was not consistent in the beginning.

McElroy clarified that the Manual is a Department process, not a consensus product, and the Department's obligation is to engage the relevant stakeholders and receive Board approval.

ACTION: Motion passed with one abstention.

CULTURAL RESOURCES COMMITTEE UPDATE

Tim Thompson, Thompson Consulting Group, reported that the Cultural Resources Committee has made substantial progress on the Cultural Resources Protection and Management Plan. The Committee would like to present the completed documents along with any recommendations at the May meeting. The documents are 85-95% complete. DNR is taking the lead on drafting appropriate rule amendments.

1 Thompson stressed the most important aspect of the entire effort is the educational element.
2 Workshops will need to be given and tribes, large and small landowners, and agencies will need to be
3 involved to make this effort worthwhile for the protection of cultural resources.

4
5 Sherry Fox said she was excited about the program and commended Thompson for all the progress
6 made. Thompson said that the credit goes to the tribes, state agency staff, and small and large
7 landowners.

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9 **WILDLIFE PLANNING**

10 John Mankowski presented an update on the wildlife strategy discussed at the November meeting.
11 He said his conceptual workplan consists of four main categories—assessment of effectiveness of
12 current rules, contribution of Forests and Fish to non-riparian species, wildlife protection needs not
13 addressed by current rules or planning, and a series of operational improvements. He said he would
14 like to present the scoping documents for those goals at the next special meeting, have a discussion
15 and adopt the workplan. The Board decided to have a Wildlife Planning discussion at the next
16 meeting.

17
18 The Board then discussed the process for the next special meeting to address the cumulative effects
19 petition received from the WFLC. The Board set March 19th as the meeting date with the location to
20 be determined later by availability of space. McElroy said he wanted to set up time frames around
21 those speaking for and against the petition. The Board agreed to allow 45 minutes for each side, 30
22 minutes for Board Members to ask questions to testifiers, and 45 minutes for Board discussion. The
23 Board also requested a staff report on the petition.

24

25 **EXECUTIVE SESSION**

26 No executive session was needed.

27

28 **MOTION:** Eric Johnson moved to adjourn the meeting.

29 **SECONDED:** Sherry Fox

30 **ACTION:** Motion passed unanimously.

31

32 Meeting adjourned at 2:45 p.m.