

1 **FOREST PRACTICES BOARD**
2 **REGULAR BOARD MEETING**
3 February 14, 2012
4 Natural Resources Building
5 Olympia, Washington
6
7

8 **Members Present**

9 Bridget Moran, Chair of the Board, Department of Natural Resources
10 Bill Little, Timber Products Union Representative
11 Bob Guenther, General Public Member/Small Forest Landowner
12 Carmen Smith, General Public Member/Independent Logging Contractor
13 Dave Somers, Snohomish County Commissioner
14 David Herrera, General Public Member
15 David Whipple, Designee for Director, Department of Fish and Wildlife
16 Mark Calhoon, Designee for Director, Department of Commerce
17 Norm Schaaf, General Public Member
18 Paula Swedeen, General Public Member
19 Phil Davis, General Public Member
20 Jaclyn Ford, Designee for Director, Department of Agriculture
21 Tom Laurie, Designee for Director, Department of Ecology
22

23 **Staff**

24 Darin Cramer, Forest Practices Division Manager
25 Marc Engel, Forest Practices Assistant Division Manager
26 Patricia Anderson, Rules Coordinator
27 Phil Ferester, Assistant Attorney General
28

29 **WELCOME AND INTRODUCTIONS**

30 Bridget Moran called the Forest Practices Board (FPB or Board) meeting to order at 9:05 a.m.
31 Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency
32 safety briefing.
33

34 Moran introduced new Board members Carmen Smith, general public member representing
35 independent logging contractor, Bob Guenther, general public member representing small forest
36 landowner who actively manages their land, Philip Davis, general public member, Jaclyn Ford,
37 Director's designee for Department of Agriculture and David Whipple, Director's designee for
38 Department of Fish and Wildlife.
39

40 Moran also recognized and expressed appreciation to outgoing members Sherry Fox and Doug
41 Stinson for their service to the Board.
42

43 **APPROVAL OF MINUTES**

44
45 **MOTION:** Tom Laurie moved the Forest Practices Board approve the November 8, 2011
46 minutes as amended.
47

48 **SECONDED:** Norm Schaaf

1
2 Board Discussion:

3 Tom Laurie recommended that lines 2-8 on page 10 be revised as follows:

4 Stephen Bernath, Forests and Fish Policy Co-Chair, reported that Policy agreed to ~~three~~
5 two top priorities for 2012, but is still in the process of developing a charter to describe
6 an approach. The ~~3~~ two priorities are:

- 7 • Complete the type N strategy of the clean water assurances. Evaluate how to identify
8 the uppermost point of perennial flow (PIP) in Type N Waters
9 • Develop a recommendation to the Board on type F/N ~~two~~ water typing issues
10 including a permanent water typing rule and updated water typing protocol survey
11 standards; and
12 • ~~Ensure that the Type N effectiveness studies are on track.~~

13
14 **ACTION:** Motion passed unanimously.
15

16 **REPORT FROM CHAIR**

17 Bridget Moran reported on the following subjects:

- 18 • Senate Bill 6406 would integrate hydraulic project approvals into the forest practices
19 application review, and would require rule making.
20 • A well-attended stakeholder meeting took place on February 8 to receive ideas for Forestry
21 Riparian Easement Program (FREP) long-term funding. A recommendation is due to the
22 Legislature by May 31, 2012 as directed in House Bill 1509 (2011).
23 • A U.S. Fish and Wildlife Service (USFWS) rule effective on November 4, 2011 removed
24 approximately 190,000 acres of critical marbled murrelet habitat in northern California and
25 southern Oregon. Staff will send the Federal Register notice to Board members. This did not
26 affect the Board's critical habitat rule for the marbled murrelet; however, the Board should be
27 aware that the American Forest Resource Council filed suit on January 24, 2012 against the
28 USFWS claiming a violation of the Endangered Species Act.
29

30 **PUBLIC COMMENT**

31 Robert Meier, Rayonier, acknowledged a number of Board successes related to Washington's forest
32 management regulatory system, including the recovery of the bald eagle, cultural resource
33 protection, reduced landslides, and the Board's role in the largest, most comprehensive habitat
34 conservation plan in the nation.
35

36 David Powell, Yakama Nation, urged the Board to adopt the "Notice of Forest Practices to Affected
37 Indian Tribes" rule. He said the proposal was the result of three years of work, including consensus
38 by the TFW Cultural Resources Roundtable.
39

40 Jeff Thomas and Andrea George, Puyallup Tribe, commenting on behalf of the Puyallup Tribal
41 Council, referred to their letter dated February 13, 2012 addressed to the Commissioner of Public
42 Lands and Patricia Anderson. They expressed there had been no meaningful government-to-
43 government interaction, insufficient notice to tribes, and no meaningful review of the comments
44 submitted during the CR-101 and CR-102 processes.
45

46 Bridget Moran asked Thomas to reconcile these comments with the fact that he is a Roundtable co-
47 chair and the Roundtable presented a consensus recommendation to the Board. Thomas said the

1 tribal council's comments were brought to the Roundtable's attention, but did not fare well in that
2 process. That is why the comments are being forwarded to the Board separately.

3
4 Pete Heide, Washington Forest Protection Association, said WFFPA's comments related to the
5 Notice to Affected Indian Tribes rule proposal was in no way meant to question the ability or
6 integrity of Forest Practices Division staff.

7
8 Peter Goldman, Washington Forest Law Center, asked the Board to consider creating a task force to
9 develop recommendations to integrate timber certification in the forest practices regulatory system.

10
11 Chris Mendoza said certain landforms like break-in-slope are conducive to alternate plans in the
12 outer edge of riparian buffers. He said perhaps fewer landowners will need compensation through
13 FREP if more of them can get financial return through the use of alternate plans in riparian areas.

14
15 Rick Dunning, Washington Farm Forestry Association, commented on the importance of the small
16 forest landowner to Washington State and the high level of regulation compared to other states.

17 **STAFF REPORTS**

18 Forests and Fish Policy Work List Priorities

19
20 Adrian Miller, Policy co-chair and Mark Hicks, Department of Ecology explained how the Policy
21 Committee is accomplishing its top two priorities for 2012. The priorities are: 1) to complete the
22 Type N strategy of the Clean Water Act Assurances; and 2) to develop a recommendation to the
23 Board on Type F/N water typing issues including a permanent water typing rule.

24 Clean Water Act Assurances Annual Report

25
26 No report provided. An update will be provided at the May meeting.

27
28 Dave Whipple explained the Washington State Fish and Wildlife Commission adopted a
29 conservation management plan for the gray wolf in December 2011. He said the Department of Fish
30 and Wildlife is committed to working with stakeholders during 2012 to assess and recommend any
31 changes needed in the forest practices critical habitat rule for the gray wolf, and will provide a plan
32 to the Board later in the year.

33
34 Bridget Moran asked if Board members had questions about any of the staff reports they received in
35 their packet. There were no questions.

36 **LEGISLATIVE ACTIVITY UPDATE**

37
38 Darin Cramer, DNR, summarized the contents of the three bills which could have the most impact
39 to the forest practices program:

- 40 • SB 6406. Integrates hydraulic project approvals into the forest practices application, eliminates
41 the 30-day review for forest practices rule making, raises application fees for forest practices,
42 increases duration of a forest practices application from two to three years, and changes SEPA
43 regulations. If passed, rule making and board manual development would be required. Costs of
44 implementation would be offset by the new fees provided in the bill.
- 45 • HB 2253/SB 6130. Changes SEPA regulations – potentially increases the gap between
46 requirements of the Forest Practices Act and Growth Management Act. If passed, rule making
47 may be required.

- HB 2238/SB 6983. Directs the Department of Ecology and the Department of Fish and Wildlife to consider allowing required environmental mitigation to be accomplished through FREP, the Family Forest Fish Passage Program, or the Rivers and Habitat Open Space Program.

ADAPTIVE MANAGEMENT REVIEW (LEAN PROCESS) UPDATE

Jim Hotvedt, DNR, reported on the outcome of an opportunity assessment conducted by a LEAN consultant. The result is a recommendation to conduct a LEAN event on the first two steps of the Cooperative Monitoring, Evaluation and Research Committee (CMER) process: 1) Setting policy direction and scoping a project, and 2) Designing a study. He explained the next step is to secure a contractor to conduct the LEAN event, and he expected results to report to the Board by May 2012.

TAYLOR’S CHECKERSPOT BUTTERFLY ANNUAL REPORT

Sherri Felix, DNR, summarized the fourth annual report on the voluntary cooperative protection approach for the Taylor’s Checkerspot Butterfly. She reported for the calendar year 2011 there were 14 forest practices applications within one mile of an occupied butterfly site, and since the Board took action in 2007 there have not been any butterfly protection issues associated with any individual forest practices activities.

David Whipple, Department of Fish and Wildlife, said the habitat of this species is in very specific geographic areas which helps make it feasible to employ a non-regulatory approach for protection. He said the landowners’ individual efforts to protect the butterfly and its habitat is also a very important component.

PUBLIC COMMENT ON FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Sherry Fox summarized the 2011 FREP reform legislation and suggested inserting language into the proposal regarding landowners’ continued use of easement premises.

Ken Miller, Washington Farm Forestry Association, said he supported Fox’s suggestion, summarized the positive aspects of the FREP reform legislation, and commented that there must be success on the long-term funding issue.

FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Dan Pomerenk, DNR, summarized activities leading to the current draft language before the Board for action. He reported that no comments were received from the 30-day review for counties, Department of Fish and Wildlife, and tribes. Gretchen Robinson, DNR, explained that staff completed a preliminary cost-benefit analysis and edited the draft language, mostly to clarify the application and valuation processes. She said staff will plan public hearings to take place late in March. She requested that the Board direct staff to file the draft language with the Code Reviser to initiate rule making.

MOTION: Norm Schaaf moved the Forest Practices Board approve for public review the draft rule proposal amending chapter 222-21, Forestry Riparian Easement Program. These changes will reflect the 2011 legislation, House Bill 1509. He further moved the Board direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making.

SECONDED: Dave Somers

1 Norm Schaaf asked if the language Sherry Fox proposed was considered during rule drafting.
2 Pomerenk answered this was the first he had heard of the proposal. He added there is language in
3 statute regarding landowner use of easement premises.
4

5 Darin Cramer suggested an appropriate location may be in the paragraph discussing the easement
6 contract (WAC 222-21-030(4)): "...the easement contract shall explicitly state ...", etc.
7

8 **AMENDMENT**

9 **TO MOTION:** Dave Somers moved to amend the paragraph on page 18 that begins on line 35 to
10 incorporate Sherry Fox's suggested language:

11 (4) Forestry Riparian easement contract. The forestry riparian easement contract
12 will identify the parties, describe the land, locate the easement, state the terms
13 and conditions, and provide a statement of consideration. The easement will be
14 for a term of 50 years from the date the completed forestry riparian easement
15 application is submitted to and received by the small forest landowner office. The
16 FRE contract shall explicitly state that the small landowner is free to use its
17 property as it see fit: provided that the use must be consistent with other rules and
18 statutes, including forest practice, GMA, and Shorelines Management Act, and
19 must protect riparian function.
20

21 **SECONDED:** Tom Laurie
22

23 **Board Discussion:**

24 Schaaf expressed concern about the proposed language and wanted to make sure it could be
25 amended during the rule making process as long as the intent was maintained.
26

27 Moran said staff would exercise some discretion to ensure the appropriate placement of the inserted
28 language and to use proper grammar and language in carrying out the intent. She reminded Board
29 members the proposal is at the public review stage and the inserted language will be available for
30 public comment.
31

32 **ACTION ON**

33 **AMENDMENT:** Motion passed unanimously.
34

35 **ACTION:** Motion passed unanimously.
36

37 **PUBLIC COMMENT ON CONVERSION ACTIVITIES AND LANDS PLATTED AFTER** 38 **1960 RULE MAKING**

39 None.
40

41 **CONVERSION ACTIVITIES AND LANDS PLATTED AFTER 1960 RULE MAKING**

42 Gretchen Robinson, DNR, requested the Board's approval to begin rule making related to
43 conversions of forest lands for non-forestry uses. She said the rule making would incorporate recent
44 changes to the Forest Practices Act including eliminating all references to lands platted after
45 January 1, 1960, and adding a process related to the Notice of Conversion to a Non-forestry Use.
46 She added that staff would also like to take the opportunity to edit the language in chapter 222-20
47 WAC to make it more user-friendly, and would monitor current legislation for any additional
48 changes that may be needed on the subject.

1
2 She said staff planned to work with the Washington State Association of Counties and other
3 agencies and stakeholders who wish to participate in rule development, and added she expected
4 draft language would be ready for further Board action in August.

5
6 **MOTION:** Dave Somers moved that the Forest Practices Board direct staff to file a CR-101
7 Pre-Proposal Statement of Inquiry to notify the public that the Board is
8 considering rule making to incorporate Forest Practices Act amendments related
9 to forest land conversion.

10
11 **SECONDED:** Bill Little

12
13 Board Discussion:
14 None.

15
16 **ACTION:** Motion passed unanimously.

17
18 **NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN TRIBES RULE MAKING**

19 Sherri Felix, DNR, requested adopting with no modifications the rule proposal amending WAC
20 222-20-120 and WAC 222-30-021(1)(c)(ii) that received public review. She said eight comments
21 were received prior to the close of the comment period on January 6, 2012. The comments were
22 support as proposed, support with a title change, and support with changes to subsection 2. She said
23 the written comments were in the Board materials and the comments were summarized with staff
24 responses in the draft Concise Explanatory Statement.

25
26 She said the reasons for the “no change” recommendation are:

- 27 1) The language is the long-deliberated, high value consensus recommendation from the TFW
28 Cultural Resources Roundtable.
29 2) While changing the WAC title is not necessary, it does alert the reader that the rule addresses
30 both notice to tribes and cultural resources. It does not change the underlying requirements in
31 the WAC.
32 3) Currently, DNR is made aware of cultural resources via data from the Department of
33 Archaeology and Historic Preservation (DAHP), confirms with DAHP, and then requires a
34 landowner-tribe meeting. DNR also requires the meeting when a tribe tells DNR there is a
35 cultural resource. This would not change under the Roundtable’s consensus language.

36
37 **MOTION:** Tom Laurie moved that the Forest Practices Board adopt the rule proposal
38 amending WAC 222-20-120 to clarify language relating to landowner-tribe
39 meeting requirement and WAC 222-30-021(1)(c)(ii) to replace old Class IV-
40 special language with the Class IV-special language adopted in 2008. He further
41 moved the Board direct staff to file a CR-103 with the Office of the Code
42 Reviser.

43
44 **SECONDED:** Paula Swedeen

45
46 Board Discussion:

47 Tom Laurie said he appreciated the comments he heard at the hearings and all of the comments the
48 Board received on this rule. He said he knew there could be process details that eventually may

1 need to be worked out either at the operational level or, if necessary, at the Board level. But all the
2 players put in a good-faith effort to developing the rule, and he supported adoption of the rule as
3 proposed.

4
5 David Herrera also expressed support based on the time invested in the consensus approach, and if
6 unanticipated problems come up they can be adaptively managed. He mentioned that government-
7 to-government interaction is still available if a tribe does not get the satisfaction needed from the
8 process in the rule.

9
10 Norm Schaaf said he would support adoption, but his concern about the added process for
11 landowners had not been resolved. He said he trusted if his concerns do arise, DNR and the tribes
12 will all act in good faith to resolve the problems. In the event that does not happen, the Board can
13 take it up at that time.

14
15 Schaaf asked if the Board could get a report from the Roundtable or DNR staff as to how the rule is
16 working and any issues that do arise from the process in the amended rule. Felix said she would be
17 happy to.

18
19 **ACTION:** Motion passed unanimously.

20
21 **CRITICAL HABITAT RULE MAKING**

22 Sherri Felix, DNR, requested adoption of the critical habitat rule. The rule makes the Board's
23 critical habitats rule consistent with 1) the changed federal and state status of the bald eagle and the
24 peregrine falcon, and 2) the name change of the species formerly known as the Western pond turtle
25 to Pacific pond turtle. She said if adopted the rule would take effect in late March.

26
27 Marc Engel, DNR, explained that DNR and Department of Fish and Wildlife are developing a fact
28 sheet to inform landowners about federal regulations protecting bald eagles, and DNR is posting
29 website links to the USFWS self-certification system for landowners who propose forest practices
30 within certain distances of bald eagle habitat.

31
32 David Whipple said WDFW had a constructive meeting with the USFWS regarding the change in
33 regulatory jurisdiction for bald eagle protection from the state to federal. USFWS is going to make
34 administrative changes to their self-certification process under the Bald and Golden Eagle
35 Protection Act and track state forest practices applications proposing activities certain distances
36 from eagle nests and roosts. Between the state and federal processes there will be a good safety net
37 making it possible to go forward with this rule.

38
39 **MOTION:** David Whipple moved the Forest Practices Board adopt the rule proposal
40 amending WAC 222-16-080, critical habitats (state) of threatened and
41 endangered species. These changes reflect the change in federal and state listings
42 of the bald eagle and the peregrine falcon, respectively, and the common and
43 scientific name changes of the Western pond turtle. He further moved the Board
44 direct staff to file a CR-103 with the Office of the Code Reviser.

45
46 **SECONDED:** Norm Schaaf

47
48 Board Discussion:

1 Paula Swedeen thanked the agencies for addressing the issues raised in past Board meetings.

2

3 Whipple commented that a lot of outreach and effort by stakeholders went into creating the
4 administrative solutions for continued eagle protection. He thanked DNR for stepping up even in
5 the absence of a rule, and said he appreciated the landowners' contributions that helped make the
6 bald eagle a success story.

7

8 Moran said while this is the right thing to do, it is extra work beyond accomplishing the program's
9 mission. It is one more example of why we need to make sure the program is properly funded and
10 stable.

11

12 **ACTION:** Motion passed unanimously.

13

14 **EXECUTIVE SESSION**

15 Executive session was convened from 11:45 a.m. – 12:20 p.m.

16

17 Meeting adjourned at 12:20 p.m.