



PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Forest Practices Board

- Preproposal Statement of Inquiry was filed as WSR 07-21-072/06-17-127 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

Amend WAC 222-16-010 related to

- forest land conversion activities, and
- historic sites.

Also amend 222-16-050 related to classifications of forest practices applications for lands that contain historic sites and/or cultural resources.

Hearing location(s):

Ellensburg: Kittitas Valley Events Center, Naneum Room
512 N Poplar Street
Date: June 17, 2008 / Time: 6 p.m.

Tukwila: Foster Public Library
4060 S 144th St
Date: June 24, 2008 / Time: 6 p.m.

Spokane: Spokane Valley Library
12004 East Main Avenue
Date: June 26, 2008 / Time: 6 p.m.

Submit written comments to:

Name: Patricia Anderson
Address: Forest Practices Board
DNR, Forest Practices Division
PO Box 47012
Olympia, WA 98504-7012
e-mail forest.practicesboard@dnr.wa.gov
fax (360) 902-1428 by 5 p.m. on June 27, 2008

Assistance for persons with disabilities: Contact
Forest Practices Division at (360) 902-1400 by June 2, 2008
TTY (360) 902-1125

Date of intended adoption: August 13, 2008
(Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposal amends the Forest Practices rules in WAC 222-16-010 (definitions) and WAC 222-16-050 (classes of forest practices) to:

- Adds a definition of "conversion activities" to help field staff recognize activities common to converting land use from forestry to non-forestry.
- Clarifies that operations on certain historic sites require a Class IV-special application and SEPA review;
- Addresses ambiguities in and consistency between Class IV-special and Class III applications involving cultural resources; and
- Ensures that certain cultural resources management plans are recognized as protection tools that are exempt from this Class IV-special designation.

Reasons supporting proposal:

Adding a definition of "conversion activities" supports implementation of SSSB 5883, 2007 legislation. Rule changes related to historic sites and cultural resources are intended to clarify the rules and protect certain historic sites and cultural resources.

Statutory authority for adoption:

RCW 76.09.040

Statute being implemented:

N/A

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION: Yes No

DATE April 21, 2008

NAME (type or print)
Victoria Christiansen

SIGNATURE

TITLE
Chair

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

**DATE: April 22, 2008
TIME: 9:49 AM**

WSR 08-09-122

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

Forest Practices Board

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Marc Engel & Sherri Felix	1111 Washington Street SE, Olympia	(360) 902-1390 / 902-1446
Implementation.... Gary Graves	1111 Washington Street SE, Olympia	(360) 902-1483
Enforcement..... Leonard Young	1111 Washington Street SE, Olympia	(360) 902-1744

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Gretchen Robinson

Address: Department of Natural Resources

P.O. Box 47012

Olympia, WA 98504-7012

phone (360) 902.1705

fax (360) 902.1428

e-mail gretchen.robinson@dnr.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Gretchen Robinson

Address: Department of Natural Resources

P.O. Box 47012

Olympia, WA 98504-7012

phone (360) 902.1705

fax (360) 902.1428

e-mail gretchen.robinson@dnr.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 08-06-039, filed 2/27/08, effective 3/29/08)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock

depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

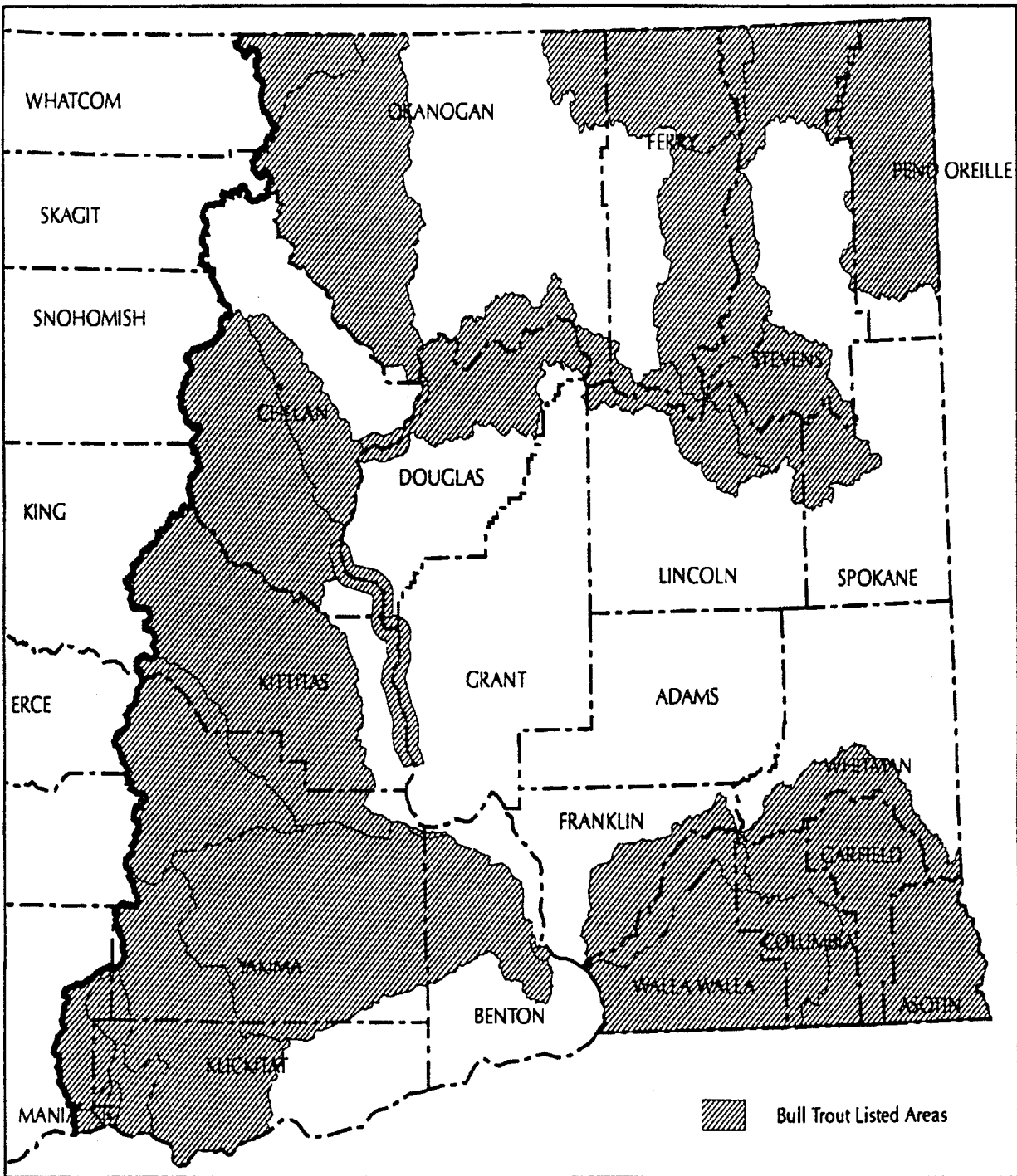
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"**Channel migration zone (CMZ)**" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"**Chemicals**" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(b) or revised pursuant to 16 U.S.C. § 544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. § 544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. § 544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. § 544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to a land use other than commercial timber operation. These activities may be occurring concurrently or after timber harvest on forest land and may include but are not limited to the following:

● Preparation for, or installation of, utilities, except on easements providing utilities to other ownerships.

● Grading and filling.

● Preparation for, or construction of, any structure for which a landowner would be required to obtain local government approval.

● Construction of, or improvement of, roads to local governmental entity standards.

● Clearing for, or expansion of, a borrow pit for nonforest practices uses or to make a surface mine.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5) (A) and 4 (a) (3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the

area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the

state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"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.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

~~(**"Historic site"** includes:
Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or
Places associated with a personality important in history; or
Places where significant historical events are known to have~~

~~occurred even though no physical evidence of the event remains.)~~)

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

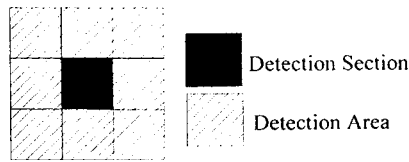
"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The

marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

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

"Northern spotted owl site center" means:

(1) Until December 31, 2008, the location of northern spotted owls:

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

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

(2) After December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

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

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

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding

season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1) (a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for

high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other

characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type

S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent,

connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) **For Eastern Washington**

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

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

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife"

includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

WAC 222-16-050 *Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted

in accordance with the forest practices rules.

(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.

* (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 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 (i) below 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 potential 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 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 WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the five-year review process); and

(C) The applicable prescription is 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 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 (~~(7)~~) 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 (~~(registered with)~~) 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 (~~(7 or on)~~); 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) in the watershed analysis.

* (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."

(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) Forest practices which would otherwise be Class III, but which are taking place on lands which 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) 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 operations for ten years 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 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 from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the SEPA.

(3) "**Class I.**" Those 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" 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 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) 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. 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 37.70A 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; and

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

(iv) Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary five-year review of the watershed analysis.

*(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.

(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).

* (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 1 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, (~~are:~~

~~(i) On or are eligible for listing on the National Register of Historic Places; or~~

~~(ii))~~ 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.

PRELIMINARY ECONOMIC ANALYSIS
Forest Practices Rule Making
Affecting Forest Practice Activities on Historic and Archaeological Sites
By Laurence Reeves, Economist, Department of Natural Resources

January 24, 2008

OBJECTIVES

The Forest Practices Board (Board) is proposing changes to WAC 222-16-010 and WAC 222-16-050 that will affect timber harvests, the construction of roads, landings, rock or gravel pits, spoil disposal areas, site preparation, and the aerial application of pesticides that involve certain cultural resources. In some instances, landowners will need to apply for a “Class IV-special” forest practices permit, which requires compliance with the State Environmental Policy Act (SEPA). The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state’s small businesses.

Prior to rule adoption, the Administrative Procedure Act (chapter 34.05 RCW)¹ requires completion of a Cost-Benefit Analysis (CBA) that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A Small Business Economic Impact Statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)² to consider the impacts of state administrative rules on “small businesses”, defined as those with 50 or fewer employees. This economic analysis combines the SBEIS and the CBA, as allowed by RCW 19.85.025, as part of the rule making process.

PROPOSED RULES SUMMARY

The proposed rule changes to chapter 222-16 WAC are focused on creating greater consistency between the Board’s Forest Practices Rules and the Washington State Department of Archaeology and Historic Preservation (DAHP) authority with regard to how certain cultural resources, specifically archaeological sites, historic archaeological resources, and historic sites, are defined, reviewed, and protected in the context of forest practices activities. The specific rule changes are as follows:

- 1) Strike the Board’s definition of “historic site” from WAC 222-16-010, thereby deferring to DAHP’s definitions in RCW 27.53.030.
- 2) In WAC 222-16-050(1)(f), replace “archaeological and historic sites registered with DAHP,” with two subsections: “(i) archaeological sites or historic archaeological resources as defined in RCW 27.53.030” and “(ii) historic sites eligible for listing on the Washington Heritage Register or National Register of Historic Places as determined by DAHP”. This separately defines archaeological verses other historic resources, reinstates register-eligible historic sites as Class IV-special, and uses the DAHP definitions.

¹ For CBA requirements, see [Chapter 34.05.328 RCW - The Washington State Legislature](#).

² For SBEIS requirements, see [Chapter 19.85.040 RCW - The Washington State Legislature](#).

- 3) Add a new subsection, (iv), to WAC 222-16-050(1)(f), which creates two exemptions for forest practices activities meeting the criteria in WAC 222-16-050(1)(f) from a cultural resources Class IV-special forest practices . The exemptions are for those proposed applications that have been designed in compliance with (a) cultural resource management strategies from an approved watershed analysis, or (b) a management plan agreed upon by the landowner, the affected Indian tribe, and the DAHP.
- 4) The final rule change strikes the wording “On or are eligible for listing on the National Register of Historic Places” from subsection (i) of Class III WAC 222-16-050(5)(k), in deference to the national register language in subsection (ii) in Class IV-special WAC 222-16-050(1)(f).

Involvement of Concerned Stakeholders

The Timber, Fish, and Wildlife Cultural Resources Committee (Committee) is the stakeholder group that collaboratively developed the proposed rule language. The Committee is a multi-caucus group with representatives of the Inter-tribal Cultural Resources Advisory Group and individual tribes (especially Puyallup, Yakama, Suquamish, Quinault, and Lummi), large and small forest landowners from the Washington Forest Protection Association and Washington Farm Forestry Association, and state agency staff from the DAHP and the Department of Natural Resources’ (DNR) Forest Practices and Land Management programs. The Forest Practices Board recognizes the Committee as the group of expertise on this issue.

Affected Industries

The rule-complying community affected by the proposal is businesses or individuals that own or control the cutting rights on private or state managed forestland or those with the right to dispose of the timber, and intend to conduct a forest practices activity sometime in the future.

Based on a review of Forest Practices Applications (FPAs) processed by the DNR since 2003, there has been an average of approximately 6,250 FPAs submitted each year, with just over 0.7 percent (45) of these FPAs having a cultural resource issue. FPAs from eastern Washington are nearly five times more likely to have a cultural resource issue than FPAs from western Washington. In addition, this review of FPAs indicated that small landowners (small businesses) make up approximately 26 percent of those applying for FPAs and were no more likely to have a cultural resource issue on their land than the overall population of landowners submitting FPAs. Thus, on average, out of the 45 FPAs annually that have a cultural resource issue, only 12 permits belong to small landowners.

ECONOMIC ANALYSIS

To comply with the Administrative Procedure Act and Regulatory Fairness Act, this analysis identifies potentially affected industries, addresses small and large businesses and determines if there is a disproportionate economic impact on small businesses. It also estimates the annual cost of compliance with the proposed rule changes.

Small Businesses versus Large Businesses

The Regulatory Fairness Act defines a “small business” as one with 50 or fewer employees. This definition does not lend itself to commercial forestry, because a growing proportion of

Washington's commercial forest acreage is owned by investment-oriented firms that employ few people and contract out forest management services. Forest ownership acreage and the volume of timber harvested on an annual basis are generally more appropriate metrics for characterizing small businesses in the timber industry. In order to better portray the effects of proposed rule changes on small business, this economic analysis addresses small businesses as those meeting the state's eligibility criteria for small forest landowner status in the Forestry Riparian Easement Program; generally those who harvest an average of less than two million board feet per year from their own land. All other private landowners are categorized as "large businesses" for purposes of this analysis.

Costs of Proposed Rule Changes

The cultural resources covered by this rule change are already protected by current Board and DAHP rules and laws and the proposed rules have no prescription requirements. Thus, there are no changes to buffer widths, leave tree requirements, equipment limitation zones or other operational restrictions as a result of this rule change. Landowners will still need to complete a DNR FPA and pay the associated fee, but under the proposed rules more landowners will need to complete an approximately 10-page environmental checklist (WAC 197-11-960) in compliance with SEPA and SEPA guidelines. The main impact to landowners will be the additional time to complete the SEPA checklist (compared to just completing the FPA), although some landowners may opt to hire a consultant to complete the SEPA checklist. By completing the SEPA checklist, there is a risk the application will be flagged for an Environmental Impact Statement (EIS) by one of the reviewing agencies. If this happens, most landowners will redesign the project so as to avoid the EIS process.

In talking with DNR employees and forestry consultants who are familiar with the SEPA checklist and who work with small landowners, the average estimate for completing a 10-page SEPA checklist is two hours, assuming there are no other environmental resource issues, such as potentially unstable slopes and landforms, critical habitat of threatened or endangered species, etc. For landowners who are not comfortable completing the SEPA checklist and do not wish to hire a private consultant, free help is available through the DNR's Small Forest Landowner Office.

Some aspects of the proposed rule change reduce the number of FPAs that would be classified as Class IV-special and require the SEPA checklist, while other parts of the rule change would increase the number of FPAs that would be classified as Class IV-special and require the SEPA checklist. Thus, it is difficult to say with certainty how the mixed impacts of the individual rule changes will balance out in terms of the final impact on landowners.

The table below lists the individual rule changes and how they will impact landowners.

	Proposed Rule Change	Effect	Time Cost/Benefit
1	Strike historic site definition in WAC 222-16-010, use DAHP's definition	DAHP eligibility standards are stricter, limits number of Class IV-special permits	Benefit to applicants
2a	Replace "registered with DAHP" criteria with definition of Archaeological Site in RCW 27.53.030(3) as Class IV-special WAC 222-16-050(1)(f)(i)	Encompasses more archaeological sites, not just those already "registered with DAHP"	More Class IV-specials: Cost to applicants
2b	Add Historic Archaeological Resources as defined in RCW 27.53.030(11) to Class IV-special WAC 222-16-050(1)(f)(i)	Historic Archaeological Resources are a subset of Archaeological Sites	Neutral to applicants
2c	Replace "registered with DAHP" criteria with "eligible" historic sites as Class IV-special WAC 222-16-050(1)(f)(ii)	Encompasses more historic sites as current rule structure precludes non-archaeological historic sites from Class IV-special	Cost to applicants
3	Add two exemptions as Class IV-special subsections (f)(iv)(a)&(b) based on having cultural resources management plan/strategy	Does not trigger a cultural resources Class IV-special	Benefit to applicants
4	Strike National Register sites from Class III (5)(k)(i)	Shifts some Class III FPAs to Class IV-special, also allows site preparation & aerial pesticide spraying as Class II	Both cost and benefit to applicants

It is generally believed, based on the identified effects in the table above, that the net affect of the proposed rule changes will cause more FPAs with cultural resources to fall into the Class IV-special category, but determining the exact number is not possible. In the FPAs reviewed, Class IV-special FPAs only make up 8 percent of all the FPAs with cultural resource issues (annually, on average, this would be 4 out of 45 permits), so if we assume the remaining 92 percent of the FPAs with cultural resources would now be Class IV-specials, the number of Class IV-special FPAs would increase by 41 in an average year. Assuming the SEPA checklist takes an average of two hours to complete, an additional 82 hours will be spent annually on paperwork by all affected businesses and landowners statewide.

It is also possible that, because the proposed rules clarify which cultural resources trigger Class IV-special or Class III, more FPAs will now be flagged for containing a cultural resource, but as above, the exact number is difficult to determine. If we assume there will be a 30 percent increase in FPAs that get flagged for cultural resources and all those FPAs are Class IV-special, this will add on average 13.5 more Class IV-special FPAs each year, meaning an additional 27 hours spent completing the SEPA checklist by all affected businesses and landowners statewide. Combined with the previous estimate of 82 hours, it would total 109 hours of additional paperwork annually to all affected businesses and landowners statewide. If we assume a

consultant would charge a rate of \$100 per hour to complete the SEPA checklist, this would amount to a cost of \$10,900 annually to all affected businesses and landowners statewide.

However, these 13.5 “new” FPAs each year that would not have been flagged for cultural resource issues under the current rules may require some additional costs such as operational restrictions imposed upon the forest practice activity. If this is the case, this could impose an even greater impact on the business or landowner. Discussions with DNR Region Forest Practices staff indicate that, on the majority of FPAs with cultural resources, the landowner and the tribe work out an agreement for safeguarding the resource. Typical restrictions can range from not driving equipment over the site to leaving buffer trees around the site. However, because these arrangements are often made solely between the landowner and the tribe, it is difficult to determine the “average” or probable restriction requirement on forestlands, so it is also difficult to determine the resulting “average” or probable impact to landowners.

If we assume that all 13.5 “new” FPAs with cultural resources would require the more costly typical restrictions noted by the DNR region staff, buffer trees would be required on these FPAs. If we further assume that 10 buffer trees were left for each FPA, this would total 135 trees annually. Assuming an average tree is 110 feet tall with a 14 inch diameter at breast height, this would yield 200 board feet (Scribner) per tree, or a total of 27 MBF (thousand board feet) for all the trees. Applying a stumpage price of \$326³ per MBF, the additional costs for operational restrictions on the 13.5 FPAs would total \$8,800 per year.

Small Business Impacts

As discussed earlier, small businesses (small landowners) do not appear to be any more likely to have cultural resources on their land than large landowners. Given that on average, small landowners make up approximately 26 percent of the FPA applicants, 29 of the 109 hours of additional paperwork required annually statewide due to the SEPA checklist would fall on small landowners. Using the estimate of \$100 per hour for hiring a consultant, this would cost all affected small landowners \$2,900 annually statewide. Unlike large land businesses (industrial timberland owners), small landowners may not be as familiar with the SEPA checklist and it may therefore take more time to complete. To mitigate this potential added time for small landowners unfamiliar with the SEPA checklist, the DNR’s Small Forest Landowner Office offers free assistance with the completion of both SEPA checklists and FPAs.

As discussed in the previous section, it is estimated that 13.5 additional FPAs statewide would be subject to more costly restrictions due to leave tree buffers around cultural resources. On average, 3.5 of these FPAs would belong to small landowners (since they make up 26 percent of those applying for FPAs), so this would add approximately \$2,290 annually to the impact on small landowners.

QUALITATIVE BENEFITS

The primary benefit of the proposed rules would be to increase protection of the cultural heritage of Washington by identifying and protecting cultural resources that could otherwise be degraded

³ This stumpage value is the average year-to-date price paid on DNR timber sales statewide for FY 2008.

or destroyed by normal forest practices activities. In the Archaeological Sites and Resources Act (chapter 27.53 RCW) and the Indian Graves and Records Act (chapter 27.44 RCW), the legislature declares the “conservation, preservation, protection, and scientific study of the state’s archaeological resources” to be in the public interest and declares these resources “finite, irreplaceable, and nonrenewable”. These legislative proclamations reflect the value to the citizens of the state in identifying and protecting Washington’s cultural resources, including when these resources are in a forest practices setting.

The proposed rules improve the identification and protection of cultural resources by clarifying the currently ambiguous language that determines the review and conditioning of forest practices application involving cultural resources. Additionally, rule clarity in itself leads to better statewide implementation of the Forest Practices Rules, more efficient DNR processing of applications, and smoother and more predictable application processing for forest landowners. It may also lead to increased landowner understanding of, and so compliance with, the forest practices rules.

SPECIFIC DIRECTIVES OF THE STATUTES BEING IMPLEMENTED

The statutes being implemented are the Forest Practices Act and the State Environmental Policy Act (SEPA). In the Forest Practices Act, chapter 76.09 RCW, the legislature declares that it is in the public interest to coordinate and cooperate with the tribes and foster compliance with state and federal laws protecting cultural resources. See RCW 76.09.010 (2). Additionally, in RCW 76.09.370, the legislature strongly encourages the Board to adopt the 1999 Forest and Fish Report which contains two commitments specific to cultural resources: 1) create a cultural resources plan to address landowner–tribes relationships and resolution of cultural resources concerns that arise due to forest practices (Appendix O.3) and 2) complete a cultural resources module to add to the watershed analysis process Appendix (G.1). The Board’s rules now require annual updates on the Cultural Resources Protection and Management Plan (WAC 222-08-160) and completion of the cultural resources module as part of a watershed analysis (chapter 222-22 WAC and Board Manual section 11).

The Forest Practices Act also directs the Forest Practices Board to adopt forest practices rules that identify which forest practices require SEPA review because of their potential for a substantial impact on the environment. See RCW 76.09.050(1) and WAC 222-16-050(1). The SEPA rules (chapter 197-11 WAC) include historic and cultural preservation as an element of the environment which must be addressed in the SEPA checklist required for all Class IV forest practices.

CONCLUSION

The total cost of this rule change is estimated at \$19,700 per year statewide over all businesses.

The costs of the proposed rule changes are measured as the annual statewide increase in time spent completing additional paperwork and additional operating costs in the form of leave trees. An assumed consultant’s rate of \$100 per hour is applied to the hourly estimates and a value of \$65 is applied to each tree to arrive at a dollar value.

Only 0.7 percent of all FPAs reviewed contain a cultural resource issue, and the rule change would increase the number of Class IV-special FPAs making it necessary to complete an additional two hours of paperwork in the form of the SEPA checklist. This adds up to a total of 109 hours annually of time spent on additional paperwork statewide, estimated at a cost of \$10,900 annually statewide, assuming landowners hire a consultant at a rate of \$100 per hour. The SEPA checklist affects both large and small businesses alike, although large businesses may have staff trained at completing this type of paperwork. The impact on small businesses of hiring a consultant to complete the SEPA checklist will be mitigated by utilizing the free assistance available through the DNR's Small Forest Landowner Office.

There will also be an estimated 13.5 more FPAs per year subject to operational constraints due to the presence of cultural resources. Assuming each FPA will be required to leave an average of 10 buffer trees to prevent damage to the cultural resources, the total value of the buffer trees for all FPAs is estimated at \$8,800 per year. While small landowners will bear a portion of this cost, there is no indication they will be disproportionately impacted by the operational constraints.

Taking into account both the qualitative and quantitative benefits and costs, and the specific directives of the Forest Practices Act and SEPA, the probable benefits of the rule amendments are greater than the probable costs. Also, the proposed amendments represent the least burdensome alternative that will achieve the general goals and specific objectives of the Forest Practices Act and SEPA.

PRELIMINARY ECONOMIC ANALYSIS
Forest Practices Rule Making
Defining the Term “Conversion Activities”
By Donald Krug, Economist, Department of Natural Resources
February 2008

OBJECTIVES

The Forest Practices Board is considering permanent rule making that will add a definition of “conversion activities” to Chapter 222-16 WAC. The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state’s small businesses.

Prior to rule adoption, the Administrative Procedure Act (chapter RCW 34.05)¹ requires completion of a Cost-Benefit Analysis (CBA) that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A Small Business Economic Impact Statement (SBEIS) is required by the Regulatory Fairness Act (chapter RCW 19.85)² to consider the impacts of state administrative rules on small businesses, defined as those with 50 or fewer employees. An SBEIS compares the costs of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

This economic analysis combines the SBEIS and the CBA and complies with the legislative requirements for these analyses as part of the rule making process.

HISTORICAL CONTEXT

The Washington State Legislature passed 2SSB 5883³ during its 2007 session. This legislation amends the procedures for notification of forest practices conversion activities. It references a definition of the term “conversion to a use other than commercial timber operation” found in RCW 76.09.020⁴, which states the term “means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practice rules” (emphasis added) .

PROPOSED RULES SUMMARY

The proposed rulemaking provides a definition of the term “conversion activities” as follows:

“Conversion activities” means site preparation activities associated with conversions of forest land to a use other than commercial timber operation. These changes in land use may be occurring concurrently or after timber harvest on forest land and may include but are not limited to the following:

¹ For CBA requirements, see [Chapter 34.05.328 RCW - The Washington State Legislature](#).

² For SBEIS requirements, see [Chapter 19.85.040 RCW - The Washington State Legislature](#).

³ 2ssb available at <http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Senate%20Bills/5883-S2.pdf>

⁴ Available at <http://apps.leg.wa.gov/RCW/default.aspx?cite=76.09.020>

- Preparation for, or installation of, utilities, except on easements providing utilities to other ownerships.
- Grading and filling.
- Preparation for, or construction of, any structure for which a landowner would be required to obtain local government approval.
- Construction of, or improvement of, roads to local governmental entity standards.
- Clearing for, or expansion of, a borrow pit for non-forest practices uses or to make a surface mine.

ECONOMIC ANALYSIS

To comply with the Administrative Procedure Act and Regulatory Fairness Act this analysis identifies potentially affected industries, defines small and large businesses and determines if there is a disproportionate economic impact on small businesses. It also estimates the annual cost of compliance with the proposed rule changes.

Potentially Affected Industries

The rule-complying community affected by the proposal includes landowners and businesses that own or control the cutting rights on forestland or those with the right to dispose of the timber.

Small Businesses versus Large Businesses

The Regulatory Fairness Act defines a “small business” as one with 50 or fewer employees. This definition does not lend itself to commercial forestry, because a growing proportion of Washington’s commercial forest acreage is owned by investment-oriented firms that employ few people. Forest ownership acreage and the volume of timber harvested on an annual basis are generally more appropriate metrics for characterizing small businesses in the timber industry. In order to better portray the effects of proposed rule changes on small business, this economic analysis defines small businesses as those meeting the state’s eligibility criteria for small forest landowner status in the Forestry Riparian Easement Program; generally those who harvest an average of less than two million board feet per year from their own land. All other private landowners are categorized as “large businesses” for purposes of this analysis.

Benefits and Costs Included in the Analysis

Benefits and costs were not determined for this proposed rulemaking because it does not have any affect on the rule-complying community. This is discussed below.

Involvement of Concerned Stakeholders

The development of the legislation to amend the procedures for notification of forest practices conversion activities was accomplished through a stakeholder process. The DNR worked with representatives from small forest landowners, Washington State Association of Counties, departments of ecology and wildlife, Washington Forest Protection Association, conservation caucus and tribes in the writing of this legislation.

The goal of the stakeholder group was to eliminate landowner confusion about forest conversion harvests and to establish a process for state and local governments to share information and to assure that the appropriate protective measures are applied to forest practices activities.

ANALYSIS AND CONCLUSION

The legislation that prompted this rule proposal benefited forest landowners by eliminating the requirement to file a development moratorium form with a Forest Practices Application or Notification. It also directed DNR to notify local governmental entities if unauthorized conversion activities during or after timber harvest on forest land is or has taken place.

The rule proposal, which is the subject of this analysis, clarifies for DNR field staff the types of activities that may indicate that a landowner is converting forest land to another use unlawfully. It does not change current practice, nor does it impose costs on the rule-complying community.