

1 **FOREST PRACTICES BOARD**

2 February 8, 2017

3 Natural Resources Building, Room 172

4 Olympia, Washington

5  
6 **Members Present**

- 7 Stephen Bernath, Chair, Department of Natural Resources
- 8 Noel Willet, Timber Products Union Representative
- 9 Bob Guenther, General Public Member/Small Forest Landowner
- 10 Carmen Smith, General Public Member/Independent Logging Contractor
- 11 Tom Nelson, General Public Member
- 12 Heather Ballash, Designee for Director, Department of Commerce
- 13 Jeff Davis, Designee for Director, Department of Fish and Wildlife
- 14 Lisa Janicki, Elected County Official
- 15 Patrick Capper, Designee for Director, Department of Agriculture
- 16 Paula Swedeen, General Public Member
- 17 Tom Laurie, Designee for Director, Department of Ecology

18  
19 **Members Absent**

- 20 Brent Davies, General Public Member
- 21 Dave Herrera, General Public Member

22  
23 **Staff**

- 24 Joe Shramek, Forest Practices Division Manager
- 25 Marc Engel, Forest Practices Assistant Division Manager
- 26 Patricia Anderson, Rules Coordinator
- 27 Phil Ferester, Senior Counsel

28  
29 **WELCOME AND INTRODUCTIONS**

30 Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

31  
32 Newly elected Public Lands Commissioner Hilary Franz introduced herself and thanked the  
33 Board for all their hard work and is looking forward to working with the Board in the future.

34  
35 **APPROVAL OF MINUTES**

36 **MOTION:** Stephen Bernath moved the Forest Practices Board approve the November 8 & 9  
37 meeting minutes as amended.

38  
39 **SECONDED:** Tom Laurie

40  
41 **ACTION** Motion passed. 9 support / 2 abstentions (Willet and Nelson)

42  
43 **PUBLIC COMMENT**

44 Ray Entz, Kalispel Tribe of Indians and Upper Columbia of United Tribes, said there are many  
45 accountability issues within the Adaptive Management Program (AMP) and asked the Board to  
46 address some of the issues, specifically review CMER membership and term limits, participation

1 grants, and TFW Policy Committee (Policy) member appointment. He said he is committed to  
2 working on this issue to bring something forward to the Board by the May meeting.

3  
4 Ken Miller, Washington Farm Forestry Association (WFFA), read the poem *When You're So*  
5 *Old* by Robert Mealey. He felt the poem describes small forest landowners are and why they  
6 matter.

7  
8 Mary Scurlock, Conservation Caucus, shared their caucuses' Board and AMP priorities for 2017:  
9 complete an AMP performance review; adopt a permanent water typing system rule; complete  
10 Policy recommendations for guidance on how to locate the perennial initiation points for Type N  
11 Waters; complete Policy recommendations for improved guidance and rules for unstable slopes;  
12 a statistically sound compliance monitoring program; and program funding.

13  
14 Chris Mendoza, Conservation Caucus, responded to Ray Entz's comments regarding CMER. He  
15 shared his experience within CMER and how unrest may come from members who do not follow  
16 the process. He volunteered to work with Entz to address the AMP issues. He also stated the  
17 default process to locate the break point between Type Np and Ns Waters is an important issue  
18 because CMER and the tribes have completed two peer review reports for locating this point. He  
19 said no guidance in the board manual or rule exists, but is hopeful there are enough peer  
20 reviewed reports for Policy to make a recommendation to the Board this year.

21  
22 Peter Goldman, Conservation Caucus, shared his perspective on why water typing and perennial  
23 initiation points are not new rules, but rather old business agreed to in the Forest and Fish Report  
24 (FFR). He said the FFR was historic in several ways, two in particular—to improve how to type  
25 waters for fish presence and absence, and develop a system to determine where the non-fish  
26 streams start. He said Policy has been working on getting it right and asked the Board to not put  
27 stakeholders in a position advocating for new rules when these were concepts originally  
28 promised with the 1999 Forest and Fish Report. He asked the Board to request Policy bring  
29 consensus recommendations or majority and minority reports on water typing at the Board's  
30 May meeting.

31  
32 Kevin Godbout, Weyerhaeuser Company, said “day of” agenda changes and materials make it  
33 difficult for members of the public to participate effectively in the meeting and requested the  
34 Board consider such implications. He specifically mentioned that the Kalispel Tribal letter  
35 regarding issues within CMER and the conservation caucus' AMP priorities did not provide  
36 stakeholders enough preparation to fully engage in the discussions today. He also expressed  
37 concerns about the interim protocol stream survey guidance memo in that nothing was available  
38 in the meeting packet to better inform on what is to be discussed. He asked for a transparent and  
39 open process on these sensitive issues for regulatory stability. He felt industry has performed  
40 well under the existing regulatory system and that the system is one of the best in the world and  
41 is performing well.

#### 42 43 **CULTURAL RESOURCES UPDATE**

44 Bernath introduced Tim Thompson, Thompson Consulting Group, as the neutral facilitator hired  
45 to bring the state, tribes, and landowners together to explore concerns around the identification  
46 and protection of tribal cultural resources.

1 Tim Thompson provided a status update on where the group is at in the negotiation process. He  
2 credited the three caucuses: landowner caucus developing suggestions for pilot agreements;  
3 tribes suggested ways to make the existing process work better and Department of Natural  
4 Resources (DNR) acknowledging lack of fundamental understanding and the need to add staffing  
5 to facilitate better discussions. He acknowledged that there are examples where landowners are  
6 implementing cultural resource protection marvelously, but there are voids and places where the  
7 state and DNR can improve.

8  
9 He provided a summary of eight implementation suggestions that are being discussed:

- 10 1. Seek baseline funding from Department of Interior for cultural resource agreements as  
11 originally provided in the Forests and Fish Agreement.
- 12 2. Fund cultural resource expertise within the Small Forest Landowner Office.
- 13 3. Provide state funding for statewide cultural resources education and training efforts.
- 14 4. Provide funding for an ambassador within DNR to assist with communications between  
15 tribes, landowners, and Department staff.
- 16 5. Modify the Forestry Riparian Easement Program statute to provide partial compensation to  
17 small landowners for leaving trees in place in order to protect cultural resources.
- 18 6. Consider modifying the Forests and Fish Support Account statute to remove the federal  
19 funding element.
- 20 7. Initiate a pilot program to evaluate alternative approaches to initiating tribal-landowner  
21 meetings.
- 22 8. Implement an audit system to evaluate program performance after the pilot is completed.

23  
24 He concluded by stating that the list of recommendations do not have consensus yet. He said this  
25 is a status report he will provide to the caucuses and will ask them how they want to proceed and  
26 then move forward accordingly.

## 27 28 **REPORT FROM CHAIR**

29 Bernath recognized Bill Little for his service to the Board from 2008 to December 2016, and  
30 recognized Adrian Miller for his hard work and leadership facilitating the Policy Committee. He  
31 also recognized Dick Miller for representing the small forest landowner community at Policy.

32  
33 Bernath reported on the status of the Governor's budget from the requests by the forest practices  
34 program. The budget did not provide money to expand the small landowner office. From the  
35 three capital requests, the Family Forest Fish Passage Program received 5 million, the Forestry  
36 Riparian Easement Program received 3.5 million, and the Riparian and Habitat Open Space  
37 Program received one million. He said the program remained silent regarding funding for the  
38 AMP.

39  
40 Based on public comments at previous board meetings, Bernath noted the following:

- 41 • DNR will be working to conduct a financial and a performance audit on the AMP;
- 42 • The AMP is reviewing the Lean pilot process within the Cooperative Monitoring, Evaluation,  
43 and Research Committee (CMER). He asked for a report at the May Board meeting to ensure  
44 the process is working as effectively as possible; and

- 1 • He will ask the Adaptive Management Program Administrator (AMPA), in consultation with  
2 stakeholders, to identify any additional changes to ensure the process is working effectively  
3 and efficiently as possible and report back at the May meeting.  
4

5 He said he will be asking Joe Shramek, DNR, to report at the May meeting on the performance  
6 measures for forest practices field staff as well as the compliance component.  
7

8 Bernath asked Board members to hold May 9 open in order to have a two day meeting in May.  
9 He also said that he is looking to have a field tour in June.  
10

11 **TFW POLICY COMMITTEE’S PROGRESS REPORT ON UNSTABLE SLOPES**  
12 **PROPOSAL INITIATION UPDATE AND RECOMMENDATIONS FROM THE MASS-**  
13 **WASTING EFFECTIVENESS STUDY**

14 Bernath reminded the Board of their accepted Proposal Initiation for the AMP to consider  
15 additional aspects of unstable slopes that were not included in the development of the board  
16 manual. He also reminded the Board that at their February 2014 meeting, they accepted the  
17 Policy consensus recommendations for next steps associated with the CMER Mass Wasting  
18 Effectiveness Study.  
19

20 Marc Engel, DNR, provided a historical recap on Board actions addressing unstable slope rules  
21 and guidance starting in 1982 when the Class IV Special trigger for roads was adopted. He  
22 mentioned other rule adoptions including Class IV Special triggers, watershed analysis, and the  
23 rule identified landforms and SEPA guidance. He focused the presentation on Board actions  
24 taken since their February 2014 meeting which included actions taken to respond to the Policy  
25 recommendations for next steps associated with the CMER Mass Wasting Effectiveness Study  
26 and to the Oso landslide in 2014 and the two year process to amend Board Manual Section 16  
27 *Guidelines for Unstable Slopes and Landforms*.  
28

29 He reminded the Board of their decision based on Policy recommendations to take no action at  
30 the February 2014 Board meeting regarding the Mass Wasting Effectiveness Monitoring Project.  
31 Hans Berge, DNR, added that Policy did agree that further research was needed on monitoring  
32 the effectiveness of road and harvest prescriptions to meet mass wasting resource objectives. In  
33 addition, Berge said the group looked at tools for unstable slopes screening such as LiDAR and a  
34 study to evaluate the rule identified landforms.  
35

36 Engel outlined the presentations and actions taken at the May 2014 Board meeting. He also  
37 provided the timeline and approved content contained in the approval of Phase 1 and 2 of the  
38 board manual as well as the Board’s direction as a result of the issues brought forward by the  
39 Conservation Caucus and the Washington Forest Protection Association. He mentioned how the  
40 unstable slopes proposal initiation was formed and the Board’s decision to seek legal advice  
41 from the Attorney General before taking any action regarding a moratorium on activities on the  
42 groundwater recharge area of deep-seated landslides.  
43

44 Berge provided a progress update on the February 2015 Board accepted Unstable Slope Proposal  
45 Initiation which included topics related to climate change, public safety, further understanding of  
46 deep-seated landslides, terms used in the board manual and shallow-rapid tools. He said Policy

1 formed a subcommittee to review elements of the proposal initiation and determine what  
2 elements could be addressed through Policy and what elements could be forwarded for  
3 completion by UPSAG and CMER. He said there are a couple of elements that still need to be  
4 addressed and it is unclear as to how to proceed. One is the impact climate change plays and the  
5 other is public safety, which may be outside the technical scope of CMER and needing Policy  
6 direction before moving forward. He said the subcommittee will look again at the remaining  
7 elements but may need some support from the Board to move forward on the remaining issues.  
8

9 Paula Swedeen asked at what point can the Board get involved and provide support. Berge said  
10 he is not sure. He said the subcommittee needs to discuss these topics and he believes that at  
11 some point the subcommittee will need some direction from the Board. Berge was unsure if the  
12 committee would be providing recommendations.  
13

14 Swedeen requested Policy ask for direction from the Board rather than stay stuck and delay  
15 moving forward on the complex issues surrounding public safety. Bernath requested an update  
16 from the subcommittee at the May 2017 Board meeting.  
17

18 Engel added that the Board's acceptance of Policy's recommendations on the Unstable Slopes  
19 Proposal Initiation included an update to the Board on the status and completion of each product  
20 as requested by Board members. Swedeen clarified by saying she wanted to see Policy ask for  
21 assistance if they get stuck on certain topics.  
22

23 Bernath asked for assurance that all the commitments made are moving ahead and are not left  
24 behind. Berge responded that most are part of various mass wasting commitments and are  
25 moving forward in some form. He also said regardless of the events, some elements still need to  
26 be addressed, such as deep-seated landslides and rule identified landforms. Engel concluded by  
27 stating that DNR's administrative commitments were completed including the additional  
28 information rule and changes to the Forest Practices Application regarding unstable slopes  
29 information.  
30

### 31 **TFW POLICY COMMITTEE UPDATE ON THE WATER TYPING SYSTEM**

32 Ray Entz, co-chair, and Hans Berge, DNR, provided the following progress report on the  
33 Board's motions passed at the November 2016 Board meeting:  
34

35 Acceptance of Policy consensus recommendations and direction to Board staff to prepare draft  
36 rule and guidance.

- 37 • Department staff has begun evaluating rule elements contained in WACs 222-16-030 and -  
38 031 that the Board accepted as remaining language for the new rule.  
39

40 Acceptance of Policy recommendation for development of a Fish Habitat Assessment Method  
41 (FHAM).

- 42 • Policy invoked dispute resolution and agreed to a process for evaluating FHAM proposals by  
43 an independent contractor.
- 44 • The AMPA received four fish habitat assessment methods
- 45 • The fish habitat assessment method contractor evaluation will also include a recommended  
46 methodology

- 1 • Stage 2 of dispute resolution was invoked and Policy voted by consensus to use mediation to  
2 resolve the dispute.
- 3 • The AMPA will send the Fish Habitat Technical Group’s conceptual framework for a  
4 methodology for inclusion in the fish habitat assessment method contractor evaluation.
- 5 • Policy directed the technical group to continue meeting and focus on identifying potential  
6 criteria for potential habitat breaks and other items.
- 7 • The fish habitat assessment method contractor team will present the evaluation report at the  
8 March Policy meeting.

9

10 Direction to Policy regarding non-consensus issues.

- 11 • Policy invoked dispute resolution on the definition of off-channel habitat; and appointed a  
12 group to find resolution to the outstanding issues.
- 13 • The Landowner and Conservation Caucuses agreed to work off-line to reach common ground  
14 on outstanding off-channel habitat language elements.
- 15 • Refinements to the off-channel habitat subgroup’s recommendations will occur prior to the  
16 Policy’s mediation session in March.

17

18 Direction to Policy on Type F/N points through water typing modification forms (WTMF) as the  
19 regulatory fish habitat points in the Fish Habitat Water Typing Map.

- 20 • Policy began dispute resolution on the acceptance of all existing WTMF.
- 21 • The Conservation, Industrial Landowners, DNR, and Westside Tribal Caucuses met as a  
22 subgroup to find a resolution.
- 23 • Policy reviewed recommendations and voted unanimously to resolve the dispute.

24

25 Funding approval to initiate science based products.

- 26 • Formal dispute resolution was not initiated regarding the development of the water typing  
27 model and the evaluation of default physical criteria.
- 28 • AMPA will be convening a technical group to develop study designs. The Board’s original  
29 authorization was initially \$500,000, but after considering options and timelines, Policy  
30 authorized to spend \$250,000.

31

### 32 **UPDATE ON DNR’S INTERIM GUIDANCE FOR THE 2017 WATER TYPING** 33 **SEASON**

34 Bernath said at the last Board meeting one of the consensus items was to have DNR provide  
35 interim guidance to landowners and stakeholders on expectations for adequately documented  
36 water type surveys and completed water type modification forms in order for DNR to make good  
37 decisions.

38

39 Joe Shramek, DNR, provided an update on the progress and timing of the operational guidance  
40 for the 2017 protocol stream survey season. He said the Department issues a memo each year in  
41 February to provide information about the forecasted abundance of water in streams supplied by  
42 snow-dominated watersheds. He said in addition to the water abundance forecast, the 2017  
43 memo will be used to provide clarity about expectations for how protocol stream surveys are to  
44 be conducted and reviewed as the Board continues to consider changes that may come following  
45 adoption of new rules and technical guidance.

46

1 He said the expectations for how protocol stream surveys are conducted will not change  
2 compared to prior years because they needed to continue to be based on current rule and board  
3 manual guidance until such time that the Board adopts changes. The focus will be in three areas:

- 4 • Protocol surveys will be carried out and acted upon in the same ways as in prior years.
- 5 • How water type review teams are used to review, prioritize, and provide information used by  
6 the Department to make decisions about proposed water type changes.
- 7 • Proponents need to completely fill out the water type modification forms.

8  
9 He closed by stating the memo will be provided before the end of February 2017 after  
10 incorporating updated water forecasts and discussing the content with TFW stakeholders and  
11 Department staff.

### 12 13 **PUBLIC COMMENT**

14 Ray Entz, Kalispel Tribe of Indians and Upper Columbia of United Tribes, provided comments  
15 on the forest chemical process. He said Mahan's leadership was much appreciated. He said the  
16 recommendations to change the Forest Practices Application and to add best management  
17 practices to the board manual met the tribe's concerns brought to the Board in 2016.

18  
19 John Henrikson, WFFA, said they support the work of the Northern Spotted Owl Implementation  
20 Team (NSOIT) in developing a programmatic Safe Harbor Agreement that can be voluntarily  
21 utilized by forest landowners to enhance existing owl habitat and grow new habitat. He  
22 encouraged the Board to continue to give direction to the NSOIT to develop incentives that will  
23 work for both small and large forest landowners as it is unrealistic to expect private landowners  
24 to shoulder the entire cost for developing this critical public benefit.

25  
26 Ken Miller, WFFA, invited the Board to his tree farm to demonstrate the small forest landowner  
27 template. He said this would help the Board visualize what they have proposed and what is  
28 assumed to be complex template.

29  
30 Karen Terwilleger, Washington Forest Protection Associated (WFPA), spoke on Type N Water  
31 typing and the lack of a default in the board manual for uppermost perennial flow. She said they  
32 have significant concerns with the science in the study. She said they have offered to develop a  
33 collaborative process to obtain appropriate data but have been rebuffed by Policy and mentioned  
34 their proposal initiation before Policy. She stated there is still a lot of work to be done on this  
35 once Type F is completed. Regarding Type F, she said that any changes to rule or guidance must  
36 be based on science and any proposed alternatives to change the regulatory break need to be  
37 evaluated against the Board's expectations passed in August 2015 and the performance targets  
38 identified in the FFR.

### 39 40 **LEGISLATIVE UPDATE**

41 Joe Shramek, DNR, provided an update on legislative activity that could affect the Board in its  
42 duties or the Department in the implementation and enforcement of the rules. He highlighted two  
43 bills in particular:

- 44 • HB 1531/SB 5394 amending the Stewardship Act (chapter 76.13 RCW) to promote working  
45 forests and the Forest Riparian Easement Program as parts of the state's carbon sequestration  
46 climate strategy.

- 1 • HB 1275/SB 5393 amending the Hydraulic Code (chapter 77.55 RCW) to add forest practice  
2 applications with hydraulic projects for fish barrier removal projects to an existing  
3 streamlined permitting process administered by WDFW.  
4

5 He said the Department was supportive of these bills after working with others on technical  
6 changes to the original versions.  
7

#### 8 **PESTICIDE WORK GROUP REPORT**

9 Donelle Mahan, DNR, provided an overview of topics discussed at previous work group  
10 meetings and provided a final report including actions DNR will implement.  
11

12 She said the final topic was how to modify the applications to make it clearer. She said all work  
13 group members agreed on the specific additions. The new aerial pesticide application is targeted  
14 to become effective on February 9, 2017.  
15

16 She said there were discussions about adding reporting on active ingredient quantities in the  
17 applications and whether this would be needed and useful information, because most proponents  
18 would list the maximum amount of herbicide which could be used, not the actual quantity of  
19 active ingredient which could create more confusion than clarity. She said this led to discussions  
20 about how reporting might be done post-application through best management practices. All  
21 group members supported post-application reporting as a non-mandatory best management  
22 practice. She said DNR will devise a process for this to occur.  
23

24 She concluded by stating the following will help stakeholder reviewers, landowners, and DNR:

- 25 • Update Forest Practices Illustrated by July 2017
- 26 • Update Board Manual Section 12 by May 2018  
27

28 Swedeen asked about the stakeholder's responses to the final decisions. Mahan said that most of  
29 the group was okay with the final outcomes. Some participants still wanted to see required one-  
30 mile notifications and post spray records, but that would require statute and rule changes.  
31

#### 32 **ELECTRONIC SIGNATURE AND ELECTRONIC PAYMENT RULEMAKING**

33 Bernath said DNR is in the initial stages of developing a system for forest practices proponents  
34 to electronically submit their Forest Practices Applications and fees. He said DNR currently has  
35 the authority to accept applications/notifications electronically but lacks clear authority to accept  
36 electronic signature or electronic payment.  
37

38 Marc Ratcliff, DNR, asked the Board to consider rulemaking to add electronic signature and  
39 electronic payment as another option for accepting forest practices applications and fees. He said  
40 the ability to submit electronic signatures and DNR's receipt of electronic formats will be a  
41 viable option alongside the current process of certified mail or hand delivery at DNR region  
42 offices.  
43

44 He said staff will ensure that electronic records and signatures are consistent with the guidelines  
45 provided by the state's Chief Information Officer (CIO).  
46



1 **PUBLIC COMMENT ON RULE MAKING FOR ELECTRONIC SIGNATURE AND**  
2 **PAYMENT**

3 None.

4  
5 **ELECTRONIC SIGNATURE AND ELECTRONIC PAYMENT RULEMAKING**

6 Marc Ratcliff, DNR, requested the Board to approve the filing of the CR-101 Preproposal  
7 Statement of Inquiry to notify the public of the Board’s intent to consider rule making.

8  
9 **MOTION:** Lisa Janicki moved the Forest Practices Board direct staff to file a CR-101  
10 Preproposal Statement of Inquiry to notify the public the Board is considering rule  
11 making relating to acceptance of electronic signatures and payments associated  
12 with forest practices applications/notifications.

13  
14 **SECONDED:** Heather Ballash

15  
16 Discussion:

17 None

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

20  
21 **TFW POLICY COMMITTEE’S REVIEW OF SMALL FOREST LANDOWNER**  
22 **TEMPLATE UPDATE**

23 Bernath reminded the Board that at their May 2016 meeting, the Board accepted a proposal  
24 initiation for a western Washington small forest landowner template proposed by WFFA. He said  
25 Policy has been reviewing the proposal to determine if it meets the definition of a template.

26  
27 Marc Engel, DNR, and Ken Miller, WFFA, provided a progress update for potential timing when  
28 an analysis and recommendations will be presented to the Board.

29  
30 Engel said the strategy approved by the Board is based on the requirements listed in WAC 222-  
31 12-0403 and entails a process of review and several parts that all have to happen in order to  
32 develop an alternate plan template. He said several parts are in varying stages of completion. A  
33 subgroup has reviewed the proposed prescriptions as to how it meets riparian function as  
34 outlined in rule and are actively looking at alternate plan prescriptions.

35  
36 Miller added that small landowners are encouraged by the process moving forward. He said the  
37 small landowner caucus was able to present their perspectives to Policy which resulted in good  
38 dialog and clarifying questions for the caucus. He said he believes that there is still some  
39 misunderstanding of what actually are the prescriptions. He is hopeful that within a year a  
40 consensus proposal will be before the Board.

41  
42 Engel said next steps include initiating the literature synthesis and once the subgroup has all the  
43 data they will do the evaluation of the prescriptions and then present to Policy sometime late  
44 2017. He said Policy will then take action and present recommendations to the Board.

1 **303D LISTING UPDATE**

2 Bernath said the Department of Ecology (Ecology) adopts standards for water quality and  
3 evaluates current monitoring data to discern what waters in the state are impaired. The Board  
4 adopts rules that are intended to meet clean water requirements. He said this presentation on  
5 303D listing for forest lands can potentially be used as one measure of success in meeting clean  
6 water requirements.

7  
8 Mark Hicks, Ecology, provided a status of Washington’s Water Quality Assessment focused on  
9 forest lands. The assessment is a comprehensive review of the quality of Washington’s waters  
10 and is required under the federal Clean Water Act.

11  
12 He said the goal of the 303(d) listing is to identify waters impairing or suspected of impairing  
13 beneficial uses and implement and encourage changes that reduce pollution or cleanup the  
14 impairment so beneficial uses will be met.

15  
16 In addition, Hicks provided a brief overview of the Clean Water Act Assurances. He said  
17 Ecology with support from the Environmental Protection Agency provided the Clean Water  
18 Assurances in Schedule M-2 of the FFR. Also, the assurances and the Forest Practices Habitat  
19 Conservation Plan form a package of federal and state assurances which creates more regulatory  
20 certainty.

21  
22 He said assurances were granted because federal and state agencies recognized the FFR  
23 prescriptions significantly improved water quality protection, and may meet water quality  
24 standards long term, therefore reducing the urgency to develop total maximum daily loads or  
25 propose alternative implementation requirements. Also, because the AMP was established to test  
26 the rules and to expediently adjust them if needed.

27  
28 **NORTHERN SPOTTED OWL IMPLEMENTATION TEAM (NSOIT) UPDATE**

29 Lauren Burnes, DNR, said the priority of the NSOIT has been the development of a voluntary,  
30 “opt-in” programmatic safe harbor agreement for the Northern spotted owl. She said the primary  
31 objective is to incentivize private landowners to undertake voluntary conservation measures that  
32 will benefit the spotted owl by creating, maintaining, or enhancing its habitat.

33  
34 She said it’s a voluntary enrollment process and is open to all landowners and aims to provide  
35 umbrella protection to interested landowners by alleviating the Class IV-Special process and  
36 providing federal assurances for the owl.

37  
38 She said safe harbor agreements require both an assessment of the baseline habitat and a  
39 projection or estimate of the amount of habitat that would constitute the net conservation benefit.  
40 It does not have to provide permanent conservation; however, the conservation measures need to  
41 be sufficient to provide a net conservation benefit to the covered species and should, whenever  
42 possible, be retained for ten years prior to the landowner returning their property to baseline.

43  
44 She said landowners will be able to opt-out if they no longer wish to participate in the program.  
45 As long as there is no mitigation debt (if there was a baseline it would have to remain) a  
46 landowner would be allowed to harvest the net accrued conservation benefit habitat.

1 Burnes concluded by stating that in special and likely rare circumstances it may be necessary to  
2 use forest management activities to enhance the value of baseline habitat that would otherwise be  
3 degraded in the near future without management.

## 4 5 **STAFF REPORTS**

### 6 Adaptive Management Update

7 Hans Berge, DNR, provided an update on the Board’s motion related to funding a study design  
8 to develop a water type model pilot and one for default physical criteria. He said a contract for  
9 both study designs has been completed. He said it is unlikely that the full \$500,000 will be spent  
10 for these study designs.

### 11 12 Upland Wildlife Update

13 Terry Jackson, Department of Fish and Wildlife (WDFW), said the bald eagle and peregrine  
14 falcon have demonstrated sustained recovery and both have been de-listed by the Washington  
15 State Fish and Wildlife Commission effective February 4, 2017. She said the two species will  
16 continue to be classified as “protected wildlife” under state law, and protected under the Federal  
17 Migratory Bird Treaty Act. In addition, she said the Bald Eagle will continue to be protected  
18 under the Federal Bald and Golden Eagle Protection Act and that landowners will still be  
19 required to protect eagles and their nests, consistent with federal guidelines.

20  
21 Regarding the lynx and marbled murrelet, she said on February 4, 2017, the commission up-  
22 listed both to State Endangered. She said one implication to the Board of the up-listing for both  
23 species is that DNR will have 30 days from this listing to provide recommendations to the Board,  
24 after consulting with WDFW, as to whether any changes or additions are needed to the current  
25 forest practices rules and/or protection approach.

26  
27 There were no questions for the following reports:

- 28 • Board Manual Update
- 29 • Clean Water Act Assurances
- 30 • Compliance Monitoring
- 31 • Rule Making Activity
- 32 • Small Forest Landowner Advisory Committee and Small Forest Landowner Office Update

## 33 34 **2017 WORK PLAN**

35 Marc Engel, DNR, reviewed the revised work plan and recommended additions as a result of  
36 today’s meeting. Bernath added the following updates at the May 2017 meeting:

- 37 • Compliance Performance Measures
- 38 • Adaptive Management Program review for process recommendations
- 39 • Review of Lean process within CMER

40  
41 **MOTION:** Bob Guenther moved the Forest Practice Board approve the 2017 Work Plan as  
42 amended.

43  
44 **SECONDED:** Carmen Smith

45  
46 **ACTION:** Motion passed unanimously.

1 **SETTLEMENT OFFER ASSOCIATED WITH SUMAS MOUNTAIN COMMUNITY**  
2 **FOR LANDSLIDE AWARENESS AND PAUL KENNARD VS. WASHINGTON STATE**  
3 **FOREST PRACTICES BOARD**

4 Phil Ferester, Senior Counsel, provided a brief status regarding the legal challenge. He said the  
5 May 2016 Board action to approve Board Manual Section 16 was challenged in King County  
6 Superior court—the case was called Sumas Mountain Community for Landslide Awareness and  
7 Kennard v. Forest Practices Board. He said the court dismissed the case in January and following  
8 the dismissal, Sumas Mountain and Kennard offered to settle the case. He said the Board will  
9 need to discuss the offer and decide on any action to take.

10  
11 **PUBLIC COMMENT ON SETTLEMENT OFFER REGARDING SUMAS**  
12 **COMMUNITY FOR LANDSLIDE AWARENESS AND PAUL KENNARD VS.**  
13 **WASHINGTON STATE FOREST PRACTICES BOARD**

14 Peter Goldman, Washington Forest Law Center, provided his perspective on why a settlement  
15 would be in the best interest of the Board, public safety and public interest. He said it is the  
16 Board’s duty to ensure the rules and the board manual are precautionous and technically sound. He  
17 said they challenged the approval of Board Manual Section 16 because they thought the manual  
18 failed to implement the Class IV-Special rule. As a result, users are left with rules identified in  
19 the Forests and Fish Report that rely heavily on board manual for implementation and one cannot  
20 challenge a board manual because it is not rule. He summarized the two requests of the  
21 settlement offer: formal guidance from the Office of the Attorney General on what is rule versus  
22 board manual and formation of a neutral expert panel to review Section 16 to ensure it is sound.  
23 He said they would not pursue any further litigation for a period of twelve months if the Board  
24 accepts the offer.

25  
26 Karen Terwilleger, WFPA, said they were an intervening party to this lawsuit and believe the  
27 court reached the correct decision. She said guidance documents are not enforceable and do not  
28 go through the adaptive management process which differentiates them from a rule. She also said  
29 that Washington forest practices has one of the strongest standards in the nation for dealing with  
30 unstable slopes in forestry. She also mentioned the proposal initiation that is currently being  
31 reviewed by Policy to go through the adaptive management process to assess whether changes  
32 are needed to the board manual or rule.

33  
34 **EXECUTIVE SESSION**

35 Executive session convened from 4:25 p.m. to 5:25 p.m.

36  
37 **SETTLEMENT OFFER REGARDING SUMAS COMMUNITY FOR LANDSLIDE**  
38 **AWARENESS AND PAUL KENNARD VS. WASHINGTON STATE FOREST**  
39 **PRACTICES BOARD**

40 Bernath solicited the Board for their thoughts on the settlement offer.

41  
42 Patrick Capper said he was not ready to make a decision today and requested more time for  
43 discussion.

1 Heather Ballash said she had concerns with the offer and would like more time to develop some  
2 options that might help move this forward. She said that she was not ready to make a decision  
3 today.

4  
5 Jeff Davis said the Board has consensus about the importance of public safety and that the Board  
6 needs to defend the current process. He said that the settlement offer may not be consistent with  
7 the Adaptive Management process and that he was not ready to make a decision.

8  
9 Carmen Smith said that she agreed with Ballash.

10  
11 Tom Nelson said he agreed with other Board members in that there are some conditions in the  
12 offer that the Board may not be able to fulfill within their authority. He also said that some  
13 elements of the settlement offer were objectionable and that he was not ready to make a decision.  
14 He said he would like to have further discussions.

15  
16 Bob Guenther said that a lot of effort has been made in the past couple of years for public safety  
17 and he was not ready to make a decision today.

18  
19 Paula Swedeen said she also was not comfortable to make a decision today. She said within the  
20 Board's structure it has done what it can but it does not get to all the points raised by the  
21 plaintiff. She said she would like to explore other possibilities while acknowledging what has  
22 been done.

23  
24 Lisa Janicki said she was concerned about circumventing the process and coming out with the  
25 wrong answer. She said she would like to move the discussion down the road, because some  
26 points merit further discussion.

27  
28 Noel Willet said he concurred with other Board members in not being prepared to make a  
29 decision. He said he believes in public safety and that the discussions need to continue.

30  
31 Tom Laurie said that he was not concerned with an appeal but felt that a more public discussion  
32 could be beneficial. He said he was also not ready to make decision today. He also noted that the  
33 schedule proposed is unrealistic given the current work before the Board, but he was willing to  
34 revisit the topic after further discussions occur.

35  
36 Bernath acknowledged the important task the Board has regarding public safety. The Board is  
37 committed in making sure the adaptive management items are moving forward. He mentioned  
38 that as a result of the 2007 storms, the unstable slopes scientific advisory group looked at those  
39 landslides and brought back a non-consensus report, which resulted in Policy's consensus  
40 recommendations. He made a commitment to finding out the status of those recommendations  
41 and the connection to the proposal initiation.

42  
43 Bernath summarized by stating that the Board is not willing to make a decision about the  
44 settlement offer today.

45  
46

- 1 Bernath reviewed some of the commitments made today:
- 2 • Look into conducting a thorough review of the AMP and possible financial audit
  - 3 • Board counsel to present an open discussion on rule versus guidance for the May meeting
  - 4 • Board will continue to talk about public safety
- 5
- 6 Swedeen asked to hear from Commissioner Franz regarding her outreach she is doing towards  
7 this issue.
- 8
- 9 The Board will schedule a workshop for May 9 and conduct the regular meeting on May 10.
- 10
- 11 Meeting adjourned at 5:45 p.m.