

1 **FOREST PRACTICES BOARD**

2 August 8, 2001

3 Natural Resources Building

4 Olympia, Washington

5
6
7 **Members Present:**

8 Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board

9 Judy Turpin, General Public Member

10 John Mankowski, Designee for Director, Dept. of Fish and Wildlife

11 Robin Pollard, Designee for Director, Office of Trade and Economic Development

12 Dick Wallace, Designee for Director, Dept. of Ecology

13 Bob Kelly, General Public Member

14 Toby Murray, General Public Member

15
16 **Members Absent:**

17 Dave Somers, Snohomish County Council

18 Keith Johnson, General Public Member/Small Forest Landowner

19 Lloyd Anderson, General Public Member/Independent Logging Contractor

20 Fran Abel, General Public Member

21 Lee Faulconer, Designee for Director, Department of Agriculture

22
23 **Staff:** Lenny Young, Paddy O'Brien, Debora Brown Munguia, Patricia Anderson, Josh Brown

24
25 **CALL TO ORDER**

26 Pat McElroy called the meeting to order at 9:00 a.m. Introductions were made. Pat made a
27 special welcome to Robin Pollard as a new Board member, representing the Office of Trade and
28 Economic Development.

29
30 **MOTION:** Judy Turpin moved to approve the May 17, 2001 meeting minutes

31 **SECONDED:** Toby Murray

32 **ACTION:** Motion passed unanimously

33
34 **BUDGET**

35 Lenny Young presented highlights of the Forest Practices Division budget for the 2001-03
36 biennium. The program's operating budget is a true zero based budget and represents the highest
37 priority work of the program from July 1, 2001 through June 30, 2003. The budget was built by
38 determining the total funds by source available to operate the Forest Practices Program during the
39 2001-03 biennium. A total of \$27.8 million is available to operate the program. About \$13.6

1 million of general funds are unrestricted and about \$5.5 million of general fund water quality and
2 salmon recovery monies was provided by the legislature for forests and fish enhancement. In
3 addition, we have about \$8.3 million of federal funding for forests and fish that is managed by the
4 Interagency Committee on Outdoor Recreation. The \$5.5 million of state forest and fish
5 enhancement is about \$1.8 million, or 24%, less than the amount requested by the department to
6 implement the forest and fish commitments. The division initially identified 142 major tasks, that
7 were then consolidated and re-shaped to eliminate duplication and overlap, and sorted into priority
8 categories with an estimated cost.

9
10 The Division then grouped related tasks to form the program's major budget components, and also
11 identified the five highest priority tasks that the program could not undertake with available
12 funding. These tasks would represent the program's request for additional funds, should any
13 become available. Young stated that there are more tasks confronting the program than there are
14 funds and people to accomplish them. Accordingly, to insure that the highest priority work is
15 accomplished to uphold performance standards and deadlines, and to safeguard the well being of
16 the Forest Practices staff, deliberate choices were made to identify tasks that the program will not
17 undertake during the 2001-03 biennium. Young said that any of the tasks that were not chosen to
18 be done could be substituted for tasks that are above the budget line, on a dollar-for-dollar basis.

19
20 Young discussed two specific items (reasonable use rule and CMER participation) that were
21 identified by Executive Management to bring above the line as funded. Young feels that
22 participation by DNR scientists in the CMER scientific advisory groups is absolutely essential and
23 that every effort will be made to bring both of these tasks above the line.

24
25 Young also reported on tasks that the division would not be able to take on at this time, such as
26 applying for the 4(d) rule exception, the forest chemical rule, developing resource assessments for
27 civil penalties, soils data layer for stewardship, and updating watershed analysis.

28
29 In addition to the operating budget, the Forest Practices Program has a \$4.75 million capital
30 budget, and this budget represents two forest and fish initiatives--the Forestry Riparian Easement
31 Program for Small Forest Landowners and the Riparian Open Space Program. He said that these

1 are dollar intensive but very staff light. The purpose of these initiatives is to move all the money
2 out to landowners so there would be just enough FTEs associated with this to administer and do
3 these functions.

4
5 Young said that there was about \$3.75 million for Forestry Riparian Easements and \$1 million for
6 Riparian Open Space. He went on to say that during August and early September the Forest
7 Practice's Program will allocate its budget among its subprograms and organizational units. The
8 allotment process may result in relatively minor changes to the picture sketched today. The
9 principal of compensatory relationships between below the line items and above the line items
10 would prevail. If legitimate extra capacity can be found it would be used, but things would not be
11 crowded above the line to result in an uncontrolled workload. Following the allotment process,
12 individual work plans will be developed for the Forest Practices staff. These work plans will:
13 focus the staff's effort upon the program's high priorities, promote discipline and consistent
14 progress towards these priorities day-to-day, safeguard the health and well-being of the staff and
15 armor the program against the loss in effectiveness that often accompanies excessive and
16 spontaneous workloads.

17
18 **Board Discussion**

19 Pat McElroy explained the short fall for the budget and stated that the Forest Practices Division is
20 in good shape. Judy Turpin asked if federal funding is still at the present levels. Young replied
21 that most of the funding is still at the previous level. John Mankowski asked whether a
22 supplemental budget was possible and Young replied that at this time they do not expect one.
23 Turpin supported any budget efforts reducing excessive, uncontrolled workloads, and did not want
24 any amendments to result in the possibility of unrealistic workloads. McElroy stated that nothing
25 would be amended in the budget that would potentially result in unrealistic excessive workloads
26 for staff.

1 **IT PROJECTS UPDATE**

2 Deborah Naslund gave an update on eight IT projects currently being worked on. The completion
3 date for the Forest Practice Application Review System (FPARS) was recently moved forward
4 approximately six months. The Forest Roads Data Project needs to have a few components added
5 to help store the Road Maintenance and Abandonment Plan information. The completion date for
6 phase one is December 2001, and phase two, updating of the data will be ongoing through June of
7 2003. The Hydrography Data Project is similar to the last one in that it is the creation of an
8 improved database. Naslund said that the new format will allow for analysis of stream flow and
9 will have new data fields to track more information about each water course and water body.
10 Completion of this conversion is necessary to run the new Fish Habitat Model and to implement
11 the new water typing system. Mankowski asked about funding for the 2001-03 budget schedule,
12 and Naslund said they were funded. Completion for phase one, data conversion is June 2002 and
13 phase 2 updating of the data will continue through June 2003. Naslund stated that the Western
14 Washington Water Typing System is still anticipated to reach completion in June of 2002 and for
15 Eastern Washington June of 2003. It was asked whether training was part of the given timelines
16 and Naslund stated that timelines included training and implementation. Naslund said that the
17 slope stability screen project focuses on development of improved screening methods for potential
18 unstable slopes. Using the best available model, landforms that have significant potential to
19 initiate shallow rapid landslides are flagged. In western Washington, fieldwork and modeling are
20 complete and this work has been peer reviewed, and the data and guidance document will soon be
21 available for distribution and use. Initial work for the slope stability screen has begun in eastern
22 Washington. Judy Turpin asked if the slope stability screen was linked to the actual functional
23 piece in place for Hazard Zonation Mapping when the interim rule moves over to this new system.
24 Naslund said this was an interim solution until the Hazard Zonation Mapping was completed. The
25 first five projects were all started last biennium, some of them as far back as early 1999. Three
26 new projects would start this biennium and include the Road Maintenance and Abandonment
27 Plans (RMAPS) Tracking System (the new Forest Roads Database to develop a system to assist
28 the division and the region offices in tracking the thousands of Road Maintenance and
29 Abandonment Plans that they will be receiving and have started to receive), the Wetlands
30 Database Improvements Project, and the Hazard Zonation Mapping Project.

31

1 **Board Discussion**

2 Mankowski felt that for the Department of Fish and Wildlife, the new Stream Typing Model
3 needed to be a high priority. Pat McElroy stated that he understands the project is not so much an
4 issue of budget but of understanding the scope and making it work correctly. There are three parts
5 to this project—the IT portion, the collection of the data on the Eastside of the state, and the
6 construction of the model itself. Mankowski said that DNR is doing the writing of the GIS part,
7 the collecting of the data was contracted out through a CMER group and the building of the model
8 was still presumably being handled through the committee. Naslund commented that they are
9 working to keep the timelines that have been set. Lenny Young stated that the division is now
10 paying for all of the in-house IT support, whereas in the past there was competition for limited
11 consulting resources for IT staff, and the work would have to be evaluated and checked against
12 other agency needs.

13

14 **CMER PROJECTS**

15 At this time Jeff Grizzel did not have any additional CMER projects for the Board’s approval.
16 However, the new Adaptive Manager Program Administrator, Geoff McNaughton, will probably
17 present some at the November Board meeting. Grizzel then asked for the Board’s endorsement of
18 the UW/WSU as the facilitator of the scientific review committee. Grizzel consulted with several
19 key members of the Forests and Fish Policy Committee who supported the recommendation.

20

21 **Board Discussion**

22 Toby Murray asked if there were any concerns about there being only two applicants for this
23 project. Grizzel said that it was a bit of a concern and that he was also surprised because an effort
24 was made to distribute the RFQQ widely. However, the University of Washington and
25 Washington State University (UW/WSU) were leading contenders for this project, and he is very
26 comfortable with the candidates that were picked. It was not known why others that were
27 contacted did not submit proposals.

28

29 **Motion:** Dick Wallace moved that the Board endorse CMER’s recommendation to
30 designate UW/WSU as the facilitator of the Scientific Review Committee.

31 **Seconded:** Toby Murray

1 **Action:** **Motion passed unanimously.**

2

3 Grizzel added that DNR's expectations are that the co-managing editors of this review committee
4 would have to be aware of potential conflicts of interest. Also, that both CMER and the
5 universities would do some self-policing to insure that this situation does not arise.

6 Pat McElroy thanked Jeff Grizzel for the fine job he has done as the Adaptive Management
7 Director. Lenny Young formally introduced Geoff McNaughton as the replacement for Jeff
8 Grizzel.

9

10 **SMALL FOREST LANDOWNER BOARD COMMITTEE & JOINT**

11 **TECHNICAL/POLICY TASKFORCE**

12 Debora Brown Munguia gave a brief description of the Small Forest Landowner Committee and
13 Joint Technical/Policy Taskforce. The co-chairs of the Joint Task Force are Dick Wallace and Bill
14 Wilkerson. The Federal Services and the environmental community will also be invited to
15 participate. Local tribes will be invited to attend field trips that occur throughout the state. The
16 role of the taskforce will be to work on forest and fish policy issues and move things forward at
17 the policy level. The taskforce will decide which items will go to the Board committee and which
18 to the Small Forest Landowner Advisory Committee. The Advisory Committee will be able to
19 address implementation of field issues and serve as technical support to the taskforce. The Board
20 committee will look at the Forest Practices Rules and provide policy guidance to DNR. Brown
21 Munguia passed on a comment made by Sherry Fox of Washington Farm Forestry Association
22 stating that one of the biggest concerns of their membership is long-term permits. Brown
23 Munguia said that the taskforce has agreed that this topic will be on their priority list.

24

25 Brown Munguia said that the scope of the taskforce will be to look at alternate plans in context of
26 permits and a longer-term strategy. The taskforce will also be looking at the easement program to
27 be handled by a smaller subgroup of the taskforce and will bring back ideas in October. Brown
28 Munguia said that the next taskforce meeting would involve visiting several sites that are
29 representative of the major issues facing small landowners. She said that eventually they plan to
30 develop templates that can be used for processing alternate plans submitted by small landowners.

31

1 **Board Discussion**

2 Pat McElroy announced the members of the Board’s subcommittee on small forest landowners—
3 Judy Turpin, Keith Johnson, Toby Murray, and John Mankowski. Mankowski will chair the
4 subcommittee. McElroy stated that the Small Landowner Advisory Committee is there to fulfill a
5 specific role but that this committee is looking at the larger perspective. Mankowski said the Joint
6 Taskforce meeting was a very good meeting with many important representatives, but there is still
7 a lot of work to do. McElroy mentioned that the small landowners are facing vexing issues, such
8 as a bias against western states that have strong forest practices regulations from federal agencies,
9 particularly when it comes to allocating financial resources. McElroy said that in much of the
10 nation there is covered by virtually no forest practice regulations. McElroy went on to say that he
11 recently learned that there is money coming from the Land and Water Conservation Fund,
12 somewhere around \$20-30 million nationwide for conservation issues. McElroy has asked Steve
13 Stinson and Ernie Rushing to do research to see if there is any potential for money. McElroy also
14 indicated that the subcommittee should define their specific duties and make their own charter.

15

16 **OCTOBER RETREAT**

17 The Board retreat has been scheduled for October 23-24, 2001 and the location will be in Eastern
18 Washington. The Board agreed to have an open house with the public to meet and mingle with the
19 Forest Practice Board members. Dick Wallace stated that on the field tour portion of the retreat he
20 would like to see an actual harvest operation to see how rules are played out. John Mankowski
21 commented that he would like to hear from the local people, tribal implementers, other agencies,
22 environmental groups, or industry about how things are laid out and how well things are working.

23

24 **EMERGENCY RULE TO IMPLEMENT HB 2105**

25 Debora Brown Munguia presented a proposed emergency rule to the Board that implemented
26 Substitute House Bill 2105, which was adopted by the legislature and went into effect July 22,
27 2001. Pat McElroy reminded the Board that on May 17, 2001 when the Board took action on the
28 final rules, chapter 21 on the Forestry Riparian Easement Program was adopted with the
29 recognition that the new law did not take effect until after the Board meeting, so the rule changes
30 could not be made prospectively at that time. Brown Munguia stated that consensus was reached
31 on the emergency rule proposal with the Small Landowner Advisory Committee and others.

1 **Board Discussion**

2 Dick Wallace mentioned that everything in the bill is covered in the rule and is limited to those
3 changes. Brown Munguia confirmed that in filing this emergency rule the Board is limited to
4 changing only what has been adopted by the legislature.
5

6 **Public Comment**

7 Allen Pleus, Forest Practices Coordinator with the Northwest Indian Fisheries Commission stated
8 two issues. First, he had a concern with Item 12, compliance monitoring. Compliance monitoring
9 has always been a priority of the tribes and their work plans. Pleus said that they have three tribal
10 members on the Monitoring Design Team, and three representatives on the CMER committee, and
11 they are all concerned about compliance monitoring as being the backbone of adaptive
12 management. Pleus encouraged the Board and DNR to make sure that all compliance monitoring
13 work in coordination with CMER and the Monitoring Design Team. Pleus' second concern was
14 that although the Board manual writing process is not as formal as the rule making process, there
15 is no clear idea of what that less formal process is and how to work through it. Pleus felt that new
16 modifications and changes seemed to be met with a lot of resistance and were not as easy to get
17 approved. He said these are the areas that the tribes are very concerned about in the Board manual
18 writing process. Pleus submitted to the board for their review a Northwest Indian Fisheries
19 Commission document dated August 2nd, 2001 titled, "FPB Manual Process Review" that outlined
20 four key process questions and provided suggested answers for discussion purposes.
21

22 Peter Heide, Director of Forest Management for the Washington Forest Protection Association,
23 stated that he was disturbed by what is not on the "A" budget list, and wanted to support Pleus'
24 concerns about compliance monitoring. He said this was also an important issue to landowners.
25 Peter stated that the WFPA is willing to offer their abilities and expertise to assist the Department
26 in completing the tasks that are on the list. He said he has not reviewed the budget, but it occurred
27 to him that a lot of funds are being spent on information technology and computer database work
28 which, in his experience with private companies, are investments that can be very successful, but
29 not necessarily so successful with government agencies. He wants the Department to be very
30 careful about putting such a huge portion of their funds into this area, in comparison to some of
31 the other things that could be accomplished with these funds.

1

2 Pat McElroy stated that the Board is very mindful about this, however these funds were
3 provisioned and not available for other uses. Peter Heide answered that they would like to be
4 involved with the prioritization of the budget. McElroy responded that the budget is a work in
5 progress and will be discussed further in October, stated that Lenny Young would be happy to talk
6 with Heide about some of the core issues.

7 Sherry Fox, Washington Farm Forestry Association, mentioned that her organization worked very
8 hard to clean up a few items in the Forestry Riparian Easement that they found to be counter
9 productive. She said her organization supports the rule adoption and would like to encourage the
10 Board to vote in favor of it. She said it has been an interesting process for small landowners to see
11 what it takes to write a law, however with that come mistakes. Fox said that they will continue to
12 work on legislation that reflects the full intent of the Forestry Riparian Easement. She said that
13 her group would be addressing compliance costs for the layout of the RMZ with legislation.
14 Sherry thanked the Department for the quick work and getting it to the Board, and she added that
15 her group would certainly want to support the rule as is.

16

17 Judy Turpin asked whether legislation is necessary. Paddy O'Brien responded that the compliance
18 costs in the rule is taken exactly from the statute. The Department's approach is to address the
19 layout costs through their contracting authority. Once a landowner has made a decision that he
20 wants to proceed, the Department makes a commitment through a Purchase and Sale Agreement to
21 reimburse for layout expenses upon closing.

22

23 **Motion:** John Mankowski moved that the Forest Practices Board adopt the small
24 forest landowner emergency rule to implement SHB 2105: Chapter 222-21
25 WAC, and that it be filed with the Code Reviser so it becomes effective
26 upon filing with the Code Reviser's office.

27 **Seconded** Toby Murray

28

29 **Board Discussion**

30 Dick Wallace asked if this means that the permanent rule process is being initiated. Debora

1 Brown Munguia answered that if the permanent rule is not significantly different from the
2 emergency rule, there is a schedule in the packet on what the timeline would look like to adopt the
3 permanent rule. However, when meeting with the advisory committee members, they indicated
4 that they would like to make some other changes when the Board is considering the permanent
5 rule. Brown Munguia added that until she knows the extent of what those changes would be, it
6 could drive a different timeline.

7 **Amended Motion:** Mankowski amends the motion to include the “direction to DNR to send
8 notice to the agencies and liaisons to begin 30 Day Review”.

9
10 **Action** Motion as revised passed unanimously

11
12 **CLASS IV GENERAL CONVERSIONS UPDATE**

13 Garry Gideon reported that the job of transferring Class IV Conversions to local governments has
14 changed somewhat since the adoption of the forest and fish rules. The requirements and the
15 ability for local government therefore have become somewhat more difficult and this has been a
16 factor slowing the process. The other factor that slowed the process was the passage of Initiative
17 695, which diminished funds available to local governments. The good news is that once the
18 transfers are completed it will result in a significant reduction of workload, especially in the more
19 urban counties. Pat McElroy stated that he received a letter from Nels Hanson, Washington Farm
20 Forestry Association, who is concerned about some of the counties wanting to go far beyond the
21 required statute, moving their regulatory scheme into more of the forest production zone, not just
22 in the urban zone. McElroy said, we will be watching for that. Snohomish County being a good
23 example; that the draft they are working from would move it not so much in the forest production
24 zone, but in the transition zone. This however, really is intended to be more in the urbanizing
25 areas. Spokane County was a problem earlier this year but an agreement has been reached, and
26 there may be other counties as they work through this system. Dick Wallace said that his
27 understanding is that this is only for conversions. McElroy said that was correct. Wallace adds
28 that there could be instances where, because of sensitive areas in Growth Management for
29 example, it might be appropriate for a conversion to another land use to go beyond the required
30 statute, but again this would be more in that particular county’s jurisdiction. McElroy said that a
31 little education might be needed here. McElroy said that another issue is that as the Forest

1 Practices rules are being updated, there is no requirement for the county to amend their
2 ordinances. McElroy said it appears that if and when a county amends its ordinance that it is
3 required to update at least the portion that they are amending, but it is not obvious that they have
4 to amend the whole ordinance. McElroy confirmed that this is a legislative issue. The counties
5 need to understand that they have a limited role. Murray strongly concurred with McElroy's
6 statement. John Mankowski said that if the distinctions of the two acts are respected it would keep
7 everyone on solid ground. Wallace reinforced Gideon's comment that it is really a long-term
8 savings, and that it is a major drain if this kind of interaction does not work. Gideon said that in
9 working with the local government it was important for them to understand what they are getting
10 jurisdiction over. This has come up in every single transfer that has been done. Ultimately they
11 sometimes would have to go to "the law" and right now, the language of the law is very limited. It
12 is strictly geared toward conversions or lands that look like they are going to convert.

13

14 **ROAD MAINTENANCE AND ABANDONMENT PLANS—COMPLIANCE ISSUES**

15 Garry Gideon said that the scope of the Road Maintenance and Abandonment Plans initiative is
16 large, and he will address the Board about a compliance issue that DNR is facing. Referring to a
17 handout, Gideon said he wants to provide the Board with information regarding the background of
18 the Road Maintenance and Abandonment Plans under the permanent rules, and the obligations this
19 presents on the forest landowners. After going through the handout, Gideon said that all six Road
20 Maintenance and Abandonment Planning Specialists hired last fall mailed out letters to large
21 landowners to inform them of their obligation and to engage them in conversation of getting their
22 RMAPS in. Staff researched the county ownership databases to do this. Gideon said he expects
23 the staff of the Small Forest Landowner Office to spread the word as well. Gideon made it clear
24 that his group's intent is to help all landowners to comply with the law, however, if informal
25 methods fail, appropriate enforcement actions will be considered.

26

27 **Board Discussion**

28 Pat McElroy said this is an enormous workload for the Department. Dick Wallace agrees that as
29 we get closer to 2005, we can try to reap some immediate benefits of sediment and erosion control
30 from the resource protection point of view. McElroy answers that he really wants to explore the
31 possibility of funding for the small landowners and to involve them not just in the planning, but to

1 also making them part of the implementation process. Gideon said that landowners of small or
2 larger areas seem to understand and recognize the importance of this process in the protection of
3 public resources, however it is a very enormous task and will not move forward without a few
4 rough spots. Robin Pollard asked whether financial assistance options have been looked at.
5 McElroy said that these are being looked for, and at the moment, it looks like there is not much
6 there.

7

8 **BOARD MANUAL**

9 Jed Herman introduced the manual changes. Pat McElroy asked if the manuals represented an
10 attempt to rewrite the rules. Judy Turpin indicated that the manuals are just guidance and are not
11 enforceable. McElroy noted the tension between doing it right and getting information to the field
12 people. John Mankowski noted that the Board can correct manuals at any meeting. Herman
13 indicated that the stakeholder group assisting with manuals is very seasoned and watches issues
14 closely.

15

16 Herman provided an update on Section 2, Channel Migrations Zones (CMZ). The focus was not
17 to change the approach to CMZ delineation but to change the format to allow a better
18 understanding of the difference between progressively meandering streams versus channel
19 avulsions. The Board asked Herman at the May meeting to look into whether a definition was
20 needed for the term “near term” as it relates to CMZs. A letter from Craig Hanson of the US Fish
21 and Wildlife Service (USFWS) was shared with the Board. In the letter, Hanson encouraged using
22 140 years as the definition of “near term.” Herman reported that, after consideration among the
23 stakeholders, the term “near term” is more context setting within the definition. Trying to set a
24 number of years on it is not of much value. The focus is to try to identify topographic controls
25 (i.e. the geologic features along a stream would control channel migration). Jeff Grizzel, a DNR
26 Hydrologist was asked to speak to this issue. He stated the phrase “near term,” as it is in the rule,
27 has no bearing on how to implement the rule. Selecting a particular quantitative value is not going
28 to help to implement the rule on the ground. Dick Wallace agreed, indicating it is not appropriate
29 to pick a year. Wallace stressed that there is a need to work with USFWS on this issue.

30

1 Herman then reported on Section 3, Forest Roads, saying that a two-step process has been
2 identified for changing and updating the Forest Roads section. Field foresters have been hired
3 specifically to address the RMAP process. The foresters are meeting to develop program tools
4 and forms to implement RMAPs. Herman stated that the board manual found in the emergency
5 rules is being used as a template and is being updated to reflect the current rules. This is a short-
6 term approach and they are working on the long-term approach. Herman stated that it was
7 reinforced in the manual section that there would be a healthy involvement of the HPA process, in
8 working with the people from WDFW, our own people, and small forest landowners. Judy Turpin
9 said she appreciates that this is being rewritten to be consistent with the rule. Bob Kelly had some
10 concerns about how the policy issues are being handled in the board manual. Kelly Expressed
11 some concern that the board manual revision process was not allowing sufficient stakeholder
12 review time for final drafts and consideration of comments. In addition, DNR and the
13 stakeholders need to work together to develop a set of manual revision guidelines and objectives
14 to be discussed at the October 23rd-24th board retreat that will be applied to future manual sections
15 prior to seeking board action for approval. Jed Herman agreed to work on this issue and provide
16 an update at the retreat. Pat McElroy said that there would be a robust discussion on process and
17 stakeholders involvement at the Board retreat in October.

18
19 On Section 4, Clearing Slash in Np and Ns Waters there are specific provisions within the rules
20 for only clearing slash. Herman stated that what needs to be done is to clear the slash 50 feet
21 above the inlet of a culvert and move it to the outlet side.

22
23 Section 7, Riparian Management Zones, has a good table of contents to be able to help find
24 specific portion of the manual section. There are charts and graphs to help with clarification and
25 the tables have been updated and corrected, as there were some erroneous calculations. Readers
26 have been advised to go to online help for the Desired Future Condition (DFC) program as it
27 periodically changes. Also to be considered in this category are intersections of Np Waters and
28 also headwater springs. The manual has been written to be consistent with the numbers and values
29 written in the rule. Herman said there is a different understanding of what these numbers may
30 need to be from the Forests and Fish Report to the rule. Judy Turpin stated that the manual has to
31 follow the rule not the manual following the report. John Mankowski refers to the manual page

1 M7-7 and a graph of sensitive sites which shows intersections of Np Waters and perennial
2 initiation points, leaving a 56 foot radius buffer on the westside and a 50 foot radius buffer on the
3 eastside and he asked what the scientific rationale was for that. The WAC says that on the
4 westside for those two water types, a 56-foot radius buffer patch needs to be left, and on the
5 eastside, it states that harvest should not occur within 50 feet. The 56 feet on the westside comes
6 from the original agreement that says to leave a 100 by 100 foot square. Stakeholders said it is
7 easier to convert this to a circle that leaves a radius instead of a square. So, the westside was
8 converted which was clear in the agreement to be a 100 by 100 foot area, and on the eastside, it
9 was never clear in the agreement that it was 100 by 100 foot, but it was never clear that it was
10 anything other than that. Mankowski said that what one ends up with is the closest way to identify
11 where this went wrong, and he said he thought it was in the WAC. He said the question seems
12 open about how this is being interpreted. There was neither a policy determination nor a scientific
13 one that eastside and westside should have a different rule relative to these sensitive sites. He
14 added that the manual interprets it as a 50-foot radius not 56 feet, and he is not sure what "the fix"
15 would be here. McElroy noted this as one of the rule changes that has to be done somewhere
16 along the line. Dick Wallace said that he felt the bottom line is to be consistent with the rule, and
17 the way it is written now is consistent with the rule, although it would be good to clarify this in the
18 future.

19
20 **Motion:** Pat McElroy moved that the Department staff and the Board attorney have
21 the authority to make changes to the Board Manual sections as are
22 necessary for clarity and distribution purposes. Such changes include
23 correcting spelling errors, changing page numbers, correcting erroneous
24 omissions and further have the authority to correct WAC, RCW, and
25 manual references, and do such reformatting as is necessary.

26 **Seconded:** Toby Murray

27 **Action:** Motion passes unanimously.

28
29 Section 26, Placement Strategy for Woody Debris reflects the desire to speed along the
30 recruitment of large woody debris into streams. It was designed to create an incentive for
31 landowners to fell trees into the stream following certain guidelines, and in return will allow them

1 to reclaim some of the cost through removal of some trees in the outer zone area of the Riparian
2 Management Zone. In western Washington 20 trees have to be left per acre in the outer zone, this
3 will allow them to harvest down to ten trees, giving a certain credit ratio for felling the other trees
4 into the stream. He said that he heard from WDFW staff and WFPA that there are not very many
5 opportunities where landowners will seek to do this. John Mankowski adds that this program may
6 have been overly processed and landowners are not using it now because they are not able to
7 clearly interpret it. However, the WDFW wants to see it being used by landowners. He said that
8 he supports moving this item forward, noting that WDFW would like this be more of an incentive
9 program that is more streamlined and gets used. Pat McElroy said that he saw summaries of
10 publications from the Pacific Northwest Forest Range Experimental Station that indicate some
11 material changes in the general understanding of large woody debris and its recruitment etc. He
12 wants folks to be mindful that this should be factored into this information base. McElroy let
13 Herman know he appreciates the hard work and effort that he put into this project. Herman replies
14 that he has enjoyed working on this and would like to thank the core group of stakeholders for
15 their diligence and dedication.

16

17 **Motion:** Pat moved that the Board approve for final adoption, the Board Manual
18 sections 2, 3, 4, 7, 26 as amended today, and that staff finalize for
19 distribution.

20 **Seconded:** Toby Murray

21 **Action:** Motion passed unanimously.

22

23 **HCP/SEPA BRIEFING**

24 Lenny Young briefed the Board on the recent interpretations regarding the manner in which Forest
25 Practices application and notifications supported by approved Habitat Conservation Plans (HCP)
26 should be reviewed. Young said that he will be referring to specific sections of the Forest
27 Practices Rules. An FPA, which triggers the State Environmental Policy Act (SEPA) for any
28 reason, should not be considered exempt from the requirements of WAC 222-10-041 and 222-10-
29 042. These are the specific forest practices SEPA rules regarding northern spotted owls and
30 marbled murrelets. If the landowner has an approved HCP or similar agreement with the US Fish
31 and Wildlife Service, 222-16-080(6) recognizes HCPs and similar agreements and directs that an

1 FPA, which is consistent with an HCP, is not to be classified as Class IV Special, there is no
2 parallel provision in the Forest Practices SEPA Rules Chapter 222-10 WAC granting DNR the
3 authority to disregard forest practices SEPA requirements on the existence of an HCP. Young
4 said that this means that even if the landowner has an approved HCP or similar agreement that
5 addresses northern spotted owls or marbled murrelets, an FPA submitted by the landowner which
6 enters SEPA for any other reason should be reviewed using the guidance provided by WAC 222-
7 10-041 and 222-10-042. Another similar interpretation, which is an FPA that is classified as Class
8 IV Special for any reason, should not be considered exempt from the requirements of WAC 222-
9 10-040. These are the Class IV Special threatened and endangered species requirements in the
10 SEPA portion of the forest practices rules. If the landowner has an approved HCP or similar
11 agreement with US Fish and Wildlife Service or the National Marine Fisheries Service, WAC
12 222-12-041, recognizes HCPs and similar agreements for "species included within aquatic
13 resources" and exempts landowners with HCPs that address such species from compliance with
14 certain rules within chapters 222-22 through 222-38 WAC. None of the WACs Young previously
15 mentioned nor any part of 222-10 grants DNR authority to disregard the forest practices SEPA
16 requirements per the existence of the HCP.

17
18 Dick Wallace asked for clarification between the two. Toby Murray asked if Lenny Young sees
19 this as serendipitous or if this is intentionally written this way. Young responds that he does not
20 have the history to judge that, but his suspicion is that this represents unintentional tension
21 between the SEPA portion of the rules and other portions of the rules. Young then explains that
22 what this means is that DNR does not have the authority to exempt FPAs supported by approved
23 HCPs from compliance with the forest practices SEPA WACs. If the forest practices are subject
24 to SEPA, DNR must evaluate the HCPs under the SEPA policies during its SEPA decision-
25 making. Both the process and substantive guidance contained in the forest practices SEPA rules
26 have to be applied. Most basically, this requires that an approved HCP supporting an FPA is
27 going to have to be submitted with the FPA for DNR's evaluation. This means that for spotted
28 owls and marbled murrelets, DNR's SEPA threshold determination needs to be guided by the
29 substance of WACs 222-10-041 for owls and 222-10-042 for marbled murrelets. Evaluation of
30 an approved HCP and this benchmarking against those WACs could result in a request for

1 additional mitigation, leading to a mitigated Determination of Nonsignificance (DNS) or to a
2 Determination of Significance (DOS), leading to an Environmental Impact Statement.

3
4 Young feels that this represents tension between chapters 10 and 16 of title 222. There is
5 recognition of HCPs in chapter 16, but no parallel recognition in chapter 10. The Board may wish
6 to consider amending chapter 10 to provide recognition of HCPs, as is recognized in chapter 16.

7 Young continued to say that in the past when interaction between the forest practices rules and
8 HCPs were first described to landowners in the 1990s, this type of a situation was part of what was
9 explained. There has been an on the street simple view that if an HCP supports an application,
10 and that HCP adequately treats the species in play, then there is not any requirement for additional
11 mitigation or additional scrutiny. Pat McElroy adds that this is how the department has
12 approached this issue until now. Young continues to say that emergency rule making is probably
13 not appropriate, but that one of the other rule making formats would need to be used. It is
14 important though that DNR does its SEPA reviews consistent with its authorities at this point in
15 time. McElroy said that it was his understanding that it has been the clear intent of the Forest
16 Practices Board, that when a landowner has an HCP insofar as the species that are addressed under
17 it are concerned, that what really was the intent is to not have this sort of duplication of effort.
18 John Mankowski answers that that was right in terms of the early thinking of this Board. More
19 recently however this has been amended through Forests and Fish to say that for new HCPs from a
20 certain date forward there is clearly a policy that there is involvement of the state and tribal
21 participants in those HCPs, if the landowner wants that sort of SEPA exemption. Toby Murray
22 has a sense that the legislation was not written to intentionally cause tension between the two
23 sections and Young agrees.

24
25 Paddy O'Brien also adds that this rule was clearly not intentionally written this way. She said the
26 issue largely comes about because of the operation of WAC 197-11-305 and things that get into
27 SEPA for another reason. Once in SEPA, the SEPA policies need to apply. The Aquatic
28 Resources Section is written so that it only applies to Class IV Specials. So, it is a little bit
29 narrower issue for HCPs that address aquatic resources. The other part of this is that SEPA
30 guidance, it is just that-- guidance language. It is very discretionary and there is a lot of ability for
31 the department to exercise its professional opinion in saying that this HCP adequately addresses

1 these issues. O'Brien said that in her mind it is more of a process issue than a substance issue.
2 Young agrees, the part that is new is that the department has to start scrutinizing HCPs, as part of
3 the SEPA decision-making. O'Brien said the word she would use is "review", which is the
4 requirement, as the word "scrutinize" comes with connotations that don't necessarily have to be
5 there. The legal requirement in doing threshold determinations is that the action is reviewed under
6 existing policies. McElroy stated that clearly this section was not intended to apply to forest
7 practices, although there is a case where it does apply. Turpin said that the only thing that the
8 Forest Practices Act is exempt from is the requirements of the subsection of SEPA that deal with
9 the preparation of an Environmental Impact Statement. There is a Forest Practices Appeals Board
10 decision on the operation of "305" as it relates to segmented proposals in forest practices. John
11 Mankowski responded to Murray's question by saying that he thinks it has always been the intent
12 of this Board to have HCPs serve in place of an additional SEPA review and analysis and overlay
13 rules. Mankowski continues to say that the latest nuance has been that the state feels like it should
14 be at the table at the HCPs from a certain date forward and that this has been laid down. He feels
15 that this path and policy ought to be continued once it is understood what the background is and
16 what is in play. McElroy proposes to direct staff to expedited rule making to make the correction
17 that Young indicated.

18

19 **Motion:** Pat McElroy moved that department staff and the Board attorney be
20 directed to start a negotiated expedited rule making process to bring those
21 various sections previously indicated by Lenny Young into conformance
22 with the longstanding intent of the Board that the HCPs stand for the SEPA
23 analysis work.

24 **Seconded:** Toby Murray

25

26 **Board Discussion**

27 Lenny Young said that obviously a lot more discussion needs to be had on this subject, but
28 conceptually he thinks what would be pursued would be a patch, similar to the language, which
29 recognizes HCPs within chapter 16, and applies it within chapter 10. He does not think that this
30 would be too long or too elaborate, once the correct mechanism for how to go about things is
31 figured out. McElroy asked Young to report progress in October. McElroy stated that he did not

1 think that Mankowski was suggesting opening up the HCPs already in place, but was talking about
2 HCPs of the future. Mankowski answered that he was talking about supporting a "patch" that
3 fixes it, that keeps things consistent with where the Board has been. Judy wanted clarification on
4 what the motion is. Young and McElroy clarified for Turpin that this has nothing to do with "305"
5 and this would deal with WAC 222-10-040 - 042, strictly relating to bringing these into
6 conformance so that the work that has gone into HCPs is recognized. Murray commented on the
7 review part saying that he is supportive of the "patch" that Mankowski spoke about, but said that
8 in other parts of the rule, and the more substantive ones not necessarily SEPA, it says if there is an
9 HCP the rules to be described need to be those which are covered in that HCP. In his mind that
10 does potentially involve review on the part of the department to make sure that the more
11 substantive rules are in the HCP. McElroy said that this was a different kind of review. Judy said
12 that for instance in this case SEPA review was necessary on anything that was not subject to the
13 HCP. Young states that what is being looked for is not to change or exempt any of the
14 fundamental SEPA responsibilities, but rather to look at the specific interaction with the three
15 WACs

16

17 **Action:** Motion passed unanimously.

18

19 **Board Discussion**

20 John requested that DNR reply to the letter the Board received from Mr. Chan Noerenberg dated
21 July 11, 2001. Mr. Noerenberg was the Chair of the Small Landowner Advisory Committee for
22 some time. This letter raises strong concerns charging that the Board is insulated and not in touch
23 with small landowner issues or activities. John requested that DNR remind Mr. Noerenberg of the
24 charter that the Board adopted at the previous meeting and what will be done as far as the planned
25 field trips. McElroy asked Steve Stinson to prepare a letter of response. Judy Turpin asked about
26 an item that was in a mailing to the Board, which had to do with the water typing downgrades and
27 the ISAG request, wanting to know if the time-window for doing stream electro shocking was
28 over. Allen Pleus responded that this time-window was March 1st-July 15^h. Turpin said that the
29 Board has often wanted technical advice, considering the tension between the Board and CMER
30 with the relationship of timing requests versus time-window, which is often not workable. Young
31 answered that this question has since been redirected to the WDFW Habitat Program, asking them

1 to undertake that evaluation. He said he would welcome the opportunity to sit down with Geoff
2 and CMER co-chairs to make sure that everyone understands the scope of CMER's
3 responsibilities. Pat McElroy said that in this situation the Board is asking a little bit too much of
4 the department, which they may not be staffed to deal with. The question is, whether this is an
5 appropriate role and that these relationship issues need to be worked on. Young said CMER
6 declined to review not just based on a responsibility basis, but also cites a very heavy workload.
7 John Mankowski feels that this issue raises some good questions about the Board's relationship
8 with CMER versus questions that individual agencies should answer. In this particular case, we
9 should ask our hydrologists and co-managers to get a response back to DNR. Mankowski feels
10 that agencies can answer some of these questions independently while others should go to CMER,
11 and how the work is directed back and forth is something the Board should work on. Young said
12 that the reason that DNR initially turned to ISAG was because they are actively carrying out
13 research right now on this subject.

14

15 **Board went into Executive Session at 2:45 p.m.**

16 **Board resumed regular Board Meeting at 3 p.m.**

17

18 **Board Discussion**

19 Judy Turpin was concerned when documents from two counties were received that they had
20 adopted new ordinances, or the counties had taken official action that might lead people in their
21 county to believe that they did not have to comply with the actions of the Board. Pat McElroy
22 answered that in the one case with Ferry County there was a resolution. The Board responded to
23 that letter and explained that the Forests and Fish rules help their local community meet the law,
24 and the Board fully intends to enforce the law in Ferry County and everywhere else in the state. In
25 the case of Okanogan County a similar situation occurred in that this county contemplated
26 adopting an ordinance and Judy Wilson (from our office) contacted their County Administrator
27 within the past month. As a result Okanogan County has not done this. McElroy added that the
28 Board was prepared in these events to take necessary action, which mostly is to ask the Board's
29 attorney to call the Prosecuting Attorney of the county.

30

1 Toby Murray addressed Paddy O'Brien saying that he watched what a lot of the environmental
2 groups have done with the Forest Service and he sees a parallel, which is since there is no
3 adequate funding, all of the tasks become a liability. He wondered when would not having
4 enough money put agencies into this vulnerable position. O'Brien answers that funding has
5 historically always been an issue for one state agency or another as the cycles of government go.
6 She sites an example involving DOE, adding that there have been cases where the state's defense
7 was that the funds were not available to do the additional research and there was not an award of
8 damages based on that. John Mankowski wants to know if the items below the funding line will
9 require getting federal assurances. McElroy said that one of the things to keep in mind that he felt
10 was important was in the case of drawing a parallel with the Forest Service, and their issue is that
11 they are the manager as well and so they have a different relationship to what they do, and to what
12 the Forest Practices Board and the department does with respect to rule making and enforcing the
13 rules on somebody else's land. Turpin said that the questions that could fairly be asked would be
14 whether your priorities result in enforcing unequally. Pat answered that the department's policy is
15 very clear that it is uniform enforcement. Before closing the meeting, McElroy thanked the staff
16 for their exemplary work and attention to details.

17

18 **MOTION:** Pat moved to adjourn the meeting.

19 **SECONDED:** Toby seconded.

20 **ACTION:** Motion passed unanimously.

21

22 **CLOSING REMARKS**

23 The Board adjourned the regular session at 3:05 pm. The next regular quarterly meeting is
24 scheduled for November 14, 2001.