

## Section 17

# Guidelines for the Small Forest Landowner Forestry Riparian Easement Program

This section provides guidance to Department of Natural Resources (DNR) staff, and consulting foresters, for advising and assisting in the process of administering a forestry riparian easement (easement) and small forest landowners interested in granting the state an easement. The section is divided into three parts, and supplements the process outlined in the Forest Practices Rules.

### Background

The DNR's Small Forest Landowner Office (SFL Office) was established by the Washington State legislature in 1999 to administer the Forestry Riparian Easement Program (FREP) and aid small forest landowners. The legislature had concerns that the reduction in harvestable timber due to Forest Practices rule restrictions could disproportionately impact small forest landowners' economic viability and willingness or ability to keep their land in forestry. FREP was established, in part to address the legislature's concerns by providing economic compensation for the timber that cannot be harvested under the Forest Practices rules. FREP acquires easements on the timber only, from qualifying small forest landowners, within riparian areas and adjacent unstable slopes, and compensates landowners for the value of their timber in those qualifying areas<sup>1</sup>. A FREP easement does not remove the landowner's responsibility for meeting other riparian requirements under the Forest Practice rules.

### Process Overview

For qualifying landowners who are interested in granting the state an easement, the process is as follows:

- The landowner submits a Forest Practices Application (FPA), which DNR either approves or disapproves based on Forest Practices rule restrictions.
- The landowner conducts a commercially reasonable harvest under an approved Forest Practices Application (FPA).
- The landowner applies to FREP.



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<sup>1</sup> [RCW 76.13.120](#)

- The SFL Office sends the landowner a welcome packet and their application is added to the easement queue list. When the landowner’s application reaches the top of the easement queue list the SFL Office staff works with the landowner to process the application. This includes a timber cruise, determination of baseline conditions, and establishing the compensation value.
- The SFL Office purchases the easement from the landowner.



To the extent possible the SFL Office will process applications in the order in which they were received and within two years of receiving the complete application.

The SFL Office will work with landowners to discuss and resolve disputes that may arise from any part of the process outlined above prior to finalizing any step. However, any person who wishes to formally appeal a written decision of the SFL Office regarding FREP eligibility, easement valuation, or any related decision may also submit a request for review. The request must be received within thirty (30) days following the written decision and must include the issue being raised and any supporting documentation. The Forest Regulation Division Manager or designee will issue a written response to the request for review within thirty days which will be the SFL Office’s final decision.

A landowner who sells the land on which an easement is located to a nonqualifying landowner within ten (10) years of receiving compensation for the easement must reimburse the State for the value of the easement. In addition, if the landowner conducts activities that result in a loss of trees in the easement area, the landowner may be liable for damages to the State as provided in the easement contract.

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## PART 1. ELIGIBILITY & IDENTIFICATION OF QUALIFYING TIMBER

### 1.1 QUALIFYING SMALL FOREST LANDOWNER

FREP is open to all qualifying small forest landowners. To qualify a landowner must be an individual, partnership, corporation, LLC, or other nongovernmental for-profit legal entity who has either fee interest in the land and timber or has the rights to harvest the relevant timber for at least forty (40) years from the date that the FREP application is received by the SFL Office. The landowner cannot have any outstanding violations of chapters 76.09 or 76.13 RCW or the Forest Practice Rules.

Additionally, the landowner must have harvested, on their own land in the state of Washington, no more than the average volume that would qualify the landowner as a small forest landowner under RCW 76.09.450 (See definition below) during the three years prior to applying for their forest practices application, during the three years prior to applying for a forestry riparian easement, and during the three years prior to receiving payment for the forestry riparian easement. There is an exception if the landowner can show to the satisfaction of the SFL Office that any harvesting above the limit was done to raise funds to pay estate taxes or other court-ordered judgments or extraordinary expenses. Landowners who qualify for the 20-acre exemption in RCW 76.13.130 do not qualify for FREP.

#### **RCW 76.09.450**

"Small forestland owner" means an owner of forestland who, at the time of submission of required documentation to the department, has harvested from his or her own lands in this state no more than an average timber volume of two million board feet per year during the three years prior to submitting documentation to the department and who certifies that he or she does not expect to harvest from his or her own lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of documentation to the department. However, any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forestland owner" if he or she establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses.

### 1.2 APPLICATION SUBMISSION – WAC 222-21-030

Applications to FREP may be submitted online at [dnr.wa.gov/FREP](http://dnr.wa.gov/FREP) or by mail at BOX 47012 Olympia, WA 98504-7012. Incomplete applications will be considered ineligible and returned. The landowner will provide the following information in an easement application:

- a. County tax parcel numbers of the property in the proposed easement premises;
- b. A list of all relevant forest practices application (FPA) numbers of approved and/or disapproved forest practices applications;
- c. The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such an easement to the state;
- d. The date the harvest activity was completed; and
- e. *Where applicable*, documentation that qualifying timber within, immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forest practices rule restrictions or is uneconomic to harvest because of forest practices rule restrictions. (See section 1.3.4. for additional information about these eligibility criteria).

**WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES**

**For DNR Use Only**

Application Number: \_\_\_\_\_

**FORESTRY RIPARIAN EASEMENT PROGRAM APPLICATION**  
Please complete this form for each forestry riparian easement eligible Forest Practices Application (FPA) after the harvest has been completed or when the harvest FPA has been disapproved by rule.

**CONTACT INFORMATION**

Landowner/s: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_  
Home phone: \_\_\_\_\_ Cell: \_\_\_\_\_  
Email: \_\_\_\_\_

**PROPERTY INFORMATION**

County: \_\_\_\_\_ Parcel number: \_\_\_\_\_  
Forest Practices Application number(s) associated with this application: \_\_\_\_\_

Check one of the following:  
 Harvest has been completed;  Cannot be harvested due to Forest Practices Rules

For each FPA enter the date (month and year) your timber harvest was completed\*. If your FPA was disapproved because of Forest Practices restrictions, enter the date your FPA was disapproved.

\*Completed harvest is defined as follows – The trees within the area under an approved forest practices application have been commercially harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.

Additional information may be required to evaluate the eligibility of the proposed easement premises and to process the application.

**Forest Practices Application/Notification**  
Western Washington

**INCOMPLETE**

### 1.2.1. INCOMPLETE FPA

A FREP application associated with a FPA that was disapproved by a forest practices forester as incomplete is not eligible.

### 1.2.2. COMMERCIALY REASONABLE HARVEST NOT POSSIBLE – WAC 222-21-032(5)

Most timber which qualifies for FREP is associated with a timber harvest (see Section 1.3 below). One exception is for properties on which a commercially reasonable harvest is not possible, due to the forest practices rules. These are typically parcels where all or nearly all the timber is contained within riparian areas. This does not apply to properties on which a commercially reasonable harvest is not possible due to immature timber.

The SFL Office will consider the following criteria to determine if a FPA qualifies for FREP because it involves an area where a commercially reasonable harvest is not possible. The proposed harvest must meet all of the following requirements:

- a. The FPA has been disapproved because the area covered cannot be harvested due to forest practice rules restrictions;
- b. The FPA involves a proposed timber harvest and would not result in a conversion to a use other than commercial timber operation (Class IV-general (WAC [222-16-050\(2\)](#));

- c. The landowner is not eligible for the twenty-acre exemption (WAC [222-30-023](#)); and
- d. The net value of the qualifying timber is equal or greater than one thousand dollars (\$1,000).

### 1.2.3. EASEMENT QUEUE LIST – WAC 222-21-050(2)

The SFL Office will maintain a priority list of applications for FREP. To the best of its ability, the SFL Office will process applications in the order that the completed application was received. In the case of two easement applications received on the same date, priority will be based on the date the department received a complete FPA associated with the easement.

If it is determined during the acquisition process that a landowner is not eligible for the program, the landowner will be notified, and their application will be removed from the priority list. If the landowner can provide additional information to demonstrate their eligibility in a timely manner, they will be added back to the same place on the easement queue list.

If the landowner must take actions beyond submitting additional information, such as meeting requirements of a Stop Work Order or Notice to Comply, they will have to resubmit an application, and then be added to the list in the order that their new application was received.

If it is determined during the acquisition process that a landowner was not eligible for the program at the time of application, but has since become eligible, their application will be moved down the priority list in accordance with the date it became eligible.

### 1.2.4. COMPLETION OF HARVEST

Upon receipt of the FREP application, the SFL Office reviews the application and associated FPA to determine whether the application is eligible (see [WAC 222-21-031](#) and [032](#)). The timber harvest associated with the easement must be complete. The landowner must provide the date their timber harvest was completed in their application materials. The date of completed harvest will be used in the valuation calculation.

#### WAC 222-21-010(1)

"Completion of harvest" means that the trees from an area under an approved forest practices application have been commercially harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.

Harvest is not complete until the timber has been removed from the harvest unit. All trees, intended for harvest by the landowner, within a harvest unit covered by the FPA have been harvested and removed from the harvest area. The landowner can submit an eligible FREP application upon completion of a **single** harvest unit within an FPA. However, efficiency is gained when **all** units have been harvested before putting in the application. For process efficiencies applications where field work is combined will still be processed in the order they were received to the extent reasonably possible.

## 1.3 IDENTIFICATION OF QUALIFYING TIMBER – WAC 222-21-010(7)

FREP relies on the Forest Practices Rules to determine which trees are considered qualifying

timber (QT). Qualifying timber is defined as timber which is required to be left unharvested because of forest practices rule restrictions and is within, immediately adjacent to or physically connected to a commercially reasonable harvest unit. Most trees associated with required riparian or wetland buffers are considered qualifying timber and therefore are eligible for inclusion in the easement. Excess trees left unharvested by the landowner are considered voluntarily left and not considered qualifying timber. If any timber harvest is approved within the riparian management zone, such as thinning in the inner or outer zones, then all trees left after the timber harvest that are located within the full width of the riparian management zone could qualify for FREP. The landowner may at their discretion choose to exclude any portion of the qualifying areas from being included in the easement. The SFL Office can compensate only for qualifying timber.

### 1.3.1. RESOURCE IDENTIFICATION ON FPA

To identify qualifying timber, FREP uses the applicant's associated FPA. The FPA should list all resources that require protection (e.g., streams, wetlands, channel migration zones and unstable slopes). For example, potentially unstable slopes should be identified on the FPA map and the Slope Stability Informational Form. Forest Practices does not require resources to be documented on the FPA unless there is a timber harvest proposed adjacent to or within that resource. However, FREP can only compensate for documented resources.

If the landowner excludes the area from their harvest proposal and adds no detail to the FPA map, water typing worksheet, or resource lists, those areas will be excluded from consideration in the easement. If the landowner excludes the area from their harvest proposal but includes detail on the FPA map the area will be considered for FREP eligibility.

If the landowner seeks to include potentially qualifying timber which was not documented on their FPA, the resources in those areas must first be verified by a forest practices forester (FPF). If the FPF provides written documentation of the resource(s) then FREP staff may, at their discretion, include them for consideration in the easement. In this situation, the same buffer and harvest codes used for similar resources in the FPA will be used for consideration of the new resources buffer.

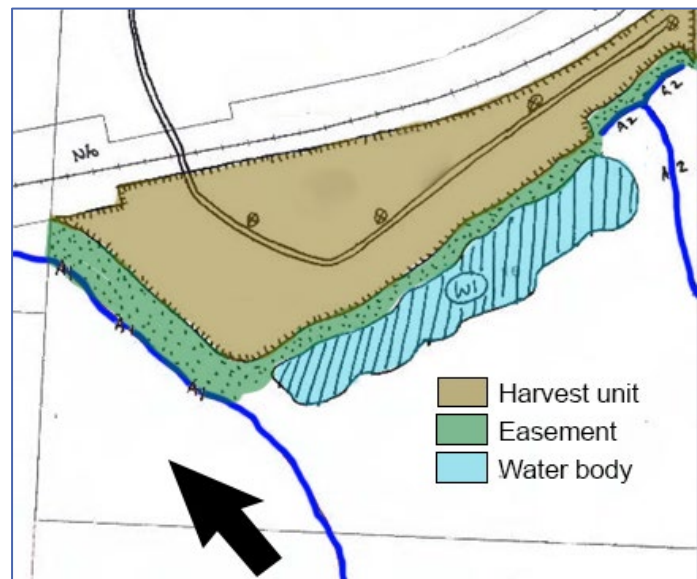


Figure 1 - The FPA didn't document any resources or harvest in the SW corner of the property, therefore the area was not considered for FREP during field reconnaissance.

### 1.3.2. ADJACENCY

Qualifying timber must be immediately adjacent or physically connected to a commercially reasonable harvest unit. Determining adjacency can be easy when qualifying timber borders the harvest unit (Figure 2) but can also be variable if other factors exist.

Generally, the landowner submits an FPA, harvests all timber allowable by the forest practice rules, and then applies for FREP, the SFLO purchases the easement from the landowner (see figure 3A-C).

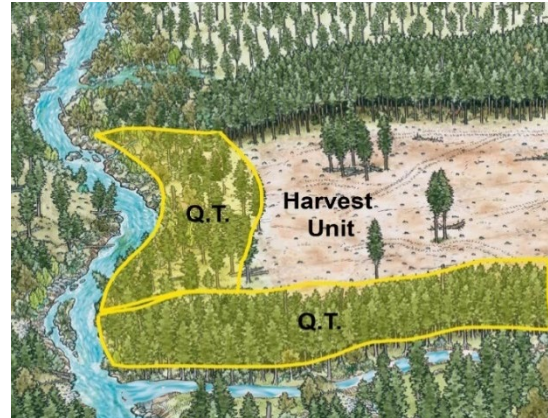


Figure 2 - Qualifying timber adjacent to a completed harvest.



Figure 3A - Landowner submits their FPA.

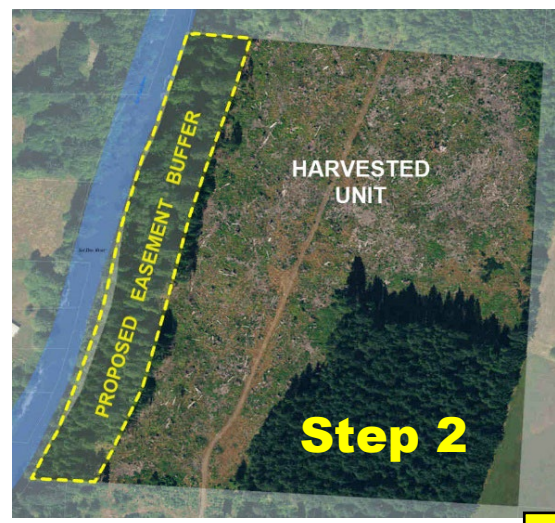


Figure 3B - Landowner harvests all allowable timber.



Figure 3C – SFLO purchases the easement.



In order for QT to qualify as adjacent when it does not physically border the harvest unit, the landowner must harvest as close to the QT as possible. In a common scenario (figure 4), all the riparian timber on the south side of the stream is clearly adjacent to the harvest area because it physically touches the harvest unit. No harvest is possible to the north of the stream because all the landowner’s timber is within the riparian buffer on the north side of the stream. Since no harvest is possible on the north side, it is considered adjacent to the harvest unit in the south, because the landowner harvested as close as they could.

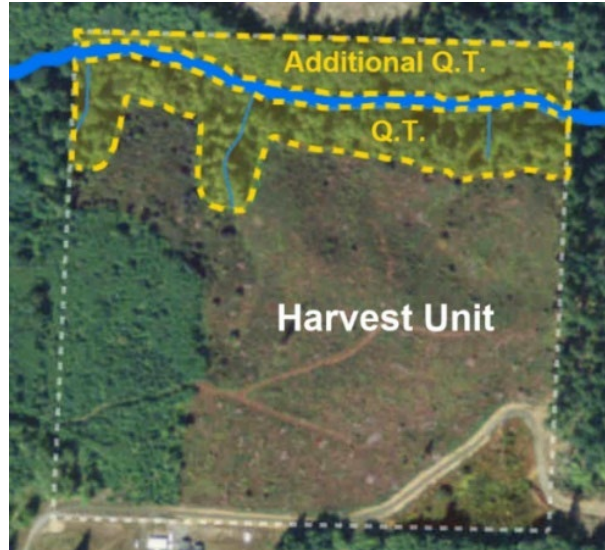


Figure 4 - Timber between the stream and the northern property line qualifies for FREP because all of it is within the riparian buffer.

Similar reasoning applies when unstocked areas (such as fields or meadows) are directly adjacent to the riparian buffer (figure 5 & 6), making it impossible for the QT to directly border the harvest unit. The landowner must harvest as close to the buffer as possible to qualify.

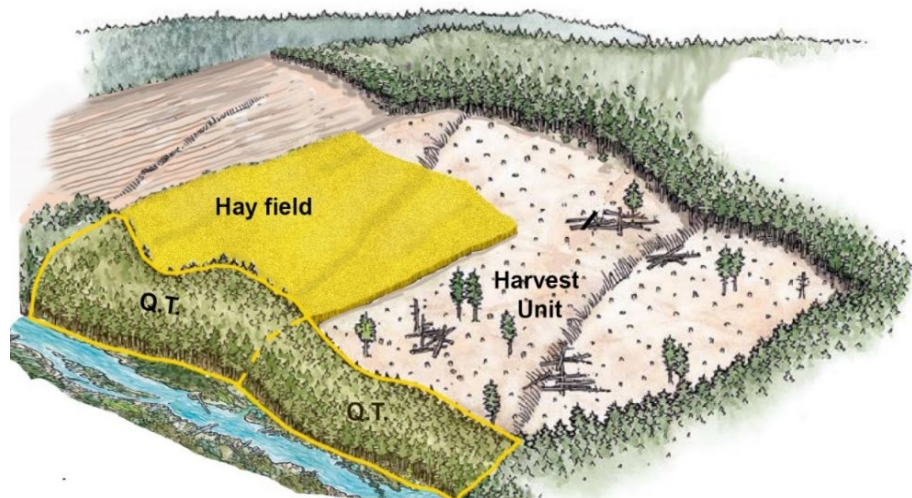


Figure 5 - Harvest was not possible directly adjacent to the west end of the buffer due to the absence of trees. However the landowner harvested as close as they could, therefore the harvest unit is considered adjacent.

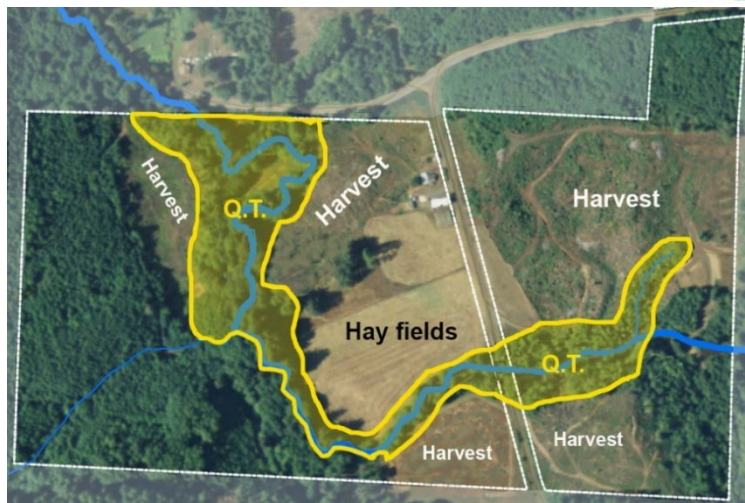


Figure 6 - Harvest was not possible directly adjacent to the stream in some areas due to the presence of hayfields. However, the buffers still qualify for FREP because the landowner harvested as close as they could.

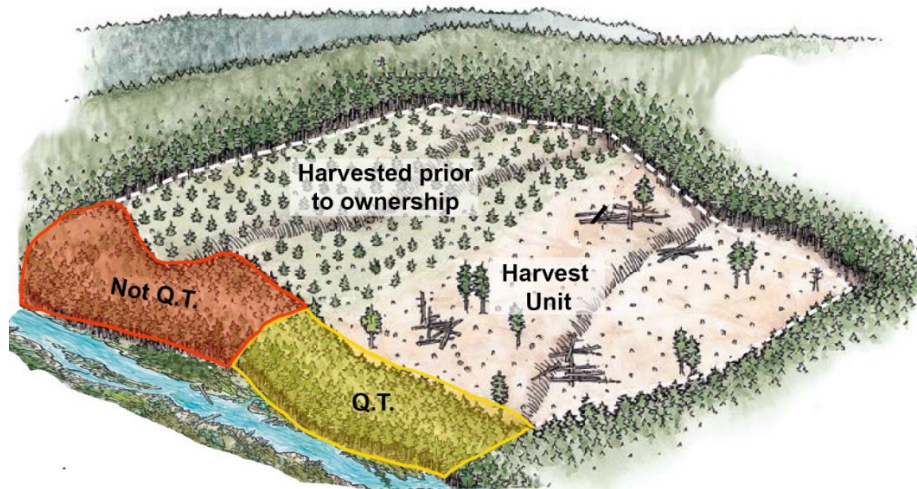


Figure 7 - Buffer trees adjacent to a harvested unit are qualifying timber. Whereas buffer trees adjacent to timber which are too young to harvest are not qualifying timber.

Where young or immature trees are next to the riparian area (figure 7), and no commercial harvest is possible due to the age of the timber, the riparian area does not qualify as adjacent. When those trees reach a commercial size and the landowner completes a harvest, then that area will be eligible for FREP.

When a landowner leaves a few tree widths outside the required riparian buffer, the buffer is still considered adjacent. (Figure 8)

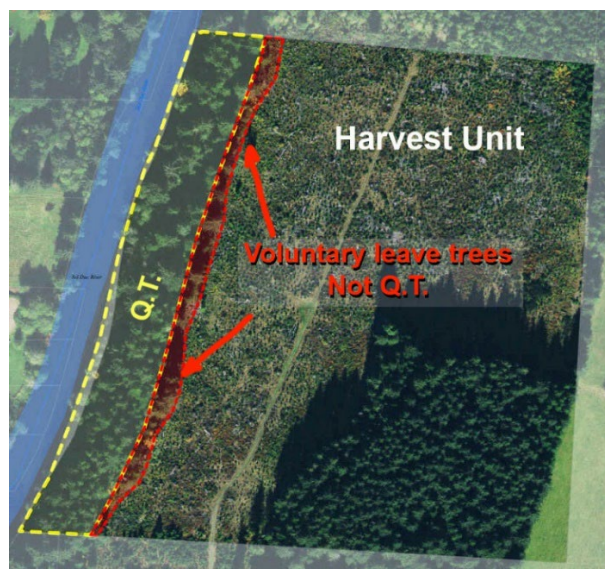


Figure 8 - Landowner left a few tree widths outside of the required buffer. These trees do not prevent the harvest from being considered adjacent, however, the voluntarily left trees are not eligible for FREP.

However, the riparian area is no longer adjacent to the harvest area when the trees left voluntarily could constitute a commercial harvest unit. When the landowner completes their harvest on the commercially reasonable harvest unit, then the area will qualify for FREP. Additionally, SFL Office staff will verify the regulatory no-harvest RMZ edge and only those trees within the regulatory no-harvest buffer will qualify for compensation.

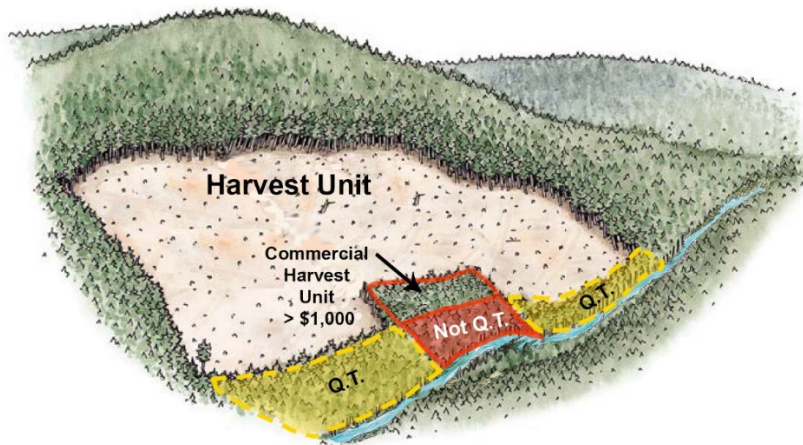


Figure 9 - A commercially feasible harvest unit, valued at greater than \$1,000 was left adjacent to the buffer. The trees within the buffer are not considered adjacent to the harvest.

When the harvest unit is an uneven aged commercial harvest, using a scattered harvest of the remaining trees, then the entire harvest area shall be considered adjacent to the buffer, so long as the harvest occurred evenly throughout the area and the landowner can show a greater than \$1,000 profit. (Figure 10)

### Forest Practice Application

**Uneven-aged [Harvest] Methods:**  
Any removal of standing trees other than those listed under Even-aged Methods.

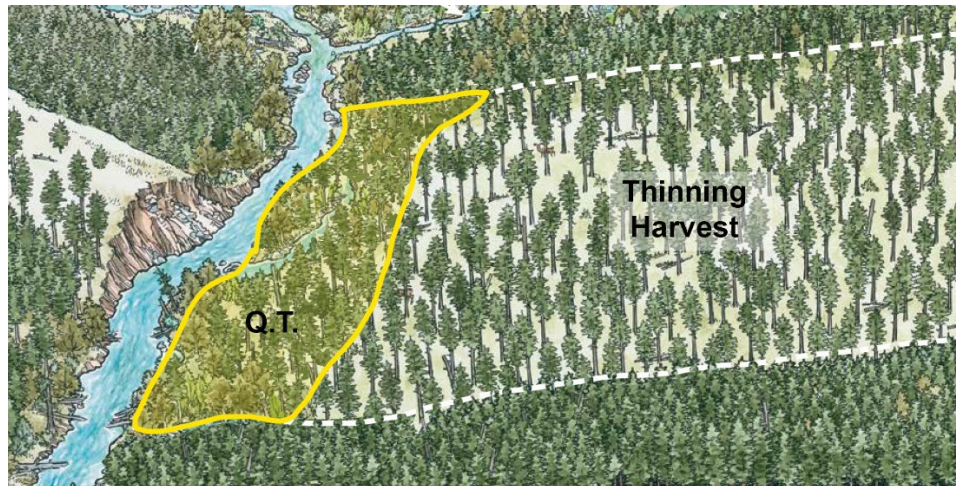


Figure 10 - A buffer next to a commercial thinning harvest which had a net profit of \$1,000 or more is considered adjacent.

When the harvest unit is an uneven aged commercial harvest using a 'patch cut' or 'skips and gaps' method, then only the buffer areas adjacent to the 'gaps' will be considered adjacent.

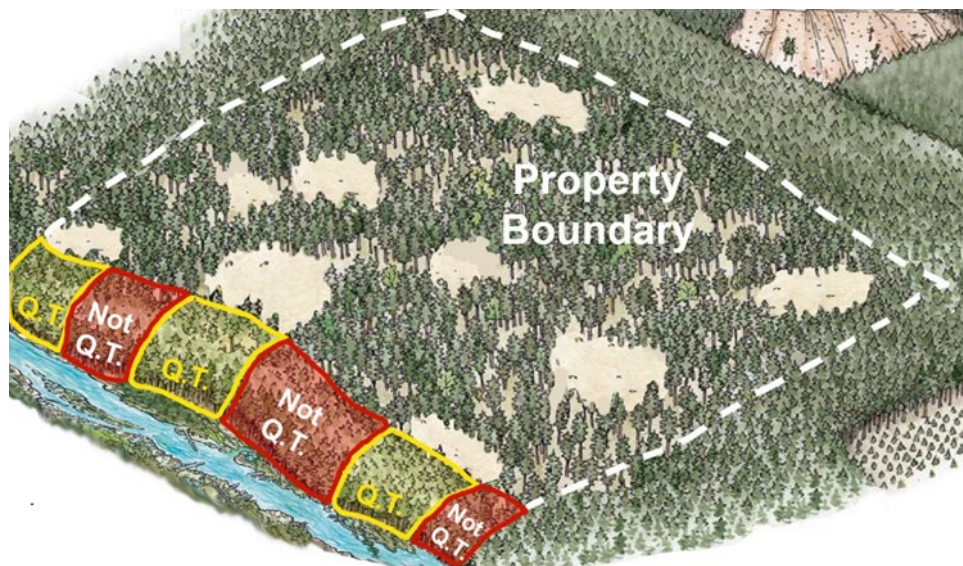


Figure 11 - Uneven-aged harvest consisted of patch cuts. Only the portions of the buffer adjacent to a patch are qualifying timber.

Determinations on all adjacency questions are up to the discretion of the SFL Office. The SFL Office may request a management plan or other information to better evaluate the eligibility of a harvest.

### 1.3.3. UNSTABLE SLOPES OR LANDFORMS

FREP may compensate for timber left in areas of potentially unstable slopes or landforms when they meet the definitions of qualifying timber and:

1. They have the potential to deliver sediment or debris to a public resource or threaten public safety, and
2. Are immediately adjacent to or physically connected to other qualifying timber that is located within riparian or other sensitive aquatic areas.



Areas of potentially unstable slopes or landforms in FREP applications must be verified by a licensed geologist (considered a qualified expert, QE) to determine if they were required to be left, or voluntarily left. Areas of the FREP application which could have been harvested as a Class IV-special (WAC 222-16-050(1)) may be found ineligible for inclusion in the FREP application.

If the landowner cannot provide evidence from a QE that the areas of potentially unstable slopes were required to remain unharvested, DNR may have a Forest Practices geologist review the application at the agencies' discretion to determine whether the potentially unstable slopes could have been harvested.

Compensation for any qualifying timber located on potentially unstable slopes or landforms outside of the RMZ will not exceed a total of one hundred fifty thousand dollars (\$150,000) per landowner during any biennial funding period.

### 1.3.4. UNECONOMIC TO HARVEST - WAC 222-21-032

Most timber which qualifies for FREP (qualifying timber) is adjacent to a timber harvest. One exception is timber which was economic to harvest before the forests and fish rules went into effect in 1999, as a result of the forests and fish report, but is now uneconomic to harvest because of the forests and fish rules rule restrictions. If the landowner believes some of their application area is uneconomic to harvest as result of the forests and fish rules, and therefore eligible for FREP, they must provide documentation with their application materials. (See WAC 222-21-030 (2)(e) for documentation requirements)

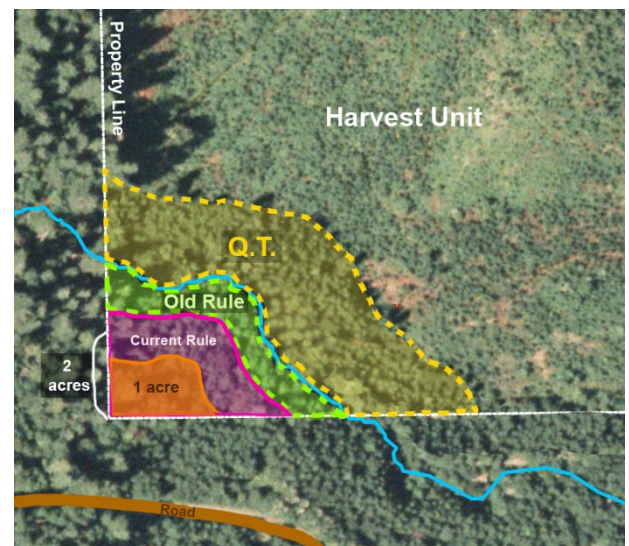


Figure 5 - Example of a potentially uneconomic to harvest corner.

	Size of the potential harvest area	Stumpage value of the potential harvest area	Cost to access the potential harvest area	Cost to harvest the area	Net Gains	Harvest Unit was economic to harvest prior to 1999 but became uneconomic as a result of decreased acres and increased cost to access which resulted from 1999 Forests and Fish Rules.
<b>Forest Practices rules prior to 1999</b>	2.0 acres, bounded by RMZ to one side and property on other sides	\$20,000	\$3,000	\$3,000	\$14,000	= <b>Area qualifies as Uneconomic to Harvest</b>
<b>Current Forest Practices Rules</b>	1 acre, bounded by RMZ to one side and property lines on other sides	\$10,000	\$6,000	\$4,000	\$0	

Table 1 – Example of how an area might qualify as Uneconomic to Harvest

When assessing the eligibility of the proposal, the small forest landowner office will consider the following criteria. The proposed harvest must meet all four of the following requirements:

1. The timber could have been included in a commercially reasonable harvest unit if there were no additional requirements imposed by the forests and fish rules;
  - The documentation should show economic viability of the proposed area under pre-forest practice rules, by including estimates of the cost to access and log the area, as well as the expected value of the timber. A minimum of \$1,000 net profit is required.
2. The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;
  - The documentation should show the area is not economically viable to harvest post-forests and fish rules, by including estimates of the cost to access and log the area, as well as the expected value of the timber.
  - The documentation should show that economic access to the area is limited by forests and fish rule restrictions. Access, which is economical, but limited by unwilling neighbors only does not qualify.
3. There is no reasonable unit size alternative which, if used, would make the area economical to harvest; and
  - The documentation should show that the harvest unit size cannot be increased due to limitation imposed by geographic features or parcel ownership.
4. The cost to access the harvest unit plus the cost to harvest would equal or exceed thirty-five percent of the stumpage value as determined using the methods in Section 2.3, in the portion of the unit considered uneconomic.
  - Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. The landowner may include actual timber appraisal and sale layout costs incurred as part of the cost calculations.

### 1.3.5. HAZARD TREES

The SFL Office considers hazard trees – trees within a tree length and a half of a residential structure, as being ineligible for timber easements due to the likelihood that they may need to be felled during the life of the easement. Easements last 40 years, so trees that are not currently hazards may become hazards as they grow.

When needed, the SFL Office will determine the hazard tree exclusion area using the following guidance:

- If trees in the surrounding vicinity of the structure are at or near their maximum height (based on site index curves) then the SFL Office will use the tallest tree height, multiplied by 1.5 to find the buffer for the hazard tree exclusion area
- If trees in the surrounding vicinity of the structure are young or sub-mature, the SFL Office will use the estimated average age and site index curves to project the stand height 40 years into the future. That height will be multiplied by 1.5 to find the buffer for the hazard tree exclusion area.

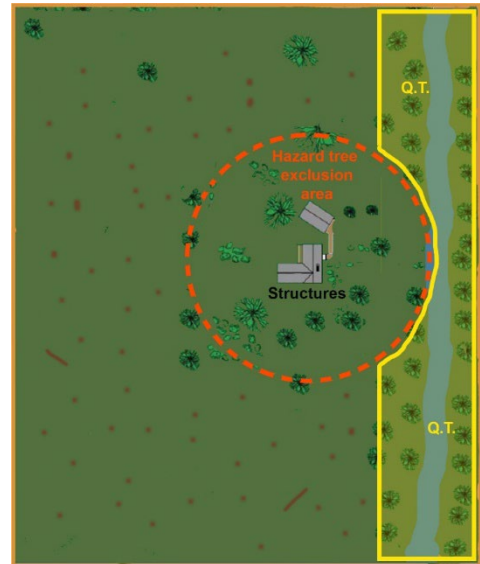


Figure 13 - Hazard tree exclusion area is a radius 1.5x tree height around the structure.

Landowners who plan to build a structure after the easement is in place should notify their forester as soon as possible. Those areas should also be excluded from the easement. If trees become hazards after the easement is in place due to the construction of a new structure in the easement vicinity, then they may be cut but damages will be owed.

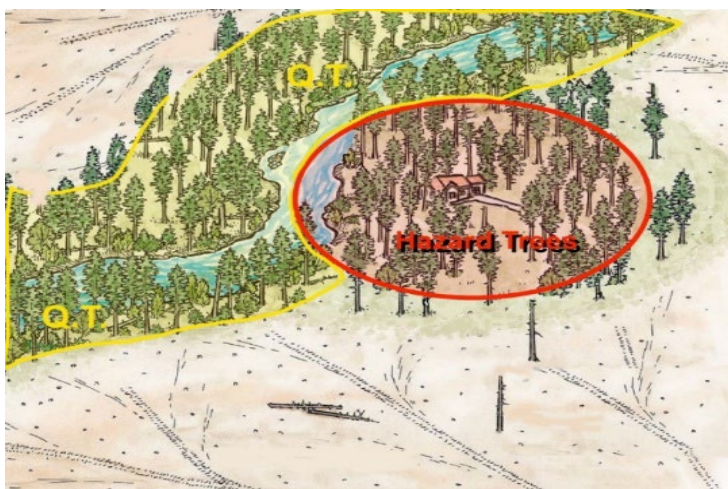


Figure 14 - Trees within the hazard tree exclusion zone cannot be included within the easement.

## 1.4 COMMITMENT FOR TITLE INSURANCE

Before acquiring an easement, the SFL Office must verify that the landowner is the legal owner

of the property or has the right to sign on behalf of the property. No unresolved liabilities or encumbrances may be present to prevent the State from acquiring an easement in that location. The SFL Office will acquire a commitment for title insurance from a suitable title company after the field visit verifies the easement location.

#### 1.4.1. SUBORDINATION AGREEMENT

Where more than one person has an interest in the property to be covered by an easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or subordinate their interest to the easement being acquired by the state. This includes but is not limited to:

- tenants in common,
- joint tenants,
- holders of reversionary interests,
- lien holders, and
- mortgage holders.



Only parties with ownership interest in the property must be signatories on the easement. A lien or mortgage holder does not need to sign the easement but must sign a subordination agreement. By signing the subordination agreement, the lien or mortgage holder signs to subordinate the lien rights to the easement. After subordination of the lien, the easement will not be lost if the lien holder forecloses because the lien holder's title to the property will remain subject to the easement. This protects DNRs interest in the easement and is required to move forward.

## PART 2. EASEMENT CRUISE & VALUATION

The SFL Office calculates the compensation amount for easements by determining a value for the qualifying timber. The volume of timber is determined by a timber cruise. The value of the easement is calculated using two different methods. One method, the Stumpage Value Determination Method, will always be used and does not require the applicant to provide the SFL Office with any records from their timber harvest. The other method, the Small Harvester Tax Return Method, will only be used if the applicant provides the SFL Office with comprehensive mill receipts from the timber harvest that is associated with their FREP application. In that case, the SFL Office will calculate the easement value using the stumpage values as determined by the Stumpage Value Determination Method or the Small Harvester Tax Return Method, whichever is greater.

### 2.1 CRUISER: STATE TIMBER VS. CONTRACTOR

The state may use qualified DNR staff or a third party to cruise the timber in the easement premises.



## 2.2 CRUISE METHODS – WAC 222-21-040

The cruise method will be a one hundred percent inventory of qualifying timber on the proposed easement premises unless the easement is larger than ten (10) acres or the conditions are homogenous in which case an alternate sampling method may be implemented. One hundred percent inventory means every tree must be visited and a measurement obtained. The timber cruise report should use species, diameter class, height, form factor, defect, and any other information necessary to determine the volume for the qualifying timber. If the easement is larger than ten (10) acres or the conditions are homogenous an alternate sampling method may be used. The sampling method used must have a sampling error of 10% or less, except in extraneous circumstances, such as steep or inaccessible terrain. If it is determined that an alternate sampling method is appropriate the SFL Office will use one of the following sampling methods:



- Individual Tree Sampling method/Stand Table Adjustment method: This type of cruise is conducted by measuring every tree in the cruise area by species and 2” size class and selecting trees to cruise through some random or systematic manner designed to give a statistically adequate number of sample trees.
- Sampling cruise method: This type of cruise is conducted by visiting a sample of the trees present in the easement premises. Sampling methods may include variable radius plots, fixed radius plots, or strip cruising.

## 2.3 EASEMENT VALUATION – WAC 222-21-045

The valuation of the easement is calculated once the timber cruise has been completed. The stumpage value of the easement is always calculated using the Stumpage Value Determination Method. If the applicant also submits all the necessary paperwork the stumpage value of the easement will also be calculated using the Small Harvester Tax Return Method. The easement value will be 90% of whichever stumpage value is higher or if the Small Harvester Tax Return Method is not used the easement value will be 90% of the Stumpage Value Determination Method’s valuation.

### 2.3.1 STUMPAGE VALUE DETERMINATION METHOD

The easement value is calculated once the timber cruise has been completed. The easement value is always calculated using the Stumpage Value Determination Method. The Stumpage Value Determination Method uses the Department of Revenue (DOR) Stumpage Value Table for either Eastern or Western Washington, and appropriate stumpage value area (Figure 15).

Stumpage value tables can be found online at the DOR forest tax website:

<https://dor.wa.gov/taxes-rates/other-taxes/forest-tax/stumpage-value-determination-tables>

The Stumpage Value Table used for the calculation is from the six-month time period (January 1 – June 30 or July 1 – December 31) after the Completion of Harvest date (see section 1.2.4)

**Example:** The timber harvest associated with the FREP application was completed on March 20, 2022, in King County, so the appropriate stumpage values would be from stumpage value area 4 found in the Western Washington DOR Stumpage Value Table for the time period of July 1 through December 31, 2022.

### STUMPAGE VALUE AREAS 1, 2, 3, 4, 5, 6, 7 & 9

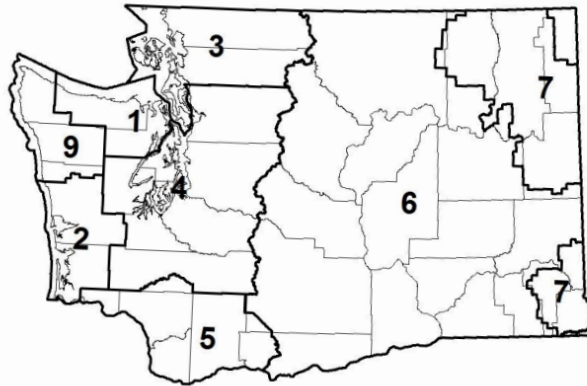


Figure 15 – Example of the Stumpage Value Area Map published by the DOR every 6 months.

#### DETERMINATION OF STUMPAGE VALUES FOR EACH SPECIES IN THE CRUISE REPORT:

The stumpage values for each species identified in the cruise report are determined using the appropriate Stumpage Value Table. The type of logging conditions in the associated timber harvest and the total net volume of timber per acre in the easement are considered to determine if any harvest adjustments are necessary.

The harvest adjustments are based on the Harvest Adjustment Table (Table 2) published by DOR in the Stumpage Value reports every six (6) months. Harvest adjustments are determined by DOR for Western Washington and Eastern Washington based on the type of logging, volume per acre, and location.

TABLE 2 – Harvest Adjustment Table Stumpage Value Areas 1, 2, 3, 4, 5 and 9 (Western Washington)		
Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume Per Acre Adjustment		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging Condition Adjustment		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit using an overhead system of winch driven cables, and/or on slopes greater than 45% using tracked or wheeled equipment supported by winch driven cables	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote Island Adjustment		
	For timber harvested from a remote island	-\$50.00
IV. Thinning Adjustment		
Class 1	A limited removal of timber described in WAC 458-40-610	-\$100.00

Table 2. Example Western Washington Harvest Adjustment Table published by the DOR for July 1 – December 31, 2024.

#### **MULTIPLE HARVEST UNITS ASSOCIATED WITH THE FREP APPLICATION:**

If there are multiple units that were harvested at different times or using different methods under one application, the associated easement units will be valued separately using the appropriate DOR stumpage values (with applicable deductions) and timber cruise report. The total stumpage value of each easement unit will be added together to calculate the total stumpage value of the easement before the compensation amount is calculated.

#### **DETERMINATION OF QUALIFYING TIMBER VOLUME AND VALUE:**



For all commercially valuable species found in the timber cruise, the volume per acre is multiplied by the number of acres in the easement and the calculated net volume is multiplied by the appropriate stumpage value (with applicable deductions) to calculate the total stumpage value of each species in the easement. For each species, the portion of the volume that is considered pulp or chipwood in the timber cruise report will be valued separately from the portions that are saw logs. The pulp or chipwood will be valued using the appropriate stumpage value from the DOR table. The total stumpage value of each species is added together to calculate the total stumpage value of the qualifying timber. If the adjusted stumpage value is less than \$0 the negative values will not be added to the total

stumpage value calculation.

#### DETERMINATION OF THE EASEMENT COMPENSATION AMOUNT:

The compensation amount for the easement is 90% of the total stumpage value of the qualifying timber calculated using this method unless the program can use the Small Harvester Tax Return Method and that results in a larger total stumpage value for the qualifying timber (See section 2.3.2).

#### Example Valuation Table using the Stumpage Value Determination Method

QT Species	QT (BF/Acre)	$(QT \text{ BF/Acre} \times \text{Acres}) \div 1000 = QT \text{ MBF}$	DOR Table Stumpage Value/MBF for 2 <sup>nd</sup> half of 2022	QT MBF x Stumpage Value/MBF = Stumpage Value of QT
DF	21,000 BF/Acre	$(21,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 210.000 \text{ MBF}$	\$640	\$134,400.00
RC	4,000 BF/Acre	$(4,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 40.000 \text{ MBF}$	\$1,472	\$58,880.00
RA	6,000 BF/Acre	$(6,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 60.000 \text{ MBF}$	\$521	\$31,260.00
<b>Total</b>	<b>31,000 BF/Acre</b>		<b>Total Stumpage Value of QT</b>	<b>\$224,540.00</b>

Table 3. Example of a stumpage value determination method valuation. This example is for an easement located in stumpage value area 4, associated with a timber harvest completed during the 1<sup>st</sup> half of 2022 (January 1 – June 30).

### 2.3.2 SMALL HARVESTER TAX RETURN METHOD

This method of valuation is optional and is only conducted if the applicant provides a complete record of their mill receipts from the associated timber harvest or similar documents that include the following:

- the date of each sale,
- the net volume by species, and
- the delivered value by species.

State of Washington  
Department of Revenue  
Forest Tax Program  
PO Box 47472, Olympia WA 98504-7472  
360-534-1324, Fax 360-705-6174  
Online at [www.foresttax.dor.wa.gov](http://www.foresttax.dor.wa.gov)

**FOREST EXCISE TAX RETURN**

Tax Registration Number: \_\_\_\_\_

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

#### ACTUAL HARVESTING AND MARKETING COSTS ARE AVAILABLE:

Using the mill receipts, or similar documents, the program calculates the average delivered value of each tree species represented in the associated harvest records. The total delivered value of each species is divided by the total volume (in thousand board feet) of each species to calculate average delivered value per thousand board feet for each species.

Example: Total volume of Douglas fir from the timber harvest is 100 MBF and the total delivered value is \$80,000.00 so the average delivered value for Douglas fir is \$800/MBF.

If provided, the harvesting and marketing costs of the harvest are added up to calculate the total actual harvesting and marketing costs. The total harvesting and marketing costs will be divided by the total volume of the timber harvested to calculate the average harvesting and marketing costs.

Example: Total harvesting and marketing costs shown on documents provided to SFLO equal \$20,000.00. The total volume of timber harvested is shown as 100 MBF. The average harvesting and marketing cost per thousand board feet equals  $\$20,000.00 / 100 \text{ MBF} = \$200.00/\text{MBF}$

The average harvesting and marketing costs per thousand board feet are deducted from the average delivered value of each tree species represented in the timber harvest records to calculate the average stumpage value for each tree species.

Example: Average delivered value of Douglas fir is \$800/MBF and the average harvesting and marketing costs are \$200/MBF so the average stumpage value for Douglas fir is \$600/MBF

QT Species	QT (BF/Acre)	$(QT \text{ BF/Acre} \times \text{Acres}) \div 1000 = \text{QT MBF}$	Harvest Stumpage Value	QT MBF x Stumpage Value/MBF = Stumpage Value of QT
DF	21,000 BF/Acre	$(21,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 210.000 \text{ MBF}$	\$600	\$126,000.00
RC	4,000 BF/Acre	$(4,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 40.000 \text{ MBF}$	\$1,500	\$60,000.00
RA	6,000 BF/Acre	$(6,000 \text{ BF/Acre} \times 10 \text{ Acres}) \div 1000 = 60.000 \text{ MBF}$	\$450	\$27,000.00
<b>Total</b>	<b>31,000 BF/Acre</b>		<b>Total Stumpage Value of QT</b>	<b>\$223,500.00</b>

Table 4. Example Valuation Table using the Small Harvester Tax Return Method.

**ACTUAL HARVESTING AND MARKETING COSTS ARE NOT AVAILABLE:**

To use this valuation method, the actual harvesting and marketing costs of the associated timber harvest must be provided *if available*. If actual harvesting and marketing costs are **not** available, then the SFL Office uses the small harvester deduction of 35% of the gross value of the timber harvest as the harvesting and marketing costs.

Example: Gross value of timber from the harvest is \$100,000 so the harvesting and marketing costs are calculated to be \$35,000.

**SPECIES RECORDED IN CRUISE BUT NOT IN HARVEST RECORDS:**

For all commercially valuable species found in the cruise not represented in the harvest records, the program uses the appropriate stumpage value (with applicable deductions) from the DOR Stumpage Value Table. The total stumpage value of each species in the easement will be added together to calculate the total stumpage value of the qualifying timber in the easement.

**APPLICATIONS WITH MULTIPLE UNITS, TIMES OR METHODS:**

If under one application to the program, there were multiple timber harvest units that were harvested at different times or using different methods, the associated easement units will be valued separately. The total stumpage value of each easement unit will be added together to calculate the total stumpage value of the easement before the compensation amount is calculated.

## DETERMINATION OF THE EASEMENT COMPENSATION AMOUNT:



The compensation amount for the easement is 90% of the total stumpage value of the qualifying timber calculated using the Small Harvester Tax Return Method or 90% of the total stumpage value of the qualifying timber calculated using the Stumpage Value Determination Method, whichever is greater.

### 2.3.3 VALUATION OF POTENTIALLY UNSTABLE SLOPES:

If there are potentially unstable slopes included in the easement, those portions of the easement will be valued as separate units. The valuation process is done as outlined above using the Stumpage Value Determination Method or the Small Harvester Tax Return Method. The separate values for the potentially unstable slope units of the easement are used to calculate and track the total value of the qualifying timber in potentially unstable areas outside the RMZ. This ensures that DNR does not compensate a landowner more than \$150,000.00 per biennium for qualifying timber on potentially unstable slopes.

If compensation to a landowner for qualifying timber on unstable slopes would exceed \$150,000.00 for that biennium, portions of the potentially unstable slopes will have to be eliminated from the proposed easement until the threshold is not exceeded.

## 2.4 REIMBURSEMENT CALCULATION – WAC 222-21-048

FREP applicants can request reimbursement from DNR for costs they incurred to identify qualifying timber. Costs to identify qualifying timber include determining and marking Riparian Management Zones (RMZ), Wetland Management Zones (WMZ), Channel Migration Zones (CMZ), and potentially unstable slopes.

For potentially unstable slopes, only the portion of the geotechnical report that is applicable to the area on the property that contains qualifying timber may be reimbursed.

**Example:** \$10,000 is paid for a geotechnical report on **ten** acres of potentially unstable slopes. The geotechnical report identified **five** of those acres as potentially unstable slopes that cannot be harvested due to forest practice rules, and the other **five** acres of potentially unstable slopes can be harvested. This means **fifty percent of the cost or \$5,000** for the geotechnical report can be reimbursed.

Reimbursement for the riparian management zones takes into consideration the level of detail and amount of work required to set up that riparian management zone.

The program applicant must provide DNR with a request for reimbursement that demonstrates actual costs to identify qualifying timber. This includes receipts, invoices, or contract agreements.

**Example:** An inventory of the riparian management zone is conducted to determine eligibility for management in the inner zone. By following methods outlined in the Desired Future Conditions Worksheet, the reimbursement would be higher than when no inventory is conducted, and the riparian area prescription was a 110-foot fixed-width buffer.

The reimbursement considers:

- the number of zones within the riparian area that are required to be identified and marked and,
- the length of the resource that is buffered.

DNR will use the following:

- Information provided in the request,
- information in the associated FPA,
- information gathered during the field visits, and
- a standardized reimbursement worksheet to determine the amount that can be authorized.

The amount of reimbursement that can be authorized may not always equal the amount requested for reimbursement by the program applicant. The amount of reimbursement authorized cannot be more than requested.

#### 2.4.1 REIMBURSEMENT WHEN THE INVOICE ISN'T ITEMIZED

DNR maintains a reimbursement document which calculates the reimbursement based on stream length, RMZ layout, relevant unstable slopes, and consulting forester hourly rates. This document is regularly updated to account for inflation.

## PART 3. COMPENSATION & CONTRACT EXECUTION

### 3.1 COMPENSATION OFFER PACKET

A compensation offer packet will be issued to the landowner for their review, after all previous tasks have been completed. The packet will include draft versions of the following documents: a baseline report of the easement conditions, timber cruise and materials used for valuation of the timber, escrow instructions, an Agreement to Purchase, and an Easement Contract including a written legal description of the easement extents. The landowner must provide written verification that they accept the offer.



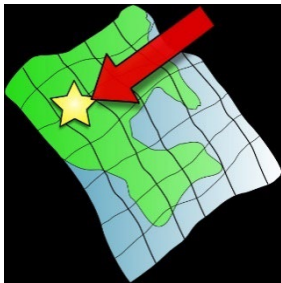


### 3.1.1 BASELINE REPORT

The program prepares a baseline report describing the easement premises and qualifying timber which is included in the compensation offer packet. The purpose of the baseline report is to document the current conditions, features, and uses in the easement premises. The baseline report can be used in the future to compare the easement premises to its condition at the time of purchase. This report contains data about the qualifying timber from the timber cruise report and provides additional information for general reference. Any potential liabilities associated with the easement premises are described in the report. Additionally, the report contains site condition information including but not limited to the soils, vegetation, wildlife habitat, water, and any relevant resources found in the easement premises. The report puts the easement premises into context of the surrounding landscape and provides an idea of what the easement premises looked like at the time of purchase. Photographs and maps of the easement premises must be included.

The report is prepared by the forester in charge of the easement project and is finalized when the contents are accepted by the landowner and the forester. The document is provided during the compensation offer and is signed by both the landowner and forester in charge, acknowledging that it is an accurate description of the easement premises to the extent of parties' knowledge.

### 3.1.2 LEGAL DESCRIPTION OF THE EASEMENT PREMISES



In order for the easement contract to comply with the Statute of Frauds, the easement must contain a sufficient land description of the premises. A sufficient land description is defined in WAC 332-130-040 as "...an instrument used for the conveyance of real property should contain a description of the property sufficiently definite to allow location by a land surveyor without recourse to oral testimony".

The easement legal description is prepared by a department licensed Professional Land Surveyor primarily from the department's State Land Survey Unit. The SFL Office provides the surveyor with the current Commitment for Title Insurance (CTI) and its supporting deed and encumbrance documents, exhibit map showing the intent and basic outline of the easement area in relationship to the applicant's parcel, along with Geographic Information System (GIS) file data of the intended easement, together with a description request workorder form. The department surveyor(s) works with the SFL Office to meet their requirements outlined in WAC 222-21-030 (5)(a)(b).

## 3.2 ESCROW

Easement transactions are closed in escrow. The state determines which escrow company best performs this service and pays all escrow fees. The escrow company coordinates signing and notarizing with landowners. The landowner is responsible for familiarizing themselves with the

terms and conditions of the easement, responding to the escrow company, and signing the easement.

### 3.2.1. 1031 EXCHANGE

The purchase of an easement may qualify for a 1031 exchange (also known as a like kind exchange). The conveyance and consideration section in the easement document allows compensation to be paid to the landowner or their assignee. The state is not responsible for any coordination required for a 1031 exchange and pays compensation into escrow as normal. Escrow may distribute the compensation as directed by the landowner, and the landowner is responsible for any additional work with the escrow company to engage in a 1031 exchange.

### 3.2.2. NO TRIGGERING COMPENSATING TAXES

Easements take the associated timber out of production and remove it from harvest for the next 40 years. Usually this means ‘compensating taxes’ are owed to the county to make up for the revenue lost from potential future timber harvest, but easements are *exempt* from this.

RCW 76.13.120(5) “Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.”

## 3.3 EASEMENT EXECUTION AND DISTRIBUTION OF COMPENSATION – WAC 222-21-050

1. All compensation and reimbursement to the small forest landowner is **subject to available funding**.
2. The small forest landowner office offers compensation for the easement in a purchase and sale agreement. The small forest landowner can accept or reject the conditions of the purchase and sale agreement in writing and submit the written acceptance or rejection to the small forest landowner office.
  - a. Easement compensation is considered **federally taxable income**.
  - b. All persons or representatives listed on the title reports for the parcels to be encumbered by the easement, must agree to the terms and sign the easement document.
  - c. The Easement and Purchase and Sale Agreement are legal documents prepared by the Attorney General’s office on behalf of the State of Washington, by and through the Department of Natural Resources. Any significant changes to the documents must be reviewed by the Attorney General’s office and could result in significant delays to the compensation distribution.
3. Compensation for the easement and reimbursement of landowner costs are paid after:
  - a. The department has verified that the landowner has no outstanding violations under chapters **76.09** or **76.13** RCW or any associated Forest Practices Rules;



- b. Any dispute over the amount of compensation or eligibility or other matter involving the easement has been resolved; and
  - c. The small forest landowner office has sent an easement contract to the landowner, the landowner has signed the contract, and the landowner has delivered it to the department.
4. Compensation for any qualifying timber located on potentially unstable slopes or landforms outside the RMZ will not exceed a total of one hundred fifty thousand dollars (\$150,000) per landowner during any biennial funding period.
5. The following documents will be prepared by the State and provided to escrow requiring notarized signatures from the Seller and the State's designated signer:
  - a. The Purchase and Sale Agreement, signed by all parties.
  - b. The Easement, signed by all parties.

**Responsibilities of the State:** The State pays the escrow account charges, the Real Estate Excise Tax, customary recording fees, and any applicable mobile notary fees. The State pays the premium for the title insurance policy and the purchase price. State will ensure the easement is recorded with county.

**Responsibilities of the Seller:** Any property taxes due up to the closing date will be fully satisfied by the Seller prior to closing. State will not pay any portion of taxes due and will not be responsible for any refunds due to Seller for taxes paid in advance. The seller is responsible for notifying the State if they sell any portion of the property on which the easement is located.

### 3.4 AMENDMENTS AND DAMAGES

This Easement may be jointly amended. The amendments will be in writing and signed by authorized representatives. Grantee will record any amendments in a timely fashion in the official records of the county in which the easement is located. All amendments will be consistent with the purposes of this Easement.

If the original, or subsequent landowner seeks to amend the easement area, DNR has discretion whether or not the amendment request is granted.

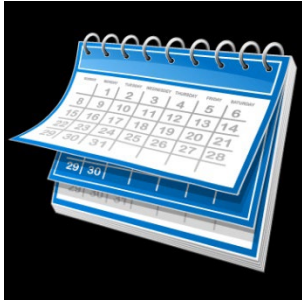
Justifiable examples of amendments might be:

- error in the original easement or legal description,
- adjacent road construction requires permanent removal of trees,
- landowner needs to permanently remove trees in order to obtain access to other parts of the property,
- landowner needs to permanently remove trees in order to complete a fish passage improvement process.

If an amendment results in the loss of trees from the easement area, the landowner owes damages as outlined in the easement contract.

Temporary removal of trees - or felling of trees which will be replanted and not result in permanent deforestation of the easement area - triggers the easement’s ‘Damages’ clause, however no amendment is needed.

### 3.5 SALE OF EASEMENT WITHIN THE FIRST 10 YEARS – WAC 222-21-055



If, within the first ten (10) years after receipt of compensation for an easement, a landowner sells the land on which an easement is located, to a nonqualifying landowner, the selling landowner must reimburse the state for the full compensation received for the easement. The department continues to hold, in the name of the state, the easement for the full term of the easement.