

1 **FOREST PRACTICES BOARD**
2 Special Board Meeting – May 7, 2024
3 Zoom Webinar and Courtyard by Marriott, Spokane, WA
4

5 **Members Present:**

6 Lenny Young, Chair, Department of Natural Resources
7 Ben Serr, Designee for Director, Department of Commerce
8 Chris Conklin, Designee for Director, Department of Fish and Wildlife
9 David Bowen, Designee for Director, Department of Ecology
10 Jim Peters, General Public Member
11 Laura Butler, Designee for Director, Department of Agriculture
12 Meghan Tuttle, General Public Member
13 Pene Speaks, General Public Member
14 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
15 Wayne Thompson, Timber Product Union Member
16 Vickie Raines, Elected County Commissioner
17

18 **Members Absent:**

19 Cody Desautel, General Public Member
20 Frank Chandler, General Public Member/Independent Logging Contractor
21

22 **Staff:**

23 Karen Zirkle, Forest Regulation Assistant Division Manager
24 Marc Engel, Senior Policy Advisor
25 Patricia Anderson, Rules Coordinator
26 Saboor Jawad, Forest Regulation Division Manager
27 Terry Pruitt, Senior Counsel
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair Lenny Young called the Forest Practices Board (Board) meeting to order at 1:00 p.m.
31 Introductions of Board members and staff were made.
32

33 Chair Young recognized former Board members for their service on the Board.

- 34 • Alex Smith – October 2021 to March 2024
 - 35 • Kelly McLain – November 2019 to March 2024
- 36

37 **FORESTRY RIPARIAN EASEMENT PROGRAM (FREP) EXPEDITED RULE MAKING**
38 **TO IMPLEMENT SUBSTITUTE SENATE BILL (SSB) 5667**

39 Maggie Franquemont, DNR, presented the proposed rule changes to chapter 222-21 WAC for the
40 Board’s approval to initiate an expedited rule making.
41

42 Franquemont summarized the amendments to WACs 222-21-005, 010, 030, 045, 050, 080 that will
43 implement SSB 5667:

- 44 • Clarified the definitions of “qualifying timber” and “completion of harvest”.
- 45 • Shortened the easement term from 50 years to 40 years.
- 46 • Changed the date used for easement valuation from the date the small forest landowner office
47 receives the forest riparian easement application to the date of completion of harvest.
- 48 • Increase compensation from 50-90% of the value of the trees left in the buffer to 90% of the
49 value.
- 50 • Eliminated the high impact regulatory threshold determination; and

- 1 • Increased the funding available for landowners with qualifying timber on potentially unstable
2 slopes from \$50,000 to \$150,000 per biennium.

3
4 Board member Jim Peters asked if the 40-year easement is transferrable if the parcel is sold.
5 Franquemont replied that this is transferable to the new landowner.

6
7 Board member Steve Barnowe-Meyer asked when will the board manual be updated. Franquemont
8 said staff will present Board Manual Section 17 Guidelines for the Small Forest Landowner Forestry
9 Riparian Easement Program at their November Board meeting.

10
11 Board member Wayne Thompson asked when the completion date of a FREP application is when
12 there is not an approved Forest Practices Application (FPA). Franquemont said that a FREP easement
13 may not have a completion date when it is not economically feasible to harvest.

14 15 **PUBLIC COMMENT ON EXPEDITED RULE MAKING**

16 Ken Miller thanked everyone who supported SSB 5667. He also thanked DNR staff for their efforts
17 towards a very smooth transition. He shared his support of the rule making and provided an account
18 of how Structured Decision Making worked to clarify his thoughts on the adaptive management
19 process.

20 21 **FREP EXPEDITED RULE MAKING**

22 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board approve the proposed rule
23 language to implement Substitute Senate Bill 5667. I further move to request staff file
24 the CR-105 expedited rulemaking with the Office of the Code Revisor.

25
26 **SECONDED:** Meghan Tuttle

27
28 Board Discussion:
29 None.

30
31 **ACTION:** Motion passed unanimously.

32 33 **STRUCTURED DECISION MAKING**

34 Philip Halteman, Compass Resource Management, provided an update on what they have been
35 working on with TFW Policy Committee (TFW Policy).

36
37 Halteman said the real benefit to a structured decision making (SDM) process is it provides a
38 pathway that people understand and see as well as provides a set of tools to navigate the complexity
39 of problems and values technical information. SDM ensures decisions are founded in sound science
40 and that the science is presented in a way that informs those making decisions. He said SDM has a lot
41 in common with other processes that help teams work together in collaboration, and it helps users to
42 have iterative and team building interactions.

43
44 The Board was asked for their reflection on the April 9, 2024, SDM training.

45
46 Board member Barnowe-Meyer said his group used the Type Np buffer rule to apply SDM for
47 collaboration and consensus. He shared that there is much to be learned but that the approach makes
48 sense and believes the Board can make the process work.

1 Board member David Bowen stressed the importance of understanding what the problem is and how
2 to properly identify the problem.
3

4 Board member Pene Speaks said she likes that the process is iterative and likes the use of alternatives
5 and reiteration of definitions and terms for understanding. She said that it is ok not to do it right the
6 first time, and this process helps to work through alternatives. She is uncertain how the Board
7 approaches issues that are much further down the line of discussion as she believes the Board is
8 struggling with controversy that needs this kind of discussion.
9

10 Board member Meghan Tuttle said she was impressed with how many attended from the various
11 caucuses, DNR and Board members. She said key to the SDM process is sharing the values up front
12 which leads the discussion to understand the tradeoffs in the process.
13

14 Board member Peters said he believes there is potential for using SDM and said it is important to
15 recognize each other's values as well as acknowledge and understand them. He believes this process
16 will help with starting the process correctly to make good decisions.
17

18 Compass Resource Management said the methodology is suitable for programs like the Forest
19 Practices Board and the adaptive management process. Compass Resource Management said that
20 they are looking forward to using SDM for the decision-making process at TFW Policy. Compass
21 Resource Management states the importance of motivation in this group for SDM and good decision
22 making.
23

24 Compass Resource Management describes the work they are doing with TFW Policy and the work
25 they are doing to address the State Auditor recommendations to implement a net gains approach to
26 adopt a decision criterion *a priori*. This means applying a SDM framework to a well-defined decision
27 facing TFW Policy. He uses a current Adaptive Management Program (AMP) study, Eastside Type N
28 Riparian Effectiveness Project (ENREP), to illustrate the process and how TFW Policy might
29 determine the need for a rule change. The presentation summarizes the next steps as, 1) the
30 development of a workplan to advance the SDM approach to improve the decision making and 2) to
31 give periodic updates to the Board.
32

33 Board member Speaks, asks about latitude for coming up with alternatives or changing things that
34 have already moved down the road, and said she is concerned that this could be problematic.
35 Compass Resource Management said that they do anticipate that there will be questions about TFW
36 Policy's latitude to explore alternatives.
37

38 Board member Barnowe-Meyer shares Board Member Speaks question and said that the current
39 structure in CMER and TFW Policy is not a straight up and down vote. He clarifies that they do a
40 good job of defining the problem but brought up the example of previous studies that could have
41 added more alternatives but did not. Board member Barnowe-Meyer talks about the relationship of
42 TFW Policy to the Board and what decisions the Board makes based on the work in TFW Policy.
43 Barnowe-Meyer said that the Board has a part in this process and that Compass Resource
44 Management did not come to the Board on this. Barnowe-Meyer said he is still shocked at the
45 decision made by the Board about the Type Np buffer rule and moving forward with just one
46 alternative. Barnowe-Meyer reminds the Board that ENREP is Type N for the Eastside of
47 Washington. Barnowe-Meyer said he feels the Board is successful a lot of the times, but not on some
48 of the hard decisions.
49

1 Board member Peters states there is always the option to do more in TFW Policy, but that is not
2 always done. He said if there are not enough caucuses in support, then the Board should not
3 necessarily move forward.

4
5 Board member Speaks asked if with using SDM does TFW Policy feel like they can come back to the
6 Board with questions and clarifications, generally and when using SDM.

7
8 Board member Meghan Tuttle supports Board member Peters statement that the time component is a
9 concern he raised because the Board process is linear instead of iterative to loop back to pause and
10 reevaluate. She said she also agreed with Board member Speaks concern about whether TFW Policy
11 is comfortable coming back to the Board and asks does the Board empower CMER and TFW Policy
12 or not? She asked if SDM enables the Board to have a more iterative process?
13

14 The Board is the ultimate decision maker and that in a consultant's experience understanding the
15 decision makers values is where the process should start. Halteman said he could see a strong role for
16 the Board to state what they see as the decision maker and asked what the Board wants to see as far
17 as information, process, options, etc. This guidance provides direction to CMER and TFW Policy for
18 what they should provide. The decision-making timeline is limited and can be difficult to navigate
19 when you don't know what you want. Having early conversations about what you want, and planning
20 check points will help to make sure that the product you are getting is what you wanted.
21

22 Board member Peters said he thinks that there is a range of answers that will come out at the end and
23 the caucuses will either like it or not. There are certain points in time where you can't go back. There
24 are decisions that you make in the beginning that you could come back as you collect data, but some
25 decisions you do not need to go back to. He said that the Board can stop at a point and have another
26 discussion about a concern because something is not working for the individual Board member.
27

28 Halteman said the SDM process will help to ensure buy-in by the participants, because values are
29 considered in the beginning and alternatives are discussed in a better way. This is done for every part
30 of SDM so when you get to the difficult decisions about tradeoffs, the group has bought into the body
31 of information.
32

33 Board member Tuttle asked what the final product will look like. Halteman responded that it is not
34 fully known yet, and any process that they finish will have a report and a presentation to TFW Policy.
35 The product the Board thinks will best meet their needs is what they hope to provide.
36

37 Lori Clark, AMPA, said she has two different sets of expectations: 1- Compass Resource
38 Management supports what the Board is looking for from this process but also that the State
39 Auditor's recommendations are addressed, and 2- the framework that the Board adopts will be put in
40 the Board Manual reflecting this. She said Compass Resource Management has been working hard
41 with the caucuses, CMER and TFW Policy. The lack of what product they will have as a result for
42 the Board is unclear because it was unknown what complexities would arise. Compass Resource
43 Management requests that the Board reach out with concerns or questions if they want, to the degree
44 that is accommodated in the contract.
45

46 **WATER TYPING SYSTEM RULE MAKING**

47 Marc Engel, DNR, provided a timeline of events leading to today's discussion.

- 48 • February 2013, the Board begins the rule making process to better address goals of the Forests
49 and Fish Report:
 - 50 ▪ Protect accessible fish habitat,

- 1 ▪ Develop a field method to identify fish habitat in an objective and repeatable manner,
- 2 ▪ Maintain essential elements of the method in rule, and
- 3 ▪ Add Board Manual guidance into rule where appropriate.
- 4 • August 2015, the Board directed TFW Policy to evaluate all components needed to establish a
- 5 permanent water typing system rule, guidance, and training.
- 6 • November 2016, TFW Policy reported status regarding rule elements which TFW Policy has
- 7 developed consensus recommendations and rule elements which are not in consensus. The Board
- 8 directed TFW Policy to initiate and complete Dispute Resolution to deliver consensus
- 9 recommendations or majority/minority report.
- 10 • May 2017, the Board acknowledged completion of Dispute Resolution and assumed management
- 11 for development of the final rule elements for a permanent water typing system rule. The Board
- 12 accepted TFW Policy's consensus recommendations and convened an expert science team to
- 13 determine in-stream features that would constitute a barrier to fish and the appropriate point to
- 14 initiate a protocol survey.
- 15 • February 2018, the Board received the expert science panel report, which contained multiple
- 16 Potential Habitat Break (PHB) descriptions for consideration. The Board accepted three PHB
- 17 alternatives for analysis under the proposed draft rule based on recommendations made by the
- 18 caucuses.
- 19 • June 2019, the Board established a Board committee to:
 - 20 ▪ determine if stream width can be estimated through spatial analysis,
 - 21 ▪ determine how the rule is to be applied in eastern Washington, and
 - 22 ▪ determine if a LiDAR-based map is appropriate for the water-typing system rule.
- 23 • November 2019, the Board approved the anadromous fish floor workgroup charter, and directed
- 24 the Board's Water Typing Rule Committee to:
 - 25 ▪ Form a workgroup to explore if other data is available to inform the rule for eastern
 - 26 Washington,
 - 27 ▪ Provide oversight of the anadromous fish floor workgroup, and
 - 28 ▪ Address outstanding water typing rule issues as assigned by the Board.
- 29 • August 2022, the Board approved anadromous fish floor (AFF) alternatives A4 (7 percent) and D
- 30 for analysis for inclusion in the proposed water typing rule.
- 31 • November 28, 2022, the Board acknowledged elements and objectives of the water typing system
- 32 rule that have been approved by the Board:
 - 33 ▪ Balance error
 - 34 ▪ Minimize electrofishing.
 - 35 ▪ Address stream segments not shown on the DNR map.
 - 36 ▪ Improve the water typing map over time.
 - 37 ▪ Include methods to locate the Type F/N break on the ground; and ensure the methods provide
 - 38 the ability to be applied by small forest landowners; and
 - 39 ▪ Be consistent with fish habitat as defined in rule.
- 40 • In addition, the Board acknowledged that the AFF is:
 - 41 ▪ measurable physical stream characteristics downstream from which anadromous fish habitat
 - 42 is presumed and an agreement that the AFF would establish the location upstream of which
 - 43 fish protocol surveys may begin under fish habitat assessment methodology.

44
45 Board member Bowen asked if the goal is to encourage the use of LiDAR and if it is the best
46 available tool.

47
48 Engel acknowledged that LiDAR could produce finer resolution than what was available previously
49 and having better LiDAR would help improve the DNR map. It is known that even with improved

1 maps there will still be streams that are missed. The Default Physical Criteria offer landowners an
2 opportunity to determine water types to establish the appropriate riparian management zone.

3
4 Board Member Barnowe-Meyer said that a LiDAR based map is important to small forest
5 landowners.

6 7 Rule Update

8 Engel said the draft rule language regarding off-channel habitat (OCH) has been clarified based on
9 the May 2017 Board motion to include Type F channelized and non-channelized streams. He said the
10 draft rule language regarding Potential Habitat Break and Permanent Natural Obstacle will be added.

11 12 Spatial Analysis

13 Saboor Jawad, DNR, said that the spatial analysis is not a CMER study nor a scientific endeavor. The
14 spatial analysis is a process of providing a reasonable central measure of where the PHBs would land
15 in relation to Type F/N break points. The spatial analysis is a key element which will inform the
16 Cost-Benefit Analysis (CBA) and environmental review.

17
18 DNR has procured a services contract with 4 Peaks to conduct the spatial analysis using one-meter
19 resolution LiDAR and evaluated the PHB and AFF alternatives on those synthetic streams. From
20 there they calculated average distances of the PHB and AFF alternatives relative to previously
21 concurred Type F/N break points and located the extent of fish habitat associated with the Water
22 Type Modification Form points. The spatial analysis is not a requirement of rulemaking, it is a key
23 element that feeds into the CBA.

24
25 The spatial analysis report will include:

- 26 ■ Assessment of gradients using 5 bankfull width stream segments instead of the 20 bankfull widths
27 stream segments.
- 28 ■ A sensitivity analysis will be provided to evaluate factors used in the analysis.
- 29 ■ Improvements for readability
- 30 ■ Chapter on the limitations of the analysis
- 31 ■ Provide an additional layer using more than one PHB above the last fish points.

32
33 Jawad said that this is a desktop, remote-sensing based study and it will have limitations. DNR staff's
34 understanding of the spatial analysis is that it will still provide reasonable information. The Board
35 should note that adding a field component will likely improve accuracy, adding a field component
36 would add time.

37
38 The final spatial analysis report will be provided to the Board.

39 40 Economic Analysis

41 Engel said that a description of each of the PHB options are included in the Board packet for the field
42 tour on May 8. The PHB options will be discussed on site. When the spatial analysis is complete, it
43 will be sent to the contractor preparing the CBA. The methodology and analysis will include
44 additional sensitivity analysis quantifying the effects of spatial analysis data relative to the
45 contribution of other inputs in the final CBA. The findings of a preliminary analysis will be provided
46 to the Board in preparation for their August decision of which PHB and AFF to include in the Water
47 Typing Rule proposal. A preliminary CBA and SBEIS will then be prepared for the Board for their
48 November 2024 meeting.

49 50 Environmental Assessment

1 Karen Zirkle, DNR, said the spatial analysis data will be used to assess the three PHB options in
2 conjunction with the two AFF alternatives to show what the six different rule alternatives would look
3 like on the ground. At the August meeting, the Board will receive a presentation on the
4 environmental assessment of the different buffer distances and associated acres, relative to the spatial
5 analysis. The presentation is intended as additional information to assist the Board in deciding which
6 PHB and AFF to include in the rule proposal for analysis.

7
8 Once a decision is made staff will conduct a SEPA analysis for the responsible official to make a
9 determination of significance or a determination of non-significance.

10 Timeline

11 Engel said that at the August meeting, the Board will receive a presentation on the preliminary CBA
12 and SBEIS; and an assessment of the proposed PHB and AFF alternatives in comparison to the
13 current rule. At that time, the Board will be asked for a decision on which PHB and which AFF to
14 move forward with in the rule proposal. This would allow the vendor to complete the preliminary
15 CBA and SBEIS, and it would allow DNR staff to prepare a SEPA analysis for the Responsible
16 Official review and determination prior to the November meeting.

17
18
19 The Board discussed when a field tour and additional meetings should occur and when best to receive
20 the information to assist the Board in their decision of one PHB and one AFF and next steps.

21
22 Chair Young said there was a time when loading changes to the base maps was not working
23 correctly. Has this been worked out and is DNR better at providing a map that people can work from?
24

25 Engel said that the map is being built overtime, 20 percent of the original Type F/N breaks are now
26 concurred points through submitted water type modification forms. Reporting has improved over
27 time. A process for review has been developed by DNR working with stakeholders. That process has
28 allowed us to address the previous backlog and to stay current and based on the quality of the
29 protocol survey requirements, we can accept those concurred points as the regulatory F/N break.

30
31 Jawad said that regarding budget, by the end of the biennium most of the allotted budget for this work
32 will be spent. There is a small amount of contingency funds, however, DNR will need to submit a
33 funding request. The Board should be aware of these needs and understand that hypothetically if
34 some of the products associated with rulemaking need to be adjusted, that will have additional cost.
35 DNR staff will monitor the budget and a request for additional funds will be submitted.

36 **FIELD TOUR PREVIEW**

37 Maggie Franquemont, DNR, provided an overview on the next day's field tour which will highlight
38 alternate plans and provide a PHB demonstration.

39 **EXECUTIVE SESSION**

40
41 None.

42
43
44 Meeting adjourned at 4:35 p.m.

1 **FOREST PRACTICES BOARD**
2 **Special Board Meeting (Field Tour) – May 8, 2024**
3 Deer Park, WA
4
5

6 **Members Present:**

7 Lenny Young, Chair, Department of Natural Resources
8 Ben Serr, Designee for Director, Department of Commerce
9 Chris Conklin, Designee for Director, Department of Fish and Wildlife
10 Jim Peters, General Public Member
11 Laura Butler, Designee for Director, Department of Agriculture
12 Meghan Tuttle, General Public Member
13 Pene Speaks, General Public Member
14 David Bowen, Designee for Director, Department of Ecology
15 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
16 Wayne Thompson, Timber Product Union Member
17

18 **Members Absent:**

19 Cody Desautel, General Public Member
20 Frank Chandler, General Public Member/Independent Logging Contractor
21 Vickie Raines, Elected County Commissioner
22

23 **Staff:**

24 Karen Zirkle, Forest Regulation Assistant Division Manager
25 Marc Engel, Senior Policy Advisor
26 Patricia Anderson, Rules Coordinator
27 Saboor Jawad, Forest Regulation Division Manager
28 Terry Pruit, Senior Counsel
29
30

31 The Forest Practices Board, led by NE region DNR staff, conducted a field tour in the Deer Park area.
32 The field tour on private lands provided the Board an opportunity to see alternate plans for small
33 forest landowners.
34

35 No public comment was taken, and no Board action occurred during the tour.
36

37 Field tour ended at 4:00 p.m.
38

1 **FOREST PRACTICES BOARD**
2 Regular Board Meeting – May 9, 2024
3 Zoom Webinar and Courtyard by Marriott, Spokane, WA
4

5 **Members Present:**

6 Lenny Young, Chair, Department of Natural Resources
7 Ben Serr, Designee for Director, Department of Commerce
8 Chris Conklin, Designee for Director, Department of Fish and Wildlife
9 Jim Peters, General Public Member
10 Laura Butler, Designee for Director, Department of Agriculture
11 Meghan Tuttle, General Public Member
12 Pene Speaks, General Public Member
13 David Bowen, Designee for Director, Department of Ecology
14 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
15 Wayne Thompson, Timber Product Union Member
16

17 **Members Absent:**

18 Cody Desautel, General Public Member
19 Frank Chandler, General Public Member/Independent Logging Contractor
20 Vickie Raines, Elected County Commissioner
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23 Karen Zirkle, Forest Regulation Assistant Division Manager
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25 Patricia Anderson, Rules Coordinator
26 Saboor Jawad, Forest Regulation Division Manager
27 Terry Pruitt, Senior Counsel
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair Lenny Young called the Forest Practices Board (Board) meeting to order at 8:00 a.m.
31 Introductions of Board members and staff were made.
32

33 **REPORT FROM THE CHAIR**

34 Chair Young provided an update on the legislative session which included:

- 35 • Substitute Senate Bill 5667 relating to the Forestry Riparian Easement Program was re-introduced
36 and passed this session. The bill increases the small forest landowner riparian easement
37 compensation to 90% of timber value, reduces easement terms to 40 years, and increases
38 compensation on potentially unstable slope easements.
39 • DNR requested funding for the fpOnline project was included in the final passed budgets and
40 remains under the oversight of the Office of Chief Information Officer. The additional funding
41 will allow DNR to complete the fpOnline development work.
42

43 Chair Young announced John McEntyre “Mack” as the new Forest Regulation Assistant Division
44 Manager for Operations and Mariah Holmes as the new Assistant Division Manager for Budget and
45 Business Administration.
46

47 **APPROVAL OF MINUTES**

48 **MOTION:** Meghan Tuttle moved the Forest Practices Board approve the February 14, 2024,
49 meeting minutes.
50

1 **SECONDED: Steve Barnowe-Meyer**

2
3 **Board Discussion:**

4 None.

5
6 **ACTION: Motion passed. (7 Support / 0 Oppose / 3 Abstention (Butler, Young & Bowen)).**

7
8 **CMER MASTER PROJECT SCHEDULE AND BUDGET UPDATE**

9 Lori Clark, Adaptive Management Program Administrator (AMPA) said that in August 2023, when
10 the Board approved the CMER Master Project Schedule (MPS) it was understood that the budget was
11 not balanced. At that time the AMPA committed to working with staff and the TFW Policy
12 Workgroup on balancing the budget hoping to have a positive surplus to carry forward to cover the
13 negative variance. That work was successful and can now show refinements and the balanced budget
14 for fiscal year 2025.

15
16 Clark said that for fiscal years 2026 and 2027, there is a significant shortfall. The reason for bringing
17 this up now is to give a heads up and to get the Board's support and to let the caucuses know that
18 their support will be needed in going to the legislature with a funding request of approximately \$3.6
19 million to cover the shortfall. It is intended that the final MPS budget proposal will be presented at
20 the August 2024 Board meeting.

21
22 Adjustments made to fiscal years 2024/2025 to balance the MPS budget include:

- 23 • CMER conference: \$30k shifted from FY25, based on past expenditure the full amount is not
24 needed and adequate funds remain for FY25.
- 25 • Contingency funds: \$50k shifted from FY24/25 to the roads project.
- 26 • Dispute resolution on-call contracts reduced by \$30k with adequate contracts available to TFW
27 Policy and CMER if needed.
- 28 • Research and monitoring projects:
 - 29 ▪ Extensive monitoring project reduced from \$50k to \$25k because it took longer than expected
30 to establish the principal investigator.
 - 31 ▪ Eastside Type N was increased \$5k for FY24 to cover harvest cost increases due to a delay at
32 Fish creek.
 - 33 ▪ Westside Type F RMZ funding for FY 24 was removed and transferred to FY 25 because
34 project was significantly delayed.
 - 35 ▪ Road's prescription scale effectiveness monitoring funding added from the contingency fund
36 due to vandalism at some sites, additional maintenance on roads, and increased cost of goods
37 and services.
- 38 • Water typing strategy projects:
 - 39 ▪ Potential Habitat Break (PHB) project funding reduced by \$20k for FY24 due to delay in
40 establishing principal investigator. The PHB study design was approved by ISPR, and
41 received CMER final approval in May 2023, and they have started desktop site selection. That
42 project will need full \$1.1 million projected at the beginning of the biennium, they are
43 expected to do full implementation. To secure contracts and to run those projects on time they
44 will need commitment of the full \$1.1 million.
 - 45 ▪ Anadromous Fish Floor was added as placeholder because Board requested it, there is no cost
46 estimate at this time.
 - 47 ▪ Riparian characteristics and shade project restored to \$50k for FY24.

48
49 Clark said the projected budget fiscal year 2026/2027 to be presented for Board consideration in
50 August 2025, is estimated at \$19 million; that is a shortfall of \$3.6 million. The \$3.6 million will be

1 required to continue funding the Adaptive Management Program (AMP) and to ensure continuity of
2 projects and keep those projects that are in active implementation moving along.

3
4 Board member Jim Peters asked how the Board can support the funding request for AMP and what
5 limitations there might be.

6
7 Clark said that anyone who is willing to go to the legislature and speak to the importance of fully
8 funding the AMP would be one way of supporting the funding request. One of the things that has
9 worked against the program in years past was the MPS did not spend all the money we said we
10 needed which has not been the case since we closed out the last biennium when the research and
11 monitoring projects were fully spent.

12
13 Chair Young asked what the best vehicle might be for securing the \$3.6 million. Jawad said that there
14 is an immediate step for staff to submit a concept note within the DNR process to ask for the \$3.6
15 million through the DNR legislative affairs office. The resulting decision package will be ready by
16 August 2024 at which time the Board approval to move ahead would be needed.

17
18 Board member Megan Tuttle said to decide in August she will need to understand where the cuts will
19 come from if the money is not received. Clark said that between now and August, TFW Policy will
20 be working on it.

21
22 Clark said that it looks like we will have continued need for secure funding in the following two
23 future biennium.

24
25 Chair Young asked what the primary drivers are for the \$3.6 million shortfall. Clark responded that
26 it's a combination of increased costs for research and monitoring projects, the number of research and
27 monitoring projects, and decreases in revenue.

28
29 Chair Young said that in the past when monies are needed and meetings with legislators or federal
30 agencies on a multi-caucus or Board endorsed ask has generally been successful.

31
32
33 **PUBLIC COMMENT ON CMER MASTER PROJECT SCHEDULE AND BUDGET**

34 None.

35
36 **CMER MASTER PROJECT SCHEDULE**

37 **MOTION:** Ben Serr move the Forest Practice Board approve the revised Fiscal Year 2025 CMER
38 Master Project Schedule budget.

39
40 **SECONDED:** Meghan Tuttle

41
42 **Board Discussion**

43 None.

44
45 **ACTION:** Motion passed unanimously.

46
47 **WESTERN GRAY SQUIRREL LITIGATION**

48 Terry Pruitt, Office of the Attorney General, said that at the February meeting, DNR submitted
49 recommendations to the Board on critical habitat for the Western gray squirrel WGS. Those
50 recommendations adopted recommendations from Washington Department of Fish and Wildlife

1 (WDFW). Those recommendations included formation of a working group to address the needs of
2 critical habitat under the Board’s rule WAC 222-16-080. The purpose of the working group under
3 those recommendations would be not only to address the needs of critical habitat but to make actual
4 recommendations regarding protections for the Western gray squirrel during timber harvest. There
5 were a few other recommendations as well. DNR incorporated those recommendations from WDFW
6 and submitted them to the Board for consideration at the February Board meeting. The Board
7 accepted those recommendations and directed DNR to support the work of the working group.

8
9 Following the February Board meeting, a consortium of conservation groups led by Vancouver
10 Audubon sued DNR in Clark County superior court and they asked the court to reverse DNR’s
11 recommendations and to compel DNR to issue new recommendations claiming that those
12 recommendations were arbitrary and capricious under the Administrative Procedures Act.

13
14 In addition, they also asked that the court enjoin DNR in approving any Forest Practice Applications
15 in areas with WGS habitat. In April, we filed a motion to dismiss that petition for judicial review and
16 WFPA filed a motion intervene in the case as a party. On Friday, May 3, the court heard those
17 motions and granted the motion to intervene for WFPA, so they are now a full party in the case. The
18 court did not make a ruling on our motion to dismiss, although the court took it under advisement.
19 We expect a ruling from the court anytime within the next few weeks.

20
21 **PROPOSED 2025 LEGISLATION (AND/OR RCW LANGUAGE) FOR ALTERNATIVES TO**
22 **PILOT RULE MAKING**

23 Saboor Jawad, DNR said the Board approves pilot rule making allowing landowners to selectively
24 deviate from specific rules where consistent with the Administrative Procedures Act (RCW
25 34.05.313). It is a cumbersome process that with any slight changes would send staff back to the
26 Board.

27
28 In February 2023, the Board asked staff to explore alternatives to this process for the Adaptive
29 Management Program (AMP) staff and other entities outside AMP. Possible options which could be
30 considered:

- 31 • Propose amendments to WAC 222-16-050(5) and add scientific research as an activity under
32 Class III FPAs; and consider negotiated rulemaking.
- 33 • The authority to suspend rules does not exist in the Forest Practices Act. The Board would need
34 legislative authority to suspend its own rules without relying on APA’s pilot rule clauses.

35
36 Jawad described the process in developing potential alternatives to pilot rule making. Agency request
37 legislation would be required to consider potential amendments to RCW 76.09.040, which authorizes
38 the Board to establish minimum standards for forest practices. If proposed amendment to RCW 76.09
39 was successful, Board rule making is still required.

40
41 Jawad said that before moving forward it would require two technical reviews: a legal review and
42 legislative staff review. In addition, a Board motion would be needed to request the Chair advance
43 this option.

44
45 Jawad asked the Board where this falls within the other Board priorities.

46
47 Board member Peters asked if there is support in TFW Policy.

48
49 Jawad said that there is support, however, not in a formal way. This is not an item in the AMP project
50 or TFW Policy process. This is an administrative process the Board is authorized to take.

1
2 Board member Jim Peters said that the Endangered Species Act and appropriate level mitigation
3 measures would need to be addressed.

4
5 Board member Ben Serr, asked if the statute is amended, would FPAs for scientific research come to
6 the Board for review.

7
8 Jawad said that if the rule making were to happen, FPAs for scientific research would go to DNR for
9 review. That would be part of discussions under rule making. DNR is required by law to implement
10 the rules, the technical legal review needed before initiating rule making would address that.

11
12 Board member Barnowe-Meyer said to minimize potential impacts how would the scope of potential
13 impacts be limited.

14
15 Jawad said the AMP does not necessarily need this. The process for AMP is cumbersome and takes
16 time, but it has worked. There need to be limits on what constitutes scientific research. It would be
17 helpful for the Board to consider a statement of intent.

18
19 Board member Peters asked to clarify if funding would be from DNR program funds and not taken
20 from AMP funds.

21
22 Board member Megan Tuttle said that we previously discussed having a Board workgroup to work
23 through questions and issues. If we don't do a workgroup, what is the Board's alternative for moving
24 forward?

25
26 Jawad said that between now and November, coordinating Board workgroup meetings would be
27 difficult. With two rule makings occurring staff are at capacity. It would help to hear from the Board
28 how urgent this is.

29
30 Board member Serr, asked if it needs to be now or if it would benefit from more thought.

31
32 Board member Pene Speaks said we don't want to overload staff, there are many things that are
33 critical and need to consider some of the ramifications. She said that she would support having this
34 further down on the priority list.

35
36 Jawad said that the Board could add it to the work plan to establish a timeline.

37
38 Chair Young asked for general indication from Board members to not develop this for the 2025
39 legislative session but to put the right process on this and target the 2026 legislative session. Seeing
40 agreement, Chair Young directed Jawad to add the item to the draft work plan and slate it for the
41 2026 legislative session.

42 **NORTHERN SPOTTED OWL SAFE HARBOR AGREEMENT UPDATE**

43
44 Karen Zirkle, DNR, summarized the Safe Harbor Agreement process for the Northern Spotted Owl
45 from the legislative permission to work with the Services to the agreement application submitted in
46 December last year. DNR staff has been working with USFWS to ensure the agreement language and
47 the Environmental Assessment were complete and ready for submittal. However, late last fall DNR
48 was informed that the USFWS would be revising the regulations for the issuance of Enhancement of
49 Survival (safe harbor agreement) and Incidental Take Permits under the Endangered Species Act.
50 DNR decided to submit the agreement application before the end of the year to avoid potential

1 changes to the regulations impacting the timeline. The application was received by the USFWS
2 December 28, 2023.

3
4 Marc Engel, DNR, said due to a change in rule effective May 13, 2024, and because there is no
5 signed agreement, DNR's application will be impacted. According to the USFWS, the intent of the
6 revised regulations is to "simplify the requirements for enhancement of survival permits by
7 combining safe harbor agreements and candidate conservation agreements with assurances into one
8 agreement type (Conservation Benefit Agreement or CBA); and incorporate portions of our five-
9 point policies for safe harbor agreements, candidate conservation agreements with assurances, and
10 habitat conservation plans into the regulations to reduce uncertainty..."

11
12 DNR is working with the point of contact at USFWS region office to understand the next steps to
13 move forward. DNR's existing legislative authorization still applies and DNR does not plan to seek
14 additional authorization. These changes have delayed our timeline and there is not an estimate when
15 DNR could receive a signed agreement or when future rulemaking to allow enrollment of landowners
16 could start. As this process continues and in anticipation of a future rulemaking DNR staff will
17 continue to provide updates and add this to the Board's workplan.

18 19 **TYPE NP RULE MAKING UPDATE**

20 Marc Engel, DNR, said that the draft rule language has been changed a little to incorporate minor
21 changes for clarity and emphasize full protection of sensitive sites. Changes are as follows:

22 *WAC 222-30-0211 (2) Sensitive site protections along Type Np Waters. Forest*
23 *practices must be conducted to protect Type Np sensitive sites. The sensitive sites must*
24 *be identified and protected before establishing the Type Np RMZ as required in*
25 *subsection (3).*

26 *(3) Riparian Management Zones (RMZ) protection along Type Np Waters. Forest*
27 *practices must be conducted to protect Type Np RMZs as detailed below. Where*
28 *sensitive site protections as outlined in subsection (2) exceed the no-harvest RMZ*
29 *requirements in subsection (3), the wider no-harvest buffer requirement shall apply.*
30 *(3)(b)(ii) For each Type Np stream less than three feet bankfull width, the landowner*
31 *must identify and protect the sensitive sites as detailed in subsection (2), then*
32 *designate a two-sided no-harvest fifty-foot buffer along the remaining entire stream*
33 *reach in the harvest unit. ~~Where the outer edge of sensitive sites protections are less~~*
34 *~~than fifty feet from bankfull width or the alluvial fan, the fifty foot buffer shall apply.~~*
35

36 The Type Np buffer rule spatial analysis report will provide methodology and preliminary results and
37 be shared with stakeholders for comments. Staff is working with a contractor currently to complete
38 the analysis. Spatial analysis will be completed with DNR's approval of the revised report and then
39 be forwarded to Industrial Economics Inc. to prepare the preliminary CBA and Small Business
40 Economic Impact Statement (SBEIS).

41
42 Engel said staff is soliciting for a contractor to identify and analyze potential environmental impacts
43 of the proposed rule change. Staff will review the potential environmental impact analysis and will
44 complete the SEPA checklist by February 2025.

45
46 Engel shared that if the Board needs additional meetings or field tours, staff will accommodate to
47 ensure the Board has the time and information to make the best decision. The Board has approved a
48 recommendation and staff will provide the how this might impact the resource with the approved
49 changes to the rule.

1 Chair Young clarified that if the CR 102 for the Water Typing System rulemaking gets delayed, the
2 Np Buffer rule process will also be pushed back.

3
4 Board member Meghan Tuttle asked how this is moving forward considering the questions about
5 orphan streams. Engel responded that orphan streams were addressed by the Type Np
6 recommendations based on two studies. The Board chose the majority report for moving forward and
7 to treat orphan N streams in the same way as Np and Ns streams that are connected.

8 9 **GENERAL PUBLIC COMMENT**

10 Ken Miller, Washington Forest Protection Association, asked that DNR to provide a burn site
11 template for salvage in Board Manual Section 21. Miller said that Eastside riparian management
12 zones (RMZ) are managed for resilience and safety, not timber. He asked that DNR be as diligent
13 about Firewise alternate plans as they are for harvest alternate plans. He states that SFLO would like
14 Firewise planning even if it is not profitable.

15
16 Patty Playfair said she agrees with Ken Miller in the use of alternate plans for burned RMZs. The
17 management of RMZs on the Eastside is not appropriate for the ecosystems and suggested the
18 traditional indigenous process to manage with fire to improve forest health. She specifically asked the
19 Board to not impose a 50-foot tree buffer because it impacts instream water and causes high fire risk.

20
21 Robert Mitchell provided comments on the negative impact of using electrofishing in the physicals
22 part of water typing strategy. He applauds the use of structured decision making (SDM) at TFW
23 Policy to align physicals with forest practice goals. He would like to pay industry to use the most
24 conservative prescriptions like the FREP process.

25
26 Rico Vinh, Conservation Caucus, said he has observed with concern and would like to bring to the
27 Board's attention the duplicative Request for Qualifications and Quotations (RFQQ) issued by the
28 Washington Forest Protection Association (WFPA) on November 17, 2023. The content and the
29 context of the RFQQ have compromised the collaborative spirit of the Timber, Fish, and Wildlife
30 Adaptive Management Program (TFW AMP). The Board's recent decision to elevate the
31 prioritization of Extensive Monitoring reaffirmed a commitment to study and address Extensive
32 Monitoring collectively through the multi-stakeholder Adaptive Management Program process.
33 WFPA's request utilizes the identical language developed in AMP's collaborative project, co-opting
34 work products developed by CMER. This raises questions regarding the good faith use of state
35 funding and human resources devoted to the AMP process, but also threatens programmatic trust and
36 cooperation between CMER and TFW Policy members actively engaged in that process. The
37 Conservation Caucus requests that the Forest Practices Board consider the adoption of guidance and
38 policies governing the use of collaborative AMP products and outputs before they are completed and
39 finalized by the Board.

40 41 **2024 WORK PLAN**

42 Marc Engel, DNR, presented recommended changes to the workplan based on Board discussion
43 include:

- 44 • Update Board Manual Development
 - 45 ▪ Section 7 – Guidelines for Riparian Buffers – slated for February 2025
 - 46 ▪ Section 23 Field Protocol to Locate Mapped Divisions Between Stream Types; Part 1 slated
47 for November 2024, Part 2 slated for February 2025.
- 48 • Target 2026 legislature for Alternatives to Pilot Rulemaking for Research Projects
- 49 • Include Type Np field tour prior to Board decision.
- 50 • Schedule August 13 for a field tour and August 28 for making the decision.

1
2 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board approve the 2024 work plan
3 as amended.

4
5 **SECONDED:** Wayne Thompson

6
7 **ACTION:** Motion passed unanimously.

8
9 **STAFF REPORTS**

10 Darin Masters, WDFW, provided an overview of the Quarterly Wildlife Update for terrestrial
11 species. Species included:

- 12 • Marbled Murrelet
- 13 • Canada Lynx
- 14 • Northern Spotted Owl
- 15 • Pacific Fisher
- 16 • Western gray squirrel

17
18 There were no questions on the following reports.

- 19 • Adaptive Management Program Update
- 20 • Small Forest Landowner Office Update
- 21 • TFW Policy Committee Update

22
23 **EXECUTIVE SESSION**

24 None.

25
26 Meeting adjourned at 12:30 p.m.