



DEPARTMENT OF
NATURAL
RESOURCES

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COMMISSIONER OF
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MEMORANDUM

October 30, 2024

TO: Forest Practices Board
FROM: *KZ* Karen Zirkle, Forest Regulation Assistant Division Manager, Policy and Landowner Services

karen.zirkle@dnr.wa.gov | 564-200-4702

SUBJECT: Stakeholder Engagement & Timeline for Rulemaking

This memo outlines the stakeholder engagement process DNR staff has undertaken in the last 2 years to continue to meet the timeline presented to the Board for both the Water Typing System and Western Washington Type Np Buffer rulemakings. This memo also provides an update on rule making efforts that are underway and presents an updated timeline. Part of that update includes a staff recommended extension (three months) to the Type Np rulemaking timeline to better accommodate stakeholder feedback and ensure staff have adequate capacity to conduct public engagement for the Water Typing System Rule (WTR).

Stakeholder Engagement Process

DNR staff has a tradition of involving stakeholders in the development and modifications of rules and board manual. Staff reach out to the Timber Fish and Wildlife (TFW) Policy Committee Members to identify stakeholders for each project we work on. Over the last 20 months we've held the following stakeholder engagements on the WTR and the Western Washington Type Np Waters Buffer (Type Np) rulemakings:

- Spatial analysis product reviews – 3 product reviews and 2 presentations, with opportunities for questions and answers (Q&A).
- WTR rule development – 6 (12 hours) rule development meetings.
- Economic Work Group (EWG) – 8 (12 hours) product review meetings and 4 opportunities to provide comments (2 methods memo's, a preliminary costs and benefits and the WTR draft preliminary Cost-Benefit Analysis (CBA)). A presentation by Industrial Economics, Inc (IEc) along with Q&A was provided at each product delivery.
- Type Np rule development – 3 (4.5 hours) rule development meetings.
- Board Manual 23 – 4 (10.5 hours) meetings, since the August 28th Board meeting.

A total of 23 meetings have now been held. This amounts to 42.5 hours of stakeholder engagement, followed by comments, which are often synthesized by staff to pass on recommended changes to vendors (vendors receive the raw comments as well) and reflected in the next product. In addition, for both rulemakings staff chose to reconvene the EWG, a consultative group of stakeholder economists, to review and discuss the economic theories and methods for the CBA and the Small Business Economic Impact Statement (SBEIS). Staff's intent of reconvening this group was to ensure the CBA and SBEIS conducted by IEC were reviewed, and comments were considered by all economists. Staff has worked with IEC to develop a comment response matrix, which has been shared with stakeholders, so each stakeholder is aware their comment was received and how it has been responded to.

In each of these stakeholder forums, staff's goal is to incorporate all comments and feedback that improve the products and align them with Board decisions. While the objective is not necessarily consensus, consensus carries value in final rule and board manual guidance. This stakeholder engagement process is upfront, inviting all impacted stakeholders to be involved in creating the language, discussing the impacts and the changes of the proposed rules. All of this stakeholder engagement is before any required public process under the Administrative Procedures Act (APA). APA public process starts with the filing of the CR102, which includes a designated public comment period on rule language, the CBA and the SBEIS (if one is required) and details the hearing dates and locations. In addition, an analysis of the Board action (adopting the rule) under the State Environmental Policy Act (SEPA) is conducted with a standalone public comment period.

Timelines

Permanent Water Typing Rulemaking

We are on schedule to adopt the Permanent Water Typing Rule in May of 2025, if the Board chooses to approve the draft rule language and move into the formal rulemaking process at your November 13 regular meeting. If not, staff will need to revisit the timelines.

If approved to move forward, the next steps are to file the CR102 (Nov 20, 2024) and hold 5 in-person public hearings across the state, starting 20 days after the date of publication in the Washington State Register. We plan to hold these hearings in January 2025, with the last concluding around the February 2025 Board meeting. The hearing officer is the Board Chair or designee, and board members are encouraged to attend as many public hearings as possible.

Comments will be accepted from the public through February 2025. DNR staff will respond to comments and develop a Concise Explanatory Statement during the public comment period, which will accompany the public comments received, proposed rules, and the final CBA/SBEIS for your consideration to adopt the rule at your May 2025 meeting.

WTR SEPA

The SEPA Responsible Official and Board Chair, Lenny Young, will make and announce his SEPA determination at the November 2024 Board meeting. If the Board approves the filing of CR102, the rule language, SEPA Checklist, and associated determination decision will then be filed in the SEPA Register and sent to interested parties for a 14-day comment period. The SEPA checklist and the associated non-project review form are both included in the Board mailing packet.

Board Manual Section 23 Part 1

With your decision on August 28th, 2024, to put implementation of the anadromous fish floor and potential habitat breaks in board manual guidance, board staff has reconvened the stakeholder workgroup to describe how to implement this on the ground, through guidance. This workgroup intends to meet twice a month for 3 hours each, including one in person, with a goal of a final product for the Board at the May 2025 meeting.

Type Np Stream Buffer Rulemaking

Staff are prepared to be on schedule to adopt the Western Washington Type Np Rule in August of 2025. However, staff recommends extending the timeline to move the adoption of the rule to November 2025. Staff's plan is to delay approval of the draft rule language and moving into the formal rulemaking process (filing of CR102) until your May 2025 regular meeting. This amounts to a three-month extension of the Type Np rulemaking timeline.

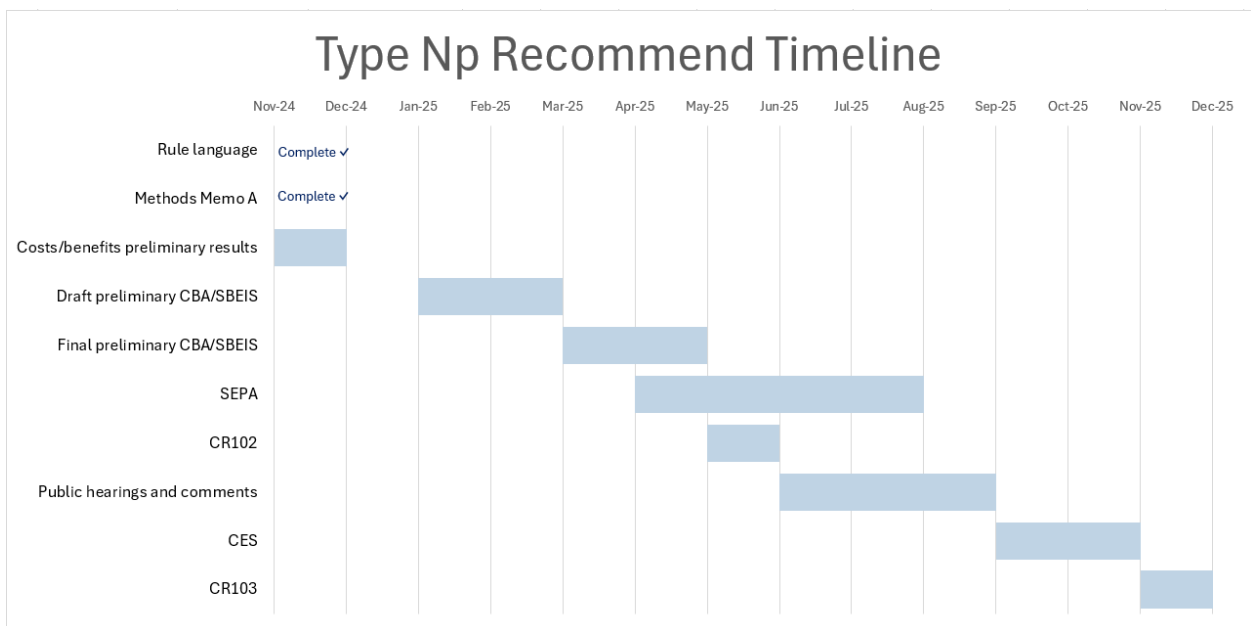
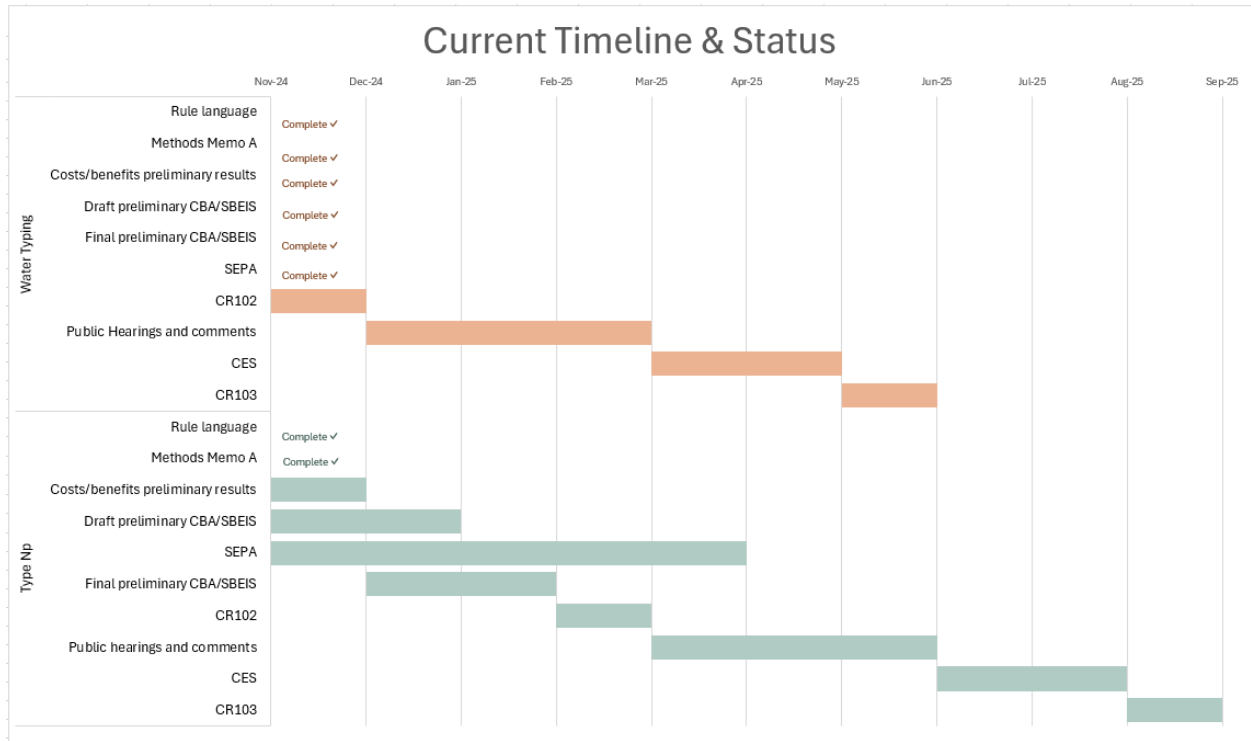
An extended timeline would offer additional time for review and comment, public processes and engaging Board Members and stakeholders. In addition, it would provide more time between public processes of the two rulemaking efforts.

The next steps and the associated timelines are:

- IEC is preparing the Type Np preliminary findings of costs and benefits (current timeline - Nov 1st, no change in the recommended timeline)
 - Stakeholder and EWG engagement: opportunity for comments, IEC attending an EWG workgroup and responses back to IEC for incorporation into draft preliminary CBA/SBEIS.
- IEC will prepare the draft preliminary CBA/SBEIS incorporating feedback received (current timeline - Dec 13th, recommended timeline mid- January)
 - Stakeholder and EWG engagement: opportunity for comments, IEC attending an EWG workgroup and responses back to IEC for incorporation into final preliminary CBA/SBEIS.
- IEC will prepare final preliminary CBA/SBEIS (current timeline - Jan 23rd, for February Board meeting mailing, recommended timeline April 2024 for the Board's May 2025 regular meeting).
- DNR staff will assess the environmental impacts in accordance with SEPA, resulting in a SEPA checklist and Determination by the Responsible Official.
- Under the current timeline, DNR staff would have scheduled the CR102 filing in the Washington State Register in late February 2025. Public hearings would've been held throughout March and April, comments would've been accepted from the public through May. DNR staff would respond to comments and develop a Concise Explanatory Statement during the public comment period, which would've accompanied the public comments received, proposed rules, and CBA/SBEIS for your consideration to adopt the rules at your August 2025 meeting.
- Under the extended and recommended timeline, DNR staff will schedule the CR102 filing in the Washington State Register in late May. Public hearings will be held throughout June and July, comments will be accepted from the public throughout August. DNR staff will respond to comments and develop a Concise Explanatory Statement during the public comment period which will accompany the public

comments received, proposed rules, and the CBA/SBEIS for your consideration to adopt the rules at your November 2025 meeting.

The graphic below shows current rulemaking timeline and its status. A separate graphic presents the recommended timeline for Type Np only. The extended and recommended timeline clearly separates the public process of the two rules and allows for additional capacity to engage with stakeholders. The revision will be represented in the workplan for Board consideration of approval.



I look forward to discussing these items with you at your November meeting. Please reach out to me if you have any questions. You are also welcome to reach out to the following DNR staff:

- Saboor Jawad, Forest Regulation Division Manager (Saboor.jawad@dnr.wa.gov)
- Maggie Franquemont, Policy Program Manager (Maggie.franquemont@dnr.wa.gov)

c: Katie R. Allen, Deputy Supervisor Aquatic Resources, Forest Regulation and Resilience, *a.i*
Saboor Jawad, Forest Regulation Division Manager
Terry Pruitt, Assistant Attorney General, Forest Practices Board Attorney
Maggie Franquemont, Policy Program Manager, Forest Regulation division

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. Background

1. Name of proposed project, if applicable:

Permanent Water Typing System Rule

2. Name of applicant:

Forest Practice Board

c/o Patricia Anderson, Rules Coordinator

3. Address and phone number of applicant and contact person:

**Department of Natural Resources
1111 Washington Street SE, Olympia WA 98504-7012
360-902-1390**

4. Date checklist prepared:

October 14, 2024

5. Agency requesting checklist:

Forest Practices Board

6. Proposed timing or schedule (including phasing, if applicable):

See attached NonProject Review Form

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

See attached NonProject Review Form

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

See attached NonProject Review Form

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No.

10. List any government approvals or permits that will be needed for your proposal, if known.

None.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

See attached NonProject Review Form

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

See attached NonProject Review Form

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site: **N/A**

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)? **N/A**

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils. **N/A**

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. **N/A**

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill. **N/A**

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. **N/A**

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? **N/A**

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: **N/A**

2. Air

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known. **N/A**

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. **N/A**

c. Proposed measures to reduce or control emissions or other impacts to air, if any: **N/A**

3. Water

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into. **N/A**

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. **N/A**
- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. **N/A**
- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. **N/A**
- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan. **N/A**
- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge. **N/A**

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known. **N/A**
- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. **N/A**

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. **N/A**
- 2) Could waste materials enter ground or surface waters? If so, generally describe. **N/A**
- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe. **N/A**

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any: **N/A**

4. **Plants**

a. Check the types of vegetation found on the site: **any and all**

- ___deciduous tree: alder, maple, aspen, other
- ___evergreen tree: fir, cedar, pine, other
- ___shrubs
- ___grass

- ___ pasture
- ___ crop or grain
- ___ Orchards, vineyards or other permanent crops.
- ___ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- ___ water plants: water lily, eelgrass, milfoil, other
- ___ other types of vegetation

- b. What kind and amount of vegetation will be removed or altered? **N/A**
- c. List threatened and endangered species known to be on or near the site. **N/A**
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: **N/A**
- e. List all noxious weeds and invasive species known to be on or near the site. **N/A**

5. Animals

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. **Any could be present.**

Examples include:

- birds: hawk, heron, eagle, songbirds, other:
- mammals: deer, bear, elk, beaver, other:
- fish: bass, salmon, trout, herring, shellfish, other _____

- b. List any threatened and endangered species known to be on or near the site. **Any could be present.**
- c. Is the site part of a migration route? If so, explain. **N/A**
- d. Proposed measures to preserve or enhance wildlife, if any: **N/A**
- e. List any invasive animal species known to be on or near the site. **N/A**

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. **N/A**
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. **N/A**
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any: **N/A**

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe. **N/A**

1) Describe any known or possible contamination at the site from present or past uses. **N/A**

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity. **N/A**

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project. **N/A**

4) Describe special emergency services that might be required. **N/A**

5) Proposed measures to reduce or control environmental health hazards, if any: **N/A**

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)? **N/A**

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. **N/A**

3) Proposed measures to reduce or control noise impacts, if any: **N/A**

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe. **N/A**

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use? **N/A**

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how: **N/A**

c. Describe any structures on the site. **N/A**

d. Will any structures be demolished? If so, what? **N/A**

- e. What is the current zoning classification of the site? **N/A**
- f. What is the current comprehensive plan designation of the site? **N/A**
- g. If applicable, what is the current shoreline master program designation of the site? **N/A**
- h. Has any part of the site been classified as a critical area by the city or county? If so, specify. **N/A**
- i. Approximately how many people would reside or work in the completed project? **N/A**
- j. Approximately how many people would the completed project displace? **N/A**
- k. Proposed measures to avoid or reduce displacement impacts, if any: **N/A**
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: **N/A**
- m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any: **N/A**

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing. **N/A**
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. **N/A**
- c. Proposed measures to reduce or control housing impacts, if any: **N/A**

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed? **N/A**
- b. What views in the immediate vicinity would be altered or obstructed? **N/A**
- b. Proposed measures to reduce or control aesthetic impacts, if any: **N/A**

11. Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur? **N/A**
- b. Could light or glare from the finished project be a safety hazard or interfere with views? **N/A**
- c. What existing off-site sources of light or glare may affect your proposal? **N/A**

- d. Proposed measures to reduce or control light and glare impacts, if any: **N/A**

12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity? **N/A**
- b. Would the proposed project displace any existing recreational uses? If so, describe. **N/A**
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: **N/A**

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe. **N/A**
- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources. **N/A**
- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc. **N/A**
- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance **N/A** to resources. Please include plans for the above and any permits that may be required.

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any. **N/A**
- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?
N/A
- c. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private). **N/A**
- d. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe. **N/A**
- e. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates? **N/A**

- f. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe. **N/A**
- g. Proposed measures to reduce or control transportation impacts, if any: **N/A**

15. Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe. **N/A**
- b. Proposed measures to reduce or control direct impacts on public services, if any. **N/A**

16. Utilities

- a. Circle utilities currently available at the site:
electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,
other **N/A**
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed. **N/A**

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: *Karen Zirkle*

Name of signee: **Karen Zirkle**

Position and Agency/Organization: **Forest Regulation Assistant Division Manager/DNR**

Date Submitted: **10/15/2024**

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Outside of the forest practices rules, the proposals do not change any laws or rules addressing any of the issues in this question.

Proposed measures to avoid or reduce such increases are: **N/A**

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

N/A

Proposed measures to protect or conserve plants, animals, fish, or marine life are: **N/A**

3. How would the proposal be likely to deplete energy or natural resources? **N/A**

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands? **N/A**

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans? **N/A**

Proposed measures to avoid or reduce shoreline and land use impacts are: **N/A**

6. How would the proposal be likely to increase demands on transportation or public services and utilities? **N/A**

Proposed measures to reduce or respond to such demand(s) are: **N/A**

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment. **N/A**

SEPA Nonproject Review Form

PART I - FRAMEWORK

1) Background

a) Name of proposal, if any, and brief description.

Permanent Water Typing System Rule (WTS rule). Adopt rules replacing the interim water typing rule with permanent Water Typing System rule. The proposed permanent water typing system rule is the classification system for surface waters including rivers, streams, lakes, ponds, impoundments, and tidal waters. This proposal establishes four classes of water types: Type S which are shorelines of the state; Type F includes fish habitat waters; Type Np includes non-fish, perennial waters and Type Ns includes non-fish, seasonal waters. The classification system in the new rule is based on beneficial use and fish habitat. Classification under this rule underpins riparian-related protection measures in all other forest practices rules for the establishment of riparian management zones, wetland management zones, channel migration zones, equipment limitation zones and other measures that limit soil, stream channel and stream bank disturbances.

b) Agency and contact name, address, telephone, fax, email

Forest Practice Board

c/o Patricia Anderson, Rules Coordinator

Department of Natural Resources

1111 Washington Street SE, Olympia WA 98504-7012

360-902-1390

c) Designated responsible official

Forest Practices Board Chair (Lenny Young, Deputy Chief of Operations)

d) Describe the planning process schedule/timeline

DNR is concurrently conducting a Cost Business Analysis (CBA) and a determination of the need for a Small Business Economic Impact analysis (SBEIS) on the proposed rule language. The Forest Practices Board (Board) will consider adoption of the draft rule for public review and comment (CR102) at their November 2024 board meeting. After public input the Board may adopt the rule (CR103) in May 2025, the effective date could be as soon as 30 days after the Board action.

e) Location - Describe the jurisdiction or area where the proposal is applicable. (Attach a map(s) if appropriate)

The affected lands are all riparian areas adjacent to all rule identified waters on non-tribal, non-federal forest lands in Washington State subject to the Washington Forest Practices Act and rules, chapter [76.09 RCW](#) and Title [222 WAC](#) respectively.

f) What is the legal authority for the proposal?

The Washington Forest Practices Act, chapter 76.09 RCW, creates the Board (76.09.030) and directs the Board authority to promulgate Forest Practices Rules (76.09.040).

g) Identify any other future non-project actions believed necessary to achieve the objectives of this action.

It's the Board's intent to provide a map-based system as called for in the original Forests and Fish Report (FFR) to type water in the future. The Board committed to implement the FFR recommendation to create a map based WTS. Part of this effort will await the completion of Cooperative Monitoring, Evaluation, and Research Committee (CMER) water typing studies and when statewide high resolution Lidar coverage becomes available.

2) Need and Objectives

a) Describe the need for the action. (Whenever possible this should identify the broad or fundamental problem or opportunity that is to be addressed, rather than a legislative or other directive.)

In 2001, the Board adopted the permanent Forest Practices Rules including a new, but not yet effective water typing system rule. This new rule, WAC 222-16-030, would become effective upon completion of "a multiparameter field verified geographic information system (GIS) logistic regression model" that would produce maps showing water type break locations that included the delineation of fish waters based on the physical characteristics of known end of fish habitat based on fish presence and fish use. Until the model produces specific accuracy targets the interim water typing rule would remain in effect through WAC 222-16-031. Both WACs have remained in rule because the Board determined that the initial logistic regression model and GIS mapping project were not accurate enough to satisfy rule requirements.

Beginning in November 2016, the Board initiated a series of actions to approve the elements of the permanent water typing system rule. These actions started with Board approval of consensus recommendations from the Timber, Fish and Wildlife Policy Committee (TFW) to include all DNR concurred water type modification changes, and the framework for the Fish Habitat Assessment Methodology (FHAM) into the WTS rule. For those non-concurred Type F/N water break points FHAM would become the protocol survey for determining fish use/habitat; and a protocol survey conducted per FHAM will establish the Type F/N break based on potential habitat breaks.

In subsequent decisions, the Board defined Anadromous Fish Floor and Potential Habitat Breaks as the following:

Anadromous Fish Floor (AFF) is the measurable physical stream characteristics downstream from which anadromous fish habitat is presumed and has agreed that the AFF would establish the location upstream of which fish protocol surveys may begin under fish habitat assessment methodology.

Potential Habitat Break is a permanent, distinct, and measurable change to in-stream physical characteristics. PHBs are typically associated with underlying geomorphic conditions and may consist of natural obstacles that physically limit fish access to upstream reaches or a distinct measurable change in channel gradient, bankfull width or a combination of the two. Natural, non-deformable obstacle PHB includes vertical drops, steep cascades, bedrock sheets and bedrock chutes.

The Board directed staff to remove specific AFF criteria and directly associated language from the draft proposed water typing rule and proceed with developing a CR-102 rule making package based on the remaining rule elements as recommended by the TFW Policy and the Board Water Typing System Rule Committees (below b.). And further directed staff to describe the AFF implementation procedures in Board Manual 23.

The Board also directed staff to maintain the definition of PHB in rule and to remove specific PHB criteria and directly associated language from the draft proposed water typing rule and proceed with developing a CR-102 rule making package based on the rule elements previously approved by the Board. And further directed staff to describe all potential habitat break metrics in Board Manual 23.

b) Describe the objective(s) of the proposal, including any secondary objectives which may be used to shape or choose among alternatives.

The Board's primary objectives for this rulemaking is to reduce the use of electrofishing and to reduce the potential for subjectivity when classifying stream water types. To accomplish this the Board established further objectives as described below.

The Board directed the TFW Policy Committee to:

1. Better address the Forest and Fish Report's foundational goal to protect accessible fish habitat through the development of a field applied methodology to reliably identify accessible fish habitat in an objective and repeatable manner.
2. Place all essential elements of the field protocol methodology in rule by adding long-standing Board guidance, found in the Board manual. Include in rule the current Board approved guidance to reduce electrofishing and develop new guidance to minimize electrofishing – new guidance will include electrofishing best management practices.
3. Have a sound water typing system which ensures riparian buffers are properly placed on all waters, protecting aquatic resources and their respective habitats.

The Board directed the Board Water Typing System Rule Committee to:

Define and establish an AFF to establish that portion of the Type F stream network where all waters are considered anadromous fish habitat, Type F, waters and to determine the metrics by which to identify the uppermost extent of an anadromous floor.

- c) Identify any assumptions or constraints, including legal mandates, which limit the approach or strategy to be taken in pursuing the objective(s).

The Forest Practices Act only allows forest practices rules to be changed by a court decision, a legislative change, or the Forest Practices Adaptive Management Program process, (RCW 76.09.370).

The Board initiated this rulemaking to complete the legislative amendment adding the provisions of a permanent water typing system rule of the FFR into the Forest Practices Act (Chapter 76.09 RCW). To develop the elements of a permanent WTS rule, the Board incorporated Adaptive Management Program recommendations developed by the TFW Policy Committee and the Board Water Typing System Rule Committee. A key FFR provision of the WTS rule is a water typing system model approach, incorporated into current non-effective rule WAC 222-16-030, will be applied to the new WTS rule if/when the accuracy standards for the model can be achieved through completed Adaptive Management Program studies now in effect.

The data needed to perform an analysis of the PHB options was limited because the reporting requirements of a water typing modification form (WTMF) did not specifically request the data needed to perform a remote spatial analysis. The data analysis was based on a random sample of water type modification forms from each forested ecoregions across western and eastern Washington. Although there are a large sample of WTMF, only a relatively small subset were determined by the Boards expert science panel for western Washington and the Board Water Typing System Rule Committee for eastern Washington as having adequate measurements of gradient, width, and obstacles needed to examine the suitability of the potential habitat break proposals.

- d) If there is no legislative or other mandate that requires a particular approach, describe what approaches could reasonably achieve the objective(s).

The Legislature adopted the FFR which mandated Board to incorporate the protections outlined in the report. The protections for all waters on forest lands were in place prior to the initiation of the WTS rule. This rule defines how the waters will be typed. Many of the elements of the proposed WTS rule are being implemented on the ground, the Board is now formalizing the process in rule and board manual guidance.

3) Environmental Overview

Describe in broad terms how achieving the objective(s) would direct or encourage physical changes to the environment. Include the type and degree of likely changes such as the likely changes in development and/or infrastructure, or changes to how an area will be managed.

The proposed permanent rule increases and clarifies stream typing methodology accuracy, which moves forest practices stream typing to an anticipated improved accuracy level. Additionally, the methodology changes are expected to reduce the level

of electrofishing through the application of FHAM, which ultimately would reduce electrofishing damage to the salmonid fish population.

4) Regulatory Framework

- a) Describe the existing regulatory/planning framework as it may influence or direct the proposal.

These proposed rule changes are taking place under the guidance of the Forest Practices Board, an independent state agency and a rule promulgating body. The Board promulgates Washington Administrative Code (WAC) rules that apply to forest practices activities on non-tribal, non-federal forestland.

- b) Identify any potential impacts from the proposal that have been previously designated as acceptable under the Growth Management Act (GMA), chapter 36.70A RCW.

There is nothing in this proposal that requires changes to the GMA. However, several counties utilize the Board's water typing systems rules to identify the fish and non-fish waters within their jurisdictions. It is assumed that some of the same local governments would update their rules upon the Board adoption of permanent water typing system rules.

5) Related Documentation

- a) Briefly describe any existing regulation, policy or plan that is expected to be replaced or amended as a result of the proposal. (Adequate descriptions in section 4.a may be referenced here, rather than repeated.)

The proposal affects the following forest practices rules:

- WAC 222-16-030 *Permanent water typing system* would be amended.
- WAC 222-16-0301 *Fish habitat assessment methodology* would be created.
- WAC 222-16-031 *Interim water typing system* would be deleted.

- b) List any environmental documents (SEPA or NEPA) that have been prepared for items listed in 4.a. or that provide analysis relevant to this proposal. **Note:** Impacts with previous adequate analysis need not be re-analyzed, but should be adopted or incorporated by reference into the NPRF.

EIS for Forest Practices Rules-Water Typing Interim Rule

[EIS for Forest Practices Habitat Conservation Plan](#)

- i. The most recent environmental information on the forest practices water typing rules is found in the January 2006 environmental impact statement (EIS) for the Forest Practices Habitat Conservation Plan (FPHCP). This EIS was conducted under the National Environmental Policy Act and can be seen at:

http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesHCP/Pages/fp_hcp_feis.aspx

- ii. Lead agency: State of Washington (issue date)
- iii. Relevant chapters and sections: 3.8 Fish and Fish Habitat, 4.8 Fish and Fish Habitat

- c) List other relevant environmental documents/studies/models which have been identified as necessary to support decision making for this proposal.

Spatial Analysis Of The Water Typing System Rule Synthetic Stream Development, Comparison Of Alternative And Buffer Analysis.

6) Public Involvement (Optional)

- a) Identify agencies with jurisdiction or expertise, affected tribes, and other known stakeholder groups whose input is likely to be specifically solicited in the development of this proposal.

Stakeholder groups, identified through Board caucuses, were actively involved in developing the draft permanent water typing rule. These groups include:

- Tribes: Northwest Indian Fisheries Commission and Upper Columbia United Tribes,
- Landowners: Washington Forest Protection Association and Washington Farm Forestry Association,
- Local governmental entities: Association of counties
- Environmental organizations: Conservation Caucus
- State agencies: WA Department of Ecology and WA Department of Fish and Wildlife

- b) Briefly describe the processes used or expected to be used for soliciting input from those listed. [Examples: ad hoc committees, tribal consultations, interagency meetings, public workshops or hearings, newsletters, etc.]

Stakeholder meetings and workshops, committees and technical subgroups, and contracted experts have been utilized to develop draft rule language, draft Board Manual language, and scientific reports. Also, stakeholders have provided input on how to analyze the economic impacts and the environmental impacts of the proposal.

PART II – IMPACT ANALYSIS AND ALTERNATIVES

7) Affected Environment

Generally describe the existing environmental landscapes or elements (e.g., character and quality of ecosystem, existing trends, infrastructure, service levels, etc.) likely to be affected if the proposal is implemented. Include a description of the existing built and natural environment where future “on the ground” activities would occur that would be influenced by the nonproject proposal.

Note: When complete, this section needs to provide information on existing conditions for the elements of the environment discussed in sections 8 and 9. A list of the built and natural elements of the environment is in WAC 197-11-444, and is included at the end of this form.

The affected lands are riparian areas on non-tribal, non-federal forest lands in Washington State subject to the Washington Forest Practices Act and rules, chapter 76.09 RCW and Title 222 WAC respectively. The water typing system rule is a classification system underpinning the riparian strategy of the forest practices rules and the Forest Practices Habitat Conservation Plan (FPHCP). This system classifies aquatic habitats in affected forested lands and includes rivers, streams, lakes, ponds, impoundments, and tidal waters. This system is the foundation for many riparian-related protection measures in all other forest practices rules which, among others, include riparian management zones, channel migration zones, and operational limits to reduce soil, channel and stream bank disturbance.

8) Key Issue Assessment

List the identified key issues or areas of controversy or concern and include a brief statement of why each is a key issue.

- A map based system to type water is not provided by this permanent water typing rule.

For each item listed:

- a) Identify alternative options or solutions for the objective or concern.
 - a. Wait to adopt a permanent water typing rule until
 - i. CMER water typing studies are completed and;
 - ii. statewide high resolution Lidar coverage exists
- b) Describe the environmental considerations/impacts relevant to each of the alternatives identified in 8.a.
 - a. The proposed rule environmental considerations or impacts will not change as a result of CMER studies or a map based system.
- c) Describe reasonable mitigation measures for the adverse impacts identified.
N/A
- d) Identify those alternatives to be carried forward for further analysis.
N/A
- e) Briefly describe why those alternatives rejected from further consideration were not carried forward.
N/A

9) Proposed Nonproject Action or Alternative Actions

Describe a range of reasonable alternatives or the preferred alternative that will meet the objective(s). For each alternative, answer the following questions, referring again to the list of the elements of the environment in WAC 197-11-444:

Preferred Alternative

- Amend WAC 222-16-030 *Permanent water typing system*
- Create WAC 222-16-0301 *Fish habitat assessment methodology*
- Delete WAC 222-16-031 *Interim water typing system*
- Amend WAC 222-16-090 *Forest Practices Board Manual to delete Section 13 and add Section 23*

The following components and processes of WAC 222-16-031 *Interim water typing system* and WAC 222-16-030 *Permanent water typing system* rules will not be modified and will be retained in the permanent rule:

- All previously concurred water type break points between fish and non-fish waters will remain as regulatory points.
- The process for submitting, reviewing, and considering water type modifications, including the role of Interdisciplinary Teams in the water typing process, will remain unchanged.
- The existing default physical stream criteria for determining the presumption of fish use on a stream within the boundaries of a proposed forest practices application will not change.
- Fish habitat definition in WAC 222-16-010 *General definitions* is retained for the water typing system rule.
- Off-channel habitat will remain as a category of Type F waters.
- The current definition of Type N water is not changing.

Clerical amendments to WAC 222-16-031 *Interim water typing system* for clarification and do not change the implementation on the ground or the riparian protections:

- Off-channel habitat. (May 2017 FPB) The proposed rule clarifies that off-channel habitat begins at the edge of the bankfull width or the ordinary high water line, dependent of physical indicators on site. (WAC 222-16-031(2)(e))
- Default physical criteria. The criteria under the interim rule is incorporated into the permanent rule as a definition of Type F waters. (WAC 222-16-031(3))
- Water crossing structures. The existing structures in WAC 222-24-040 in Type N Waters will not automatically require replacement if a new survey using the fish habitat assessment methodology locates Type F water upstream of the existing structure. Replacement of the structures installed prior to 12/31/2019 and functioning with little risk to public resources can remain in place until the end of the culvert's functional life.

Deletions to WAC 222-16-031 *Interim water typing system* do not change the implementation on the ground or the riparian protections:

- Water typing model. The multiparameter GIS model for identifying fish habitat in WAC 222-16-030 has not reached the level of statistical accuracy envisioned in the Forests and Fish Report, therefore establishing the water classifications based a map created by the model in the forest practices WTS rule is not applicable at this time.

- Ponds. One of the two definitions for classifying ponds as Type F water is deleted. The remaining definition includes smaller sized ponds.

Define new terms and Methodologies applicable to WAC 222-16-030 Permanent water typing system and WAC 222-16-0301 Fish Habitat Assessment Methodology for Type F waters and the establishment of Type F/N breaks.

- Anadromous Fish Floor (AFF) is the measurable physical stream characteristics downstream from which anadromous fish habitat is presumed and from which the AFF would establish the location upstream of which fish protocol surveys may begin under fish habitat assessment methodology.
- Fish Habitat Assessment Methodology (FHAM). The FHAM is an in-stream field survey procedure for determining the upper most extent of fish habitat which corresponds to the regulatory water type break between Type F and Type N waters.
- Potential Habitat Breaks (PHB) are defined in the rule. The Board has approved the inclusion of 'potential habitat breaks' in the FHAM protocol field surveys. The Board approved inclusion of three PHB options metrics for: gradient change, permanent natural barriers (e.g., waterfalls), stream width, basin size, channel size and others to be included in the board manual guidance.

Establish a new section, WAC 222-16-0301 Verification of fish habitat and the break between Type F and Type N Water.

To assist applicants in determining the water type classification, the department prepares water type maps showing the location of Type S, F, and N (Np and Ns) Waters within the forested areas of the state. The mapping tool and instructions for viewing water type maps is available on the department's website.

For the purposes of forest practices, landowners are required to verify the water type break between Type F and N Waters where fish use has not previously been determined. Department concurred breaks between Type F and N Waters are shown on the water type map. These breaks are official and can be used by the landowner. All other mapped stream breaks, and the establishment of the Type F and N Water break on streams not shown on the map, need to have the Type F and N Water break established through the application of the default physical characteristics, per WAC 222-16-030(2)(d)(i); or, through the application of the fish habitat assessment method (FHAM) described in (1) of this section.

The application of FHAM is intended to establish the line of demarcation between fish and non-fish habitat waters. No application of default physical characteristics or FHAM to determine the Type F and N Water break is allowed within the anadromous fish floor (AFF), unless a landowner requests an interdisciplinary team, as defined in WAC 222-16-010.

The upper extent of the AFF is delineated by measurable physical stream characteristics. Within the floor, anadromous fish habitat is presumed, and upstream of

the floor the default physical characteristics or a protocol fish survey under FHAM may be applied to establish the Type F and N Water type break. The Board will approve guidance on how to identify if a proposed forest practices activity is within the anadromous fish floor through Board Manual Section 23.

*(1) Fish Habitat Assessment Methodology (FHAM). The FHAM is a series of steps used to delineate the upper extent of fish habitat coincident with the regulatory water type break between Type F and Type N Waters. Proposals to change the department water type map must include documentation of the use of the FHAM on a form designated by the department. FHAM shall be applied in waters situated upstream from the anadromous fish floor or known fish use. Board manual section 23 provides additional technical guidance for conducting the FHAM.

The FHAM requires the identification of geomorphic features meeting the definition of a potential habitat break (PHB) as described in (a) of this section.

(a) “Potential Habitat Break” means a permanent, distinct, and measurable change to in-stream physical characteristics. PHBs are typically associated with underlying geomorphic conditions and may consist of natural obstacles that physically limit fish access to upstream reaches or a distinct measurable change in channel gradient, bankfull width or a combination of the two. Natural, non-deformable obstacle PHB includes vertical drops, steep cascades, bedrock sheets and bedrock chutes. Guidance on how to identify PHB is contained in Board Manual Section 23.

(b) The steps to conduct FHAM are:

Step 1	Locate the upstream extent of the AFF or other upstream most point of known fish use, whichever is furthest upstream. The process and sources used to determine known presence or fish habitat must be documented. Proponents are encouraged to contact the department of fish and wildlife and/or affected Indian tribes to assist in determining areas of known fish use.
Step 2	Locate the first PHB situated upstream of the point in Step 1. See the PHB criteria in (2) of this section.
Step 3	Begin the fish habitat assessment directly upstream of the PHB identified in Step 2. If a fish is observed in the stream segment upstream from the first PHB, stop the electrofishing survey and proceed upstream to the next PHB. Repeat this process until no fish are observed upstream of a PHB;
Step 4	When fish are not observed in the stream segment directly above a PHB, continue protocol surveying of all available habitats for ¼ mile upstream of the PHB. If no fish are observed, this point becomes the end of fish habitat for the stream segment and the

	proposed water type break between Type F and Type N Waters. Document this location as the proposed habitat break.
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- a) If this alternative were fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), describe where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely effects on the natural environment. Identify where the change or affect or increased demand constitutes a likely adverse impact and describe any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Establishing a permanent Water Typing Rule within the Forest Practices Rules memorializes changes reflected in both the current WAC 222-16-030 Permanent water typing system and WAC 222-16-031 Interim water typing system rules and ensures there is one set of rules to comply with.

Establishing WAC 222-16-0301 FHAM gives a reliable methodology for stream typing. The action of adopting these rules decreases subjectivity in the field on identifying the end of fish habitat and resulting riparian buffers and decreases the amount of electrofishing by establishing a methodology. The reduction in subjectivity cannot be tied to an increase or decrease in riparian buffers and therefore there is there are no anticipated changes within elements of the human or built environment.

An unmeasurable effect of establishing FHAM is the reduction in electrofishing which will have a positive effect on the natural environment through less potential harm to fish.

Amending, deleting and establishing these rules will not constitute a likely adverse impact.

- b) Identify potential mitigation measures for the adverse impacts identified in 9.a and describe how effective the mitigation is assumed to be, any adverse impacts that could result from the use of the mitigation, and any conflict or concern related to the proposal objectives and/or key issues identified.

N/A

- c) Identify unavoidable impacts and those that will be left to be addressed at the project level.

N/A

- d) Describe how the proposal objectives will or will not be met if the impacts described in 9.c were to occur.

N/A

Note: Alternatives may be rejected at any point in the process if: they have no environmental benefit, are not within existing authority, are determined unfeasible, or do not meet the core objectives.

PART III – IMPLEMENTATION CONSIDERATIONS

10) Consistency of the proposal with other plans, policies and laws.

- a) Internal consistency - If there are internal inconsistencies between this proposal and your agency's previously adopted or ongoing plans and regulations, identify any strategies or ideas for resolving these inconsistencies.

N/A

- b) External consistency - If there are external inconsistencies between this proposal and adopted or ongoing plans and regulations of adjacent jurisdictions and/or other agencies, identify any strategies or ideas for resolving these inconsistencies.

N/A

11) Monitoring and Follow-up

- a) Describe any monitoring that will occur to ensure the impacts were as predicted and that mitigation is effective, including responsible party, timing, and method(s) to be used.

The Forest Practices Board has directed and approved the adaptive management program to conduct a suite of water typing studies intended to: validate the field protocol to determine the end of fish habitat to establish the breaks between Type F and N Waters, and the process to establish the regulatory Type F and N break on the water typing maps; and to establish the model by which to locate the water type breaks on the water typing map. The studies are:

- 1) Evaluation of potential habitat breaks (PHBs) for use in delineating end of fish habitat in forested landscapes in Washington State,
- 2) Default physical criteria assessment (DPC) project, and
- 3) LiDAR based water typing model.

- b) Identify any plans or strategies for updating this proposed action based on deviation from impact projections or other criteria.

As a result of the above studies, changes may be made to the permanent water typing rule.

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WAC 197-11-444, Elements of the Environment

Natural Environment

- a. Earth**
Geology; soils; topography; unique physical features; erosion/enlargement of land area
- b. Air**
Air quality; odor climate
- c. Water**
Surface water movement/quantity/quality; runoff/absorption; floods
- d. Plants and animals**
Habitat for and numbers or diversity of species of plants, fish, or other wildlife; unique species; fish or wildlife migration routes
- e. Energy and natural resources**
Amount required/rate of use/efficiency; source/availability; nonrenewable resources; conservation and renewable resources; scenic resources

Built Environment

- a. Environmental health**
Noise; risk of explosion; releases or potential releases to the environment affecting public health
- b. Land and shoreline use**
Relationship to existing land use plans and to estimated population; housing; light and glare; aesthetics; agricultural crops
- c. Transportation**
Transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement/circulation of people and goods; traffic hazards
- d. Public services and utilities**
Fire; police; schools; parks and other recreational facilities; maintenance; communications; water/storm water; sewer/solid waste; other governmental services or utilities.