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RESOURCES

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MEMORANDUM

July 9, 2024

TO: Forest Practices Board

FROM: Karen Zirkle, Forest Regulation Assistant Division Manager
Karen Zirkle
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SUBJECT: Monthly Progress Update: Developing Rule Materials for Water Typing System Rule and Type Np Waters Buffer Rule

This memo provides a summary of progress on developing materials for two Board rule making efforts: the permanent Water Typing System Rule (WTR), and the Type Np Water Buffers Rule (Type Np). Staff are implementing Board guidance on sequencing the rule development work. For each rule staff are developing the following materials for inclusion in the rule packages:

- Administrative rule language
- Spatial analysis
- Preliminary cost-benefit analysis (CBA)
- Preliminary Small Business Economic Impact Statement (SBEIS)
- State Environmental Policy Act (SEPA) analysis
- Board Manual technical guidance

The rule packet materials are requirements of the Administrative Procedures Act (APA); the Regulatory Fairness Act (RFA); and the State Environmental Policy Act (SEPA). Spatial analysis is not a rule requirement, but its results partially inform the CBA and SEPA. Board manual guidance is included to help understand how the rule requirements would be applied during the public comment period.

The following is a summary of progress as of this update:

1- Spatial Analysis of Water Typing System Rule

The [Final Spatial Analysis of the Water Typing System Rule Synthetic Stream Development, Comparison of Alternatives and Buffer Analysis](#)¹ for the water typing system rule (and Type Np Stream Buffer Rule) was completed and shared with stakeholders.

¹ This is a link to the final spatial analysis report for the water typing and the Type Np Stream Buffer rules. This has been provided to the vendor for use in the CBA.

DNR synthesized all comments received on both the permanent Water Typing rule (draft WTR spatial analysis shared 3/19/24 and informational presentation 3/22) and the Type Np Stream Buffer Rule (draft addendum shared 4/9 and informational presentation 4/24) draft documents. In addition, DNR reviewed a final draft providing additional comments and changes. The substantive changes incorporated in this final document include the following (this is not an exhaustive list):

- Re-analysis of Potential Habitat Break (PHB)s using a 5x Bank-full Width (BFW) stream segments – in GIS using LiDAR- to better predict gradient PHB and better detect obstacles and barriers. The previous report had used a 20x BFW.
- Recalculation of distances for PHBs detected using 5x BFW stream segments.
- A new chapter on sources of uncertainties and other limitations (LiDAR, synthetic streams, reach length etc.). PHB detection rate in relation to varying reach lengths, is also provided.
- All distances are reported as eco-region averages along with their respective range. Same information is presented in graphical form (max, min, median in box-whisker plots).
- Graphs are more legible, provide more explanation of data behind the figure and better represent the analysis.
- Distribution of PHB's above LF and/or F/N break are shown in graphic format.
- Default Physical Criteria (DPC) is applied to the synthetic stream along with maps showing predicted DPC breakpoints.

The Board will receive a presentation on the spatial analysis findings for the WTR at their August regular meeting.

- 2- Preliminary Cost-Benefits Analysis (CBA):** Input from the economic workgroup on the [draft CBA methodology](#) for WTR were received and are being incorporated into the cost and benefit analysis. Industrial Economics, Inc (IEC) will present preliminary findings, in the form of a presentation, of the SBEIS and CBA at the August 14th board meeting. A memo discussing these findings will be provided with the board materials on July 31st in preparation of a Board decision on which anadromous fish floor (AFF) and PHB will be evaluated in the rulemaking process. IEC will then move forward with the Board decided rule to conclude the preliminary CBA and SBEIS for the November 13th board meeting.

For the Type Np CBA, Industrial Economics Inc. (IEC) was awarded the contract and started work June 26th. We anticipate the rulemaking packet (including preliminary CBA and SBEIS) to be ready for your February 2024 meeting.

- 3- SEPA:** To provide the board with additional information on buffer impacts from the Board approved fish habitat assessment methodology (FHAM) applying the three PHBs, and two AFF alternatives, DNR staff will present information derived from the spatial analysis and preliminary cost benefit work to illustrate the differences of the six alternatives. The presentation will be provided to assist the Board decision on which AFF and PHB will be evaluated in the rulemaking process. DNR staff will then conduct a SEPA analysis on the rule, with the Board Chair, as the Responsible Official, issuing a threshold determination to inform your decision in November 2024 whether to approve the CR102.

For Type Np, Four Peaks Environmental Science & Data Solutions was the successful bidder to assist DNR in identifying and analyzing potential environmental impacts of the rule change. This short duration contract (two months) is meant to provide staff with a consolidated background analysis to conduct a SEPA analysis on the rule. Staff expects to deliver the Type Np rule packet at your February 2025 regular meeting. A similar public comment process will start if the Board approves a CR102 for the Type Np rule.

As illustrated in the revised rulemaking timeline, the CR102 rulemaking package for WTR will be ready for your review and approval at your November 13th, 2024, regular meeting. Your approval of a CR102 starts a public comment period on the rule making packet, simultaneously the comment period on the SEPA determination will open. Previous statewide rulemakings have had public hearings across the state and staff is recommending 5 for the WTR (4 around the state and one in Olympia). The schedule will need to be discussed at the November board meeting so it can be included on the CR102 filed with the Code Revisors Office by December 4th. Public meetings are considered the same as regular Board meetings except a quorum is not needed.

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

- Marc Engel, Senior Policy Advisor (marc.engel@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 Pruit, Assistant Attorney General, Forest Practices Board Attorney
Marc Engel, Senior Policy Advisor, Forest Regulation Division
Karen Zirkle, Assistant Division Manager Forest Regulation Division
Maggie Franquemont, Policy Program Manager, Forest Regulation Division

Attachment A: Revised Rule Package Development Timeline

Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Water Typing Rule														
Rule Language	100%	Complete. <i>Minor revisions needed</i>												
Synthetic Streams Spatial Analysis														
Conduct Spatial analysis	100%	Complete												
Draft Report including methodology available for stakeholder review	100%	Complete												
Final Report disseminated to stakeholders	100%	Complete												
Cost Benefit Analysis & SBEIS	60%													
Conduct Analysis	60%	ongoing												
Preliminary CBA & SBEIS Complete	30%	ongoing												
Final CBA & SBEIS Complete		planned												
SEPA	0%	Planned												
SEPA Analysis (timeline reflects a DNS ONLY)														
Final SEPA Determination signed before FPB CR102 approval														
SEPA public comment period														
Concise Explanatory Statement	0%	Planned												
Initiate Rulemaking	0%	Planned												
CR102, public meetings, public comment, CR103 adopts rule by the FPB & approves BM23														
Rule in effect within 30 days														

Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Type Np Buffer Rule w/SEPA DNS														
Rule Language	100%	Complete <i>Minor edits/revisions needed</i>												
Synthetic Streams Spatial Analysis	100%	complete												
Conduct Spatial analysis	100%	complete												
Draft Report including methodology available for stakeholder review	100%	complete												
Final Report disseminated to stakeholders	100%	Complete												
SEPA	0%	Planned												
SEPA Analysis (timeline reflects a DNS ONLY)														
Final SEPA Determination signed before FPB CR102 approval														
SEPA public comment period														
Cost Benefit Analysis & SBEIS	5%	Ongoing												
Conduct Analysis	5%	Kickoff scheduled												
Preliminary CBA & SBEIS Complete		Planned												
Final CBA & SBEIS Complete		Planned												
Concise Explanatory Statement	0%	Planned												
Initiate Rulemaking	0%	Planned												
CR102, public meetings, public comment														
CR103 adopts rule by the FPB & approves BM23														
Rule in effect within 30 days														

Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Type Np Buffer Rule w/SEPA DS and EIS														
SEPA	0%	Planned												
SEPA Analysis w/Determination of Significant and EIS timeline														
Final SEPA Determination signed before FPB CR102 approval														
SEPA public comment period														
Cost Benefit Analysis & SBEIS	5%	ongoing												
Conduct Analysis	5%	Kickoff scheduled												
Preliminary CBA & SBEIS Complete														
Final CBA & SBEIS Complete														
Concise Explanatory Statement	0%													
Initiate Rulemaking	0%													
CR102, public meetings, public comment														
CR103 adopts rule by the FPB & approves BM23														
30 days rule official														