WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

MEMORANDUM

October 13, 2011

To: Forest Practices Board

From: Donelle Mahan, Policy Advisor D.M.
Forest Practices Division

Subject: Rule Making Proposal: Forestry Riparian Easement Program(FREP)

On November 8th I will request the Board's approval to distribute the enclosed rule language to the counties and the Washington Department of Fish and Wildlife (WDFW) for review and comments pursuant to RCW 76.09.040(2). We also include tribes in this review.

On August 9, 2010 the Board directed staff to file a CR-101, *Preproposal Statement of Inquiry*, to inform the public that the Board is considering rule making that includes the provisions of ESHB 1509 to the forestry riparian easement program's (FREP) rule language in chapter 222-21 WAC. In addition, staff saw the need for clarification of this chapter so that small forest landowners are better able to understand the FREP program and associated processes.

On September 29, 2011 the rule language was distributed to the small forest landowner advisory committee (SFLOAC) for comment. On October 5th we met with the SFLOAC and received recommendations regarding clarification and added their recommendations to WAC 222-21-010(11), 21-030(4)(a), 21-045(2), and 21-050(4).

With the Board's approval, staff will distribute the language to WDFW, counties, and tribes shortly after the November 8th Board meeting. The review and comment period is 30 days, and staff will inform the Board of comments received prior to the February 2012 Board meeting. Staff will also begin the cost-benefit analysis in preparation for the next step, which is to distribute a rule proposal for public review and hearings.

I am available at (360) 902-1396 if you have rule questions and Dan Pomerenk is available for technical questions at (360) 902-1427.

DM/

Enclosure: Rule proposal

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Chapter 222-21 WAC
SMALL FOREST LANDOWNER FORESTRY RIPARIAN EASEMENT PROGRAM

WAC 222-21-005 Policy. The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

WAC 222-21-010 Definitions.
The following definitions apply to this chapter:

(1) ~~**"Commercially reasonable harvest unit"** means a harvest area that meets the requirements of WAC 222-21-060.~~ **"Bordering"** means the area of the easement premises that lies within, is immediately adjacent to, or is physically connected to the area identified in the forest practices application/notification (FPA/N).

(2) **"Completion of harvest"** means that the trees within the area under an approved FPA/N have been harvested ~~from an area under an approved forest practices application~~ and that further entry into that area by any type of logging or slash treating equipment or method is not expected.

(3) ~~**"Compliance costs"** includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement.~~

~~(4) **"Danger tree"** means any qualifying timber reasonably perceived to pose an imminent danger to life or improved property.~~

(~~5~~) **"Easement premises"** means the geographic area designated in a forestry riparian easement, including the locations of areas in which qualifying timber is located. ~~Easement premises may be categorized as follows:~~

~~(a) **Riparian area easement premises** means riparian areas and areas upon which qualifying timber associated with riparian areas are located.~~

~~(b) **Other easement premises** means areas of land required to be left unharvested under rules adopted under RCW 76.09.055 or 76.09.370 including areas upon which other qualifying timber outside riparian areas is located and areas of land upon which uneconomic qualifying timber is located.~~

(~~6~~4) **"Forestry riparian easement"** means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(5) **"Forests and Fish Rules"** means the rules adopted by the Board in accordance with RCW 76.09.055, RCW 76.09.370, and the amendments to those rules.

(~~7~~6) **"Hazardous substances"** ~~means~~ includes but is not limited to hazardous substances as defined in RCW 70.102.010(5), and 70.105D.020(7), and solid waste as defined in RCW 70.95.030(22).

(~~8~~7) **"High impact regulatory threshold"** ~~means the threshold where the value of qualifying timber is greater than 19.1% (for timber in Western Washington) or 12.2% (for timber in Eastern Washington) of the value of the harvested timber and qualifying timber under the approved forest practices application covering the qualifying timber.~~ is one of two values used in the compensation for easement formula. The high impact regulatory threshold value of 19.1% is used in the compensation for easement formula for easements located in western Washington and is 12.2% for the compensation for easement formula for easements located in eastern Washington.

(~~9~~8) **"Qualifying small forest landowner"** means:

(a) A small forest landowner must meet all of the following characteristics: on the date the department receives an FPA/N associated with the forestry riparian easement; and the date the department offers compensation for the easement:

(i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section;

(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application is submitted to the small forest landowner office;

(iii) Has harvested from their own lands in this state, during the three years prior to the year the department receives a complete FPA/N associated with the easement, an average timber volume that would qualify the forest landowner as a small harvester under RCW 84.33.035(14);

(iv) Certifies at the time the FPA/N is received and when the department offers compensation that the landowner does not expect to harvest from their own lands more than the volume allowed by RCW 84.33.035(14) during the ten years following the date that the small forest landowner office offers compensation for the forestry riparian easement; and

(v) The landowner has no outstanding forest practices violations (RCW 76.09).

(b) A forest landowner whose prior three-year average harvest exceeds the limit of RCW 84.33.035(14), or who expects to exceed this limit during the ten years following the date that the small forest landowner office offers compensation for the forestry riparian easement may still qualify as a small forest landowner. The landowner will be required to establish to the small forest landowner office reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or other equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses.

(c) A landowner who is unable to obtain an approved FPA/N for timber harvest on their land because of restrictions per forests and fish rules.

(9) **"Qualifying timber"** means those forest trees in which the small forest landowner is willing to grant the state a forestry riparian easement and must meet all of the following:

(a) The forest trees are covered by ~~a forest practices application that~~ an FPA/N and the small forest landowner is required to leave them unharvested ~~under rules adopted under RCW 76.09.055 or 76.09.370~~ because of restrictions per forests and fish rules, or those forest trees that are made uneconomic to harvest ~~by those rules, and for which the small forest landowner is willing to grant the state a forestry riparian easement~~ because of restrictions per forests and fish rules. ~~Qualifying timber is timber~~

(b) The forest trees are within or bordering a commercially reasonable harvest unit, ~~or timber for which~~and an approved ~~forest practices application~~FPA/N for timber harvest can not be obtained because of restrictions ~~under these rules~~ per forests and fish rules. ~~Qualifying timber is categorized as follows:~~

~~(a) **Permanent qualifying timber** includes trees that shall not be harvested or damaged or removed from the easement premises during the term of the easement.~~

~~(i) Where permanent qualifying timber is in areas in which no harvest may take place, the easement shall describe the boundaries of the areas. No harvest of any tree within this area shall take place during the term of the easement.~~

~~(ii) Where permanent qualifying timber is located in areas in which selective harvest may take place, the permanent qualifying timber must be tagged for the duration of the easement.~~

~~(b) **Reserve qualifying timber** includes trees that may be harvested and removed but only in compliance with the terms of the easement. Reserve qualifying timber shall be identified separately from the permanent qualifying timber.~~

(c) ~~**Replacement qualifying timber** includes trees which, in the future, will be substituted for the reserve qualifying timber before the reserve qualifying timber may be harvested or removed from the property. Replacement qualifying timber will be selected from time to time pursuant to the provisions of the easement and will be subject to the terms and protections of the easement.~~The forest trees are located within any one of the following categories:

(i) Riparian or other sensitive aquatic areas;

(ii) Channel migration zones (CMZ); or

(iii) Areas of potentially unstable slopes or landforms, verified by the department and have the potential to deliver sediment or debris to a public resource or threaten public safety.

~~(d) **Uneconomic qualifying timber** includes trees made uneconomical to harvest. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.~~

~~(e) **Other qualifying timber outside riparian areas** includes trees that may not be harvested under forest practices rules adopted under RCW 76.09.055 or 76.09.370 for reasons other than protection of riparian functions. It includes without limitation trees that are unharvestable because of public safety concerns. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.~~

(10) **"Reimbursement to the state of Washington"** means the full repayment of the easement to the state of Washington when, within the first ten years of receipt of compensation a small forest landowner sells the land on which an easement is located to a landowner that does not meet the conditions of a qualifying small forest landowner. Repayment shall include easement compensation and reimbursements for all landowner costs incurred.

(11) **"Reimbursement to the small forest landowner"** means the ~~repayment~~ payment ~~that~~ the ~~department~~ state of Washington shall provide to small forest landowners for the actual costs incurred ~~for laying out the streamside buffers and marking the~~that results in the identification of qualifying timber ~~once a contract has been executed for the forestry riparian easement program.~~ and can include one or several of the following categories:

(a) Determining and marking the streamside buffers;

(b) Marking the qualifying timber;

(c) Geotechnical reports only for that area determined to contain qualifying timber; or

(d) Stewardship plans, if required by the small forest landowner office to assist in the determination of qualifying timber.

(~~11~~) ~~**"Riparian areas"** include the areas designated in a forestry riparian easement. Riparian areas include without limitation all riparian and other special management zones required by the forest practices rules for protection of aquatic resources and includes associated qualifying timber.~~

(12) ~~**"Riparian function"** includes bank stability, recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic systems conditions.~~

~~(13) **"Small forest landowner"** means:~~

~~(a) A forest landowner meeting all of the following characteristics as of the date a forest practices application is received (see WAC 222-20-010 (7)), or the date the landowner provides written notification to the small forest landowner office that the harvest is to begin, for which the forestry riparian easement is associated:~~

~~(i) Is an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section;~~

~~(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is received;~~

~~(iii) Has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the forest landowner as a small harvester under RCW 84.33.035(14); and~~

~~(iv) Certifies at the time the forest practices application is received that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035(14) during the ten years following receipt of the application.~~

~~(b) A forest landowner whose prior three-year average harvest exceeds the limit of RCW 84.33.035(14), or who expects to exceed this limit during the ten years following receipt of the forest practices application, may still qualify as a small forest landowner if that landowner establishes to the small forest landowner office reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses. (Note: The small forest landowner office will establish a board manual governing these exceptions.)~~

~~(c) A landowner may still qualify as a small forest landowner if the landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules adopted under RCW 76.09.055 or 76.09.370.~~

(~~14~~12) **"Small forest landowner office"** is ~~an office~~ within the department of natural resources. ~~described in RCW 76.13.110, and it shall be~~The office is a resource and focal point for small forest landowner concerns and policies, and ~~shall have~~ has significant expertise regarding the management of small forest holdings and government programs applicable to such holdings~~, and the~~. The office manages the forestry riparian easement program.

(~~15~~13) ~~**"Uneconomic to harvest"** means that a harvest area meets the requirements of WAC 222-21-065.~~ "**Unacceptable liabilities**" means exposure to undesirable responsibilities or problems as determined by the small forest landowner office. This includes, but is not limited to, the presence of hazardous substances on the lands, or by other conditions that may create a liability to the department, or existing uses of the property that may jeopardize the protection of the easement premises and qualifying timber.

~~**WAC 222-21-020 Criteria for accepting riparian easement.**~~

~~(1) All of the following criteria must be met before the small forest landowner office may acquire a forestry riparian easement:~~

~~(a) The easements must include qualifying timber within riparian areas and may include other qualifying timber;~~

~~(b) The small forest landowner must be willing to sell or donate such easements to the state;~~

~~(c) The small forest landowner has a final forest practices application including qualifying timber on the easement premises that has been approved or has been disapproved because of restrictions under the forest practices rules adopted under RCW 76.09.055 or 76.09.370;~~

~~(d) The small forest landowner has provided a litigation guarantee or similar report from a title company for the property;~~

~~(e) Acceptable documents necessary for creation of the easement have been prepared; and~~

~~(f) The easement is not subject to unacceptable liabilities in subsection (3) of this section.~~

~~(2) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises, qualifying timber, and the riparian functions provided by the qualifying timber during the term of the easement must execute the easement documents or otherwise subordinate their interest to the easement interest being acquired by the state. This includes tenants in common, joint tenants, holder of reversionary interests, lien holders, and mortgages.~~

~~(3) Unacceptable liabilities for the state include, but are not limited to, the following:~~

~~(a) Potential liability exposure due to the presence of hazardous substances;~~

~~(b) Existing uses of the property that may jeopardize the protection of the easement premises, qualifying timber, and riparian functions;~~

~~(c) Any other liability where the liability may jeopardize the protection of the easement premises, qualifying timber, and its riparian functions.~~

WAC 222-21-030 Document standards.

(1) ~~**Riparian easement.** The riparian easement document must be substantially in the following form, but may be modified by the small forest landowner office wherever necessary to accomplish the purposes of RCW 76.13.120.~~

~~(This version assumes ownership of land and trees)~~

~~FORESTRY RIPARIAN EASEMENT~~

~~This grant of a forestry riparian easement is made on this _____ day of _____, 20 _____, by [a_____ corporation, limited liability company, partnership, limited partnership, limited liability partnership] [husband and wife] [individual][or others as appropriate] having an address at _____ ("Grantor"), to and in favor of the State of Washington, acting by and through the Department of Natural Resources ("Grantee").~~

~~1.0 RECITALS AND PURPOSE~~

~~1.1~~ ~~This Easement is intended to implement the goals of the Forest Practices Salmon Recovery Act, ESHB 2091, sections 501 through 504, chapter 4, Laws of 1999 ("Salmon Recovery Act"). The goals include avoiding the further erosion of the small forest landowners' economic viability and willingness or ability to keep the lands in forestry use which would reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, through the establishment of a forestry riparian easement program to acquire easements from small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.~~

~~1.2~~ ~~This Easement is intended to protect the Qualifying Timber and riparian functions associated with the qualifying timber located on the Easement Premises as provided by the terms of this Easement as set forth in Exhibit B while preserving all lawful uses of the Easement Premises by Grantor consistent with the Easement objectives, and to provide Grantee with the ability to enforce the terms thereof.~~

~~1.3~~ ~~The Easement Premises and Qualifying Timber are located, as described in Exhibit A; that the encumbrances, if any, are as set forth in **Exhibit A**; that all Exhibits referenced herein and attachments thereto are incorporated into this Easement as part of this Easement; and that the Grantor wishes to execute this Forestry Riparian Easement.~~

2.0 CONVEYANCE AND CONSIDERATION

2.1 In consideration of the mutual covenants contained herein, including without limitation the monetary consideration set forth in subsection 2.2 below, the Grantor does hereby voluntarily warrant and convey to the Grantee a Forestry Riparian Easement under the Salmon Recovery Act, which Easement shall remain in full force and effect from the date hereof until it expires on (month, date, year) [50 years from the date the complete and accurate forest practices application is submitted], which Easement shall consist of the rights and restrictions expressly set forth herein.

2.2 In consideration of this Easement, Grantee shall pay to Grantor the sum of _____dollars ($ ____.00).

IN WITNESS WHEREOF Grantor and Grantee have executed this instrument on the day and year written.

GRANTOR:_____ Date: _____

By:_____

GRANTEE: _____

State of Washington

By and Through the Department of Natural Resources _____

Date: _____

(Title) _____

(insert form of acknowledgement, as appropriate)

~~EXHIBIT A~~

~~A1 Description and location of qualifying timber~~

~~The Qualifying Timber includes the following categories of trees located within the Easement Premises:~~

~~*[List the categories relevant to particular Easement, i.e., Permanent, Reserve, Replacement, Uneconomic, or Other Qualifying Timber.]* The Qualifying Timber is located as shown in the documentation attached hereto as Attachment A-1.~~

~~A2 Description and location of easement premises~~

~~The Easement Premises is *[insert description using the standards developed under Section 504(9)(b) of the Salmon Recovery Act including the categories relevant to particular Easement, i.e., Riparian Area and Other Easement Premises]* as shown in the documentation attached hereto as Attachment A-2 and is located in *[insert legal subdivision/lot, etc., in which the Easement Premises exists.]*~~

~~A3 Baseline identification, description and documentation of property, easement premises and qualifying timber~~

~~The parties agree that the current use, condition of the Easement Premises and the condition of the Qualifying Timber are documented in the inventory of their relevant features and identified in Attachment A-3 ("Baseline Documentation"), and that this documentation provides, collectively, an accurate representation at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.~~

~~EXHIBIT B~~

~~FORESTRY RIPARIAN EASEMENT TERMS AND CONDITIONS~~

~~B1 Definitions~~

~~The terms used in this Easement, including without limitation the following, are defined by the forest practices rules incorporated in Attachment B-1 to this Exhibit.~~

~~**"Danger Tree"**~~
~~**"Easement Premises"**~~
~~**"Qualifying Timber"**~~
~~**"Hazard Substances"**~~
~~**"Riparian Areas"**~~
~~**"Riparian Function"**~~

~~B2 RIGHTS OF GRANTEE~~ ~~**[Subsection B2.4 should be included only for multiple entry Easements.]**~~

~~To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:~~

~~**B2.1** To enforce the terms of this Easement as provided in subsection **B9**.~~

~~**B2.2** To enter upon the Easement Premises, or to allow Grantee's agents or any experts consulted by Grantee in exercising its rights under this Easement to enter upon the Easement Premises in order to evaluate Grantor's compliance with this Easement, and to otherwise enforce the terms of this Easement.~~

~~**B2.3** To convey, assign, or otherwise transfer Grantee's interests herein to another agency of the State of Washington, as provided for and limited by Section 504 of the Salmon Recovery Act.~~

~~**B2.4** Where harvest of Reserve Qualifying Timber is allowed during the term of this Easement, to approve Replacement Qualifying Timber that will be protected by this Easement as provided in subsection **B3.5**.~~

~~B3 RESTRICTIONS ON GRANTOR~~ ~~**[Subsection B3.6 should be included only for multiple entry Easements.]**~~

~~**B3.1 Inconsistent Uses of Riparian Easement Premises.** Any use of, or activity on, the Easement Premises inconsistent with the purposes and terms of this Easement, including without limitation converting to a use incompatible with growing timber, is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity.~~

~~**B3.2 Property Outside the Easement Premises.** Grantor may change its use of the property on which the Easement lies to any lawful use. Grantor shall provide Grantee sixty (60) days notice prior to changing the use of the property as a courtesy to Grantee.~~

~~**B3.3 Qualifying Timber.** Grantor shall not engage in any activity which would result in the cutting of Qualifying Timber or the removal of that timber from the Easement Premises, except as provided in this Easement. The parties further agree that use, harvest, and treatment of the Qualifying Timber are restricted according to the forest practices rules in Attachment B-1.~~

~~**B3.4 Danger Trees and Salvage.** Grantor may cut a Danger Tree, which shall be left in place within the Easement Premises or moved by Grantor inside the Easement Premises. Grantor shall notify DNR within seven (7) days that a Danger Tree has been felled. Grantor shall not engage in any activities pertaining to salvage of Qualifying Timber including without limitation blowdown except as provided for in the forest practices rules.~~

~~**B3.5 Harvest of Reserve Qualifying Timber and Designation of Replacement Qualifying Timber on Riparian Area Easement Premises**~~

~~Grantor shall not, during the term of this Easement, harvest or remove any Reserve Qualifying Timber except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of Reserve Qualifying Timber, except that where a permit or approval is required from any governmental entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark Reserve Qualifying Timber and Replacement Qualifying Timber, where Replacement Qualifying Timber is required, for review by Grantee. Grantor's thirty (30) days written notice to Grantee is effective only after both Reserve Qualifying Timber and Replacement Qualifying Timber (if required) are marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest and remove the Reserve Qualifying Timber. If Grantee does object and gives Grantor written notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest or remove Reserve Qualifying Timber until the objection is resolved. If Reserve Qualifying Timber is to be removed but Replacement Qualifying Timber is required to be left standing for the balance of the term of this Easement, then Grantor shall mark the Replacement Qualifying Timber and, if approved by Grantee, such Timber shall be considered Qualifying Timber under this Easement. A new Exhibit A shall be prepared along with a supplement to this Easement, executed by Grantor and Grantee, and recorded.~~

~~**B3.6 Multiple Entry Easements.** Grantor shall not, during the term of this Easement, make multiple entry harvests except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of timber, except that where a permit or approval is required from any government entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark timber to be removed for review by Grantee. Grantor's thirty (30) day written notice to Grantee is effective only after the timber to be removed is marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest. If Grantee does object and gives Grantor notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest until the objection is resolved.~~

~~**B4 RESERVED RIGHTS.** Other than specifically provided herein, Grantor is not restricted in its use of the Easement Premises.~~

~~**B5 PUBLIC ACCESS.** No right of public access to or across, or any public use of, the Easement Premises or the property on which it lies is conveyed by this Easement.~~

~~**B6 COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION**~~

~~**B6.1 Costs, Legal Requirements, and General Liabilities.** Except as is expressly placed on Grantee herein, Grantor retains full responsibility for the Qualifying Timber and Easement Premises. Grantor shall keep the Qualifying Timber and Easement Premises free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor remains responsible for obtaining all permits required by law.~~

~~**B6.2 Taxes and Obligations.** Grantor shall remain responsible for payment of taxes or other assessments imposed on the Easement Premises or the Qualifying Timber. Grantor shall furnish Grantee with satisfactory evidence of payment upon request.~~

~~B6.3 Hold Harmless~~

~~B6.3.a Grantor.~~ ~~To the extent permitted by law, Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantor; (b) a breach by Grantor of its obligations under subsection B3; (c) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law or requirement by Grantor in any way affecting, involving, or relating to the Easement Premises or the Qualifying Timber; (d) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantor.~~

~~B6.3.b Grantee.~~ ~~To the extent permitted by law, Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantee; or (b) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantee.~~

~~B7 SUBSEQUENT TRANSFERS~~

~~B7.1 Grantee.~~ ~~Grantee may assign, convey, or otherwise transfer its interest as evidenced in this Easement, but only to another agency of the State of Washington under any circumstances in which it determines, in its sole discretion, that such transfer is in the best interests of the state. Grantee shall give written notice to Grantor of the same within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).~~

~~**B7.2 Grantor.** Grantor may assign, convey, or otherwise transfer without restriction its interest in the Easement Premises or the Qualifying Timber identified in Exhibit A hereto. Grantor agrees to incorporate the restrictions of the Easement in any deed or other legal instrument by which Grantor divests itself of all or a portion of its interests in the Easement Premises or Qualifying Timber. Grantor shall give written notice to the Grantee of the assignment, conveyance, or other transfer of all or a portion of its interest in the Easement Premises or the Qualifying Timber within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).~~

~~**B7.3 Termination of Grantor's Rights and Obligations.** The Grantor's personal rights and obligations under this Easement terminate upon transfer of the Grantor's interest in the property on which the Easement lies or the Qualifying Timber, except that liability under the Easement for acts or omissions occurring prior to transfer shall survive transfer.~~

~~**B8 DISPUTE RESOLUTION**~~

~~The parties may at any time by mutual agreement use any nonbinding alternative dispute resolution mechanism with a qualified third party acceptable to Grantor and Grantee. Grantor and Grantee shall share equally the costs charged by the third party. The existence of a dispute between the parties with respect to this Easement, including without limitation the belief by one party that the other party is in breach of its obligations hereunder, shall not excuse either party from continuing to fully perform its obligations under this Easement. The dispute resolution provided for in this subsection is optional, not obligatory, and shall not be required as a condition precedent to any remedies for enforcement of this Easement.~~

~~**B9 ENFORCEMENT**~~

~~**B9.1 Remedies.** Either party may bring any action in law or in equity in the superior court for the county in which the Easement Premises are located or in Thurston County (subject to venue change under law) to enforce any provision of this Easement, including without limitation, injunctive relief (permanent, temporary, or ex parte, as appropriate) to prohibit a breach of this Easement, enforce the rights and obligations of this Easement, restore Qualifying Timber cut or removed in violation of this Easement or for damages. Grantee may elect to pursue some or all of the remedies provided herein.~~

~~**B9.1.a Damages and Restoration.** If Grantor cuts or removes (or causes another to cut or remove) Qualifying Timber from the Easement Premises in violation of this Easement, Grantee shall be entitled to damages, or restoration. Damages for the cutting of Qualifying Timber or the removal of Qualifying Timber from the Easement Premises in violation of the terms of this Easement may be up to triple stumpage value times the proportion of the original compensation. The maximum amount of damages shall be calculated according to the following formula:~~

~~Where:~~
~~Sv = The stumpage value of the Qualifying Timber that is cut or removed from the Easement Premises at the time the damage was done;~~
~~C = The compensation paid by the state to the Grantor at the time the Easement became effective;~~
~~Vq = The original value of Qualifying Timber at the time the Easement became effective as calculated in WAC 222-21-050.~~

~~Maximum Damages = 3*Sv*(C/Vq)~~

~~In addition the Grantor shall pay interest on the amount of the damages at the maximum interest rate allowable by law.~~

~~Grantee's rights to damages under this section shall survive termination. Restoration of Qualifying Timber may include either replanting or replacing trees or both, as determined by Grantee, in its sole discretion, to be appropriate. Replanting shall be by nursery transplant seedlings approved by Grantee with subsequent silvicultural treatment including without limitation weed control and fertilization approved by Grantee. Replacing trees shall be accomplished by designation of replacement trees of the size and species acceptable to Grantee. If replacement trees are designated to replace the Qualifying Timber cut or removed in violation of the terms of this Easement, the designated trees shall be thereafter treated as Qualifying Timber under this Easement.~~

~~**B9.1.b Injunctive Relief.** Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate and that Grantee may be entitled to injunctive relief, both prohibitive and mandatory, in addition to other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.~~

~~**B9.1.c Relationship to Remedies in Other Laws.** The remedies provided for in this section are in addition to whatever other remedies the state may have under other laws including without limitation the Forest Practices Act. Nothing in this Easement shall be construed to enlarge, diminish or otherwise alter the authority of the state to administer state law.~~

~~**B9.2 Costs of Enforcement.** The costs, including reasonable attorneys' fees, of enforcing this Easement shall be borne by Grantee unless Grantee prevails in a judicial action to enforce the terms of this Easement, in which case costs shall be borne by Grantor, provided that nothing herein shall make Grantor liable for costs incurred by Grantee in taking enforcement actions pursuant to other state laws.~~

~~**B9.3 Forbearance/Waiver.** Enforcement of this Easement against the Grantor is at the sole discretion of the Grantee, and vice versa. Any forbearance by either party to exercise its rights hereunder in the event of a breach by the other party shall not be deemed a waiver by the forbearing party of the term being breached or of a subsequent breach of that term or any other term or of any other of the forbearing party's rights under this Easement.~~

~~**B9.4 Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.~~

~~**B9.5 Acts Beyond Grantor's Control.** Nothing herein shall be construed to entitle Grantee to bring any action or claim against Grantor on account of any change in the condition of the Easement Premises or of the Qualifying Timber that was not within Grantor's control, including without limitation fire, flood, storms, insect and disease outbreaks, earth movement, or acts of trespassers, that Grantor could not reasonably have anticipated and prevented, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Premises or Qualifying Timber resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.~~

~~**B10 CONSTRUCTION AND INTERPRETATION**~~

~~**B10.1 Controlling Law.** Interpretation and performance of this Easement shall be governed by the laws of the State of Washington.~~

~~**B10.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumptively construed against either party.~~

~~**B10.3 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.~~

~~**B11 AMENDMENT**~~

~~This Easement may be jointly amended. The amendments shall be in writing and signed by authorized representatives. Grantee shall record any such amendments in a timely fashion in the official records of County, Washington. All amendments shall be consistent with the purposes of this Easement.~~

~~**B12 TERMINATION**~~

~~Grantee may unilaterally terminate this Easement if it determines, in its sole discretion, that termination is in the best interest of the State of Washington. Grantee shall provide thirty (30) days written notice to Grantor of such termination.~~

~~**B13 EXTINGUISHMENT**~~

~~If circumstances arise that render the purpose of this Easement impossible to accomplish, this Easement can only be extinguished, in whole or in part, by mutual agreement of the parties or through judicial proceedings brought by one of the parties. Grantee shall be entitled to the value of the Easement as such value is determined pursuant to forest practices rules governing extinguishment or eminent domain, if no rule for extinguishment exists.~~

~~**B14 CONDEMNATION**~~

~~If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantee shall be entitled to compensation in accordance with the forest practices rules.~~

B15 NOTICE

Notices given pursuant or in relation to this Easement shall be in writing and delivered personally or by first class mail (postage pre-paid), addressed as follows:

(a) If to Grantor: _____

_____

_____

_____

(b) If to Grantee: Washington State Department of Natural Resources
Small Forest Landowner Office
DNR-Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012

If either party's address changes during the term of this Easement, that party shall notify the other party of the change.

Any notice required to be given hereunder is considered as being received: (i) If delivery in person, upon personal receipt by the person to whom it is being given; or (ii) if delivered by first class U.S. mail and properly addressed, three (3) days after deposit into the U.S. mail; or (iii) if sent by U.S. mail registered or certified, upon the date receipt is acknowledged by the recipient.

B16 RECORDATION

Grantee shall record this instrument in timely fashion in the official records of _____County, Washington and may re-record it at any time as may be required to preserve its rights in this Easement.

B17 GENERAL PROVISIONS

B17.1 Severability. If any provision in this Easement, or the application hereof to any person or circumstance, is found to be invalid, the remainder of this Easement, or the application hereof to other persons or circumstances shall not be affected thereby and shall remain in full force and effect.

B17.2 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement. This instrument supersedes all other and prior discussions, negotiations, understandings, or agreements of the parties. No alteration or variation of this instrument shall be binding unless set forth in an amendment to this instrument consistent with subsection **B11.**

~~**B17.3 Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective successors and assigns and shall continue as a servitude running with the property on which the Easement lies for the term of this Easement set forth in subsection **2.1.**~~

~~**B17.4 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.~~

~~**B17.5 Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original as against the party that has signed it. In the event of any disparity between counterparts produced, the recorded counterpart shall be controlling.~~

~~**B17.6 References to Statutes and Rules.** Except as otherwise specifically provided, any references in this Easement to any statute or rule shall be deemed to be a reference to such statute or rule in existence at the time the action is taken or the event occurs.~~

~~**B17.7 Adherence to Applicable Law.**~~

~~Any activity pertaining to or use of the Easement Premises or Qualifying Timber shall be consistent with applicable federal, state, or local law including chapter 76.09 RCW, the Forest Practices Act, chapter 36.70A RCW, the Growth Management Act, chapter 90.58 RCW, the Shoreline Management Act, chapter 77.55 RCW, Construction Projects in State Waters Act ("Hydraulics Code"), the Endangered Species Act (16 U.S.C. Sec. 1531, et seq.), and the Clean Water Act (33 U.S.C. Sec. 1251, et seq.), and rules adopted pursuant to these statutes (including all rules adopted under Section 4(d) of the Endangered Species Act).~~

~~(2)~~ **Forestry riparian easement application.**

(a) Prior to submitting a forestry riparian easement application, the small forest landowner must:

(i) Have an approved FPA/N under the forests and fish rules; or

(ii) Have a disapproved FPA/N per forests and fish rules and be unable to harvest.

(b) The small forest landowner office has the authority to determine what constitutes a completed application. ~~The following items are required for a complete forestry riparian easement application~~ A complete forestry riparian easement application must contain at least the following four items:

(~~a~~i) The small forest landowner must submit a forestry riparian easement application listing all of the application numbers of approved FPA/N(s) and/or disapproved FPA/N(s) per forests and fish rules;

(~~b~~ii) ~~A c~~Certification ~~by~~ that the small forest landowner ~~that he or she~~ meets the ~~qualifications~~ conditions of a qualifying small forest landowner;

(~~b~~iii) ~~All~~ Notification of completion of harvest to the small forest ~~practices application numbers for the commercially reasonable harvest units and the associated qualifying timber on the property~~ landowner office through submittal of a complete harvest status questionnaire; and

(iv) Documentation stating the small forest landowner is willing to sell or donate such easements to the state.

~~(c) The dates and areas of all planned future harvest entries on the easement premises;~~

~~(d) A preliminary litigation guarantee or similar report from a title company for the tax parcels that contain the easement premises;~~

~~(e) A description of past and current uses of the easement premises;~~

~~(f) Any information not specifically listed that the small forest landowner office needs to evaluate the easement and eligibility of the small forest landowner.~~

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the easement and the small forest landowner.

(~~3~~2) **Baseline documentation.** The baseline documentation must describe the features and current uses on the forestry riparian easement premises and the qualifying timber. ~~The information provided by the small forest landowner in subsection (2) of this section is considered part of the baseline documentation. In addition, t~~The ~~department~~ small forest landowner office will ~~provide~~ gather documentation that includes, but is not limited to:

(a) A summary of ~~Cruise~~ cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed forestry riparian easement ~~(see the board manual section 17 for procedures for conducting assessment); and~~

~~(d) A description of the easement consistent with WAC 222-21-035.~~

(3) **Forestry riparian easement.** The forestry riparian easement document will be a conservation easement that identifies the parties, describes the land, locates the easement, states the terms and conditions, and provides a statement of consideration. The easement shall be for a term of 50 years from the date the completed forestry riparian easement application is submitted.

(4) **Land description standards of forestry riparian easement.**

(a) The forestry riparian easement shall include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey of the easement is not required, a written description shall be prepared that suitably and accurately depicts the location of the easement conveyed or the department may consider other methods of accurately describing the forestry riparian easement, such as a map.

~~**WAC 222-21-035 Description of easement.**~~
~~The easement premises and qualifying timber must be described as follows:~~
~~(1) Range, township, section, and parcel number;~~
~~(2) Forest practice base map of proposed harvest, other forest practices activities and easement;~~
~~(3) 1:400 map of the easement premises indexed either to one legal land survey point or two geopositional system points; and~~
~~(4) Traverse of the easement premises tied to subsection (3) of this section. (See the board manual section 17 for standards of traverse.)~~
~~(5) Where the department does not have satisfactory access to the easement premises, the landowner must designate the access route on the forest practices application base map.~~

NEW SECTION
WAC 222-21-031 Review and processing of applications for the forestry riparian easement program.
After the preliminary determination of eligibility:
(1) The department shall verify the timber harvest associated with the forestry riparian easement is complete.
(2) The department will submit the list of eligible projects to the state legislature for budget approval.
(3) The landowner shall mark the boundary of the area containing the qualifying timber.
(4) The department shall verify eligibility of qualifying timber.
(5) The department shall perform a timber cruise on the qualifying timber for the purposes of establishing the compensation value;
(6) The department will inform the landowner in writing the value of the easement. All compensation and reimbursement is subject to available funding.
(7) The department will notify the landowner in writing why their application is ineligible. All ineligible applications will be returned to the landowner.

NEW SECTION
WAC 222-21-032 Criteria for eligibility of forestry riparian easement.
(1) The landowner must complete a timber harvest before they are eligible for a forestry riparian easement unless the FPA/N has been determined to meet all the criteria when a commercially reasonable harvest is not possible (WAC 222-21-032(5)) or the only timber available to harvest meets the criteria of uneconomic to harvest (WAC 222-21-032(6)).
(2) The easement cannot include unacceptable liabilities. Unacceptable liabilities may exist when the applicant is unwilling or unable to provide reasonable protection against financial loss to the state.
(3) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or otherwise subordinate their interest to the easement interest being acquired by the state. This includes tenants in common, joint tenants, holder of reversionary interests, lien holders, and mortgages.

(4) **Commercially reasonable harvest.** The small forest landowner office will use the following criteria to determine if an area covered by an FPA/N involves a commercially reasonable harvest. The proposed harvest must meet all five of the following requirements:

(a) The harvest unit borders qualifying timber;

(b) The application is for a forest practice involving a timber harvest except when the harvest results in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the 20 acre exemption under WAC 222-30-023;

(d) The value of the timber in the harvest unit, excluding qualifying timber, is equal to or exceeds the minimum required by department of revenue for taxing purposes ($1000); and

(e) The taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045, unless otherwise approved by the small forest landowner office.

(5) **Criteria when commercially reasonable harvest is not possible.** The small forest landowner office will use the following criteria to determine if an FPA/N for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible and an approved application for harvest can not be obtained because of restrictions under the forests and fish rule. The proposed harvest must meet all four of the following requirements:

(a) The FPA/N has been disapproved per forests and fish rules that require the area covered by the application to be left unharvested;

(b) The FPA/N is for a forest practice involving a proposed timber harvest except when the proposed harvest would result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the 20 acre exemption under WAC 222-30-023; and

(d) The value of the qualifying timber is equal to, or exceeds, the minimum required by the department of revenue for taxing purposes ($1,000).

(6) **Uneconomic to harvest.** The small forest landowner office will use the following criteria to determine whether timber is qualifying timber because the forests and fish rules made the timber uneconomic to harvest. The proposed harvest must meet all four of the following requirements:

(a) The timber could have been included in a commercially reasonable harvest unit by the small forest landowner if there were no additional requirements imposed per forests and fish rules;

(b) The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;

(c) The unit must have no reasonable unit size alternative which, if used, would make the area economical to harvest; and

(d) The cost to access the harvest unit plus the cost to harvest must equal or exceed 35% of the stumpage value in the portion of the unit considered uneconomic. The small forest landowner office will determine costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester tax return method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred, as part of the cost calculations.

WAC 222-21-040 Timber cruises.

(1) This section is designed to establish methods and standards for cruises of qualifying timber for the proposed forestry riparian easements for purposes of establishing the compensation. It

applies only to the ~~department,~~ small forest landowner office and small forest landowners~~, and the small forest landowner office~~ in connection with the forestry riparian easement program.

(2) ~~The following standards will be used for the timber cruises:~~ A completed timber cruise is required to determine the volume by species and grade to accurately determine the value of the qualifying timber.

(a) ~~The purpose of the timber cruise is to determine the volume by species and grade sufficient to value the qualifying timber.~~

~~(b) Additional trees left voluntarily by the small forest landowner may be noted, but are not included in the cruise volume.~~

~~(c)~~ The cruise method will be a 100 percent inventory of qualifying timber on the proposed easement premises. The inventory will include species, diameter class, grade, and any other information necessary to determine ~~valuation of~~a value for the ~~easement~~qualifying timber. ~~(See the board manual for specific cruise standards.)~~

(~~d~~b) A sampling cruise method may be used for easement premises under certain circumstances such as easement premises that are greater than ten acres or where the forest trees are homogenous. ~~(See the board manual section 17 for standards for sampling cruise method.)~~

(3) Additional trees left voluntarily by the small forest landowner may be noted, but are not included in the cruise volume.

WAC 222-21-045 Valuation.

(1) **This section is designed to establish methods and standards for valuation** of ~~forestry riparian easements~~ qualifying timber for purposes of establishing the compensation value for forestry riparian easements. It applies only to the ~~department,~~ small forest landowners~~,~~ and the small forest landowner office in connection with the forestry riparian easement program.

(2) **The small forest landowner office will calculate the fair market value** of the ~~forestry riparian easement~~ qualifying timber ~~as of~~using stumpage values from data gathered from, or adjusted to, the date ~~of receipt of~~ the ~~forest practices~~complete forestry riparian easement application ~~associated with the qualifying timber, or the date the landowner provides written notification to the small forest landowner office that the harvest is to begin~~is received. ~~Data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091 will be used and adjusted to the applicable date.~~The calculation task will be accomplished subject to the availability of amounts appropriated for this specific purpose. For easements with an approved ~~forest practices application~~FPA/N, the small forest landowner must indicate whether ~~valuation~~ qualifying timber value will be ~~calculated~~ determined using method (a) or (b) of this subsection. Only method (a) of this subsection is available for qualifying timber for which an approved ~~application~~ FPA/N for timber harvest cannot be obtained because of restrictions ~~under the forest practices rules under WAC 222-21-061~~ per forests and fish rules. ~~In either method (a) or (b) of this subsection, the time adjustment index will be based on log price changes. The small forest landowner office will determine the specific log species and/or sorts and the log price reporting service to use after consultation with the small forest landowner advisory committee established under RCW 76.13.110(4) and the department of revenue. The small forest landowner office will generate an index that reflects the time adjustments using information and data obtained from a log price reporting service determined by the department in consultation with the small forest landowner committee.~~

(a) **Stumpage value determination method.** The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs that would be sold in the

ordinary course of business for the date ~~of receipt of the forest practices application~~the complete forestry riparian easement application is received. The landowner must provide the small forest landowner office with:

(i) The reference for the stumpage value table and any other needed information for use of the table ~~(see the board manual section 17 for details)~~; and

(ii) Any information the small forest landowner would like the department to consider in its cruise and valuation of the qualifying timber.

(b) **Small harvester tax return method.**

(i) The landowner must provide to the small forest landowner office comprehensive mill or buyer information ~~to the department on the sale breakdown~~ that the small forest landowner office is able to review and assess. ~~This includes:~~ Documentation for each harvest unit associated with the forestry riparian easement must include:

~~(i) The volume and scaling bureau log grades of each species harvested;~~

~~(ii) The amount received for each species; and~~

~~(iii) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.~~

(A) The delivered value by species;

(B) The total volume by species; and

(C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be able to be verified as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the qualifying timber value will be determined using the stumpage value determination method.

(ii) In order for the small forest landowner office to determine the qualifying timber value based on the date the complete forestry riparian easement application is received using the small harvester tax return method, a time adjustment index will be used. The small forest landowner office will generate a time adjustment index for each harvest associated with the easement based on log price changes. The ~~price received~~value derived from the landowner's mill or buyer information for the harvested timber is adjusted to the ~~applicable~~ date the complete forestry riparian easement application is received using the time adjustment index ~~and then the~~. The average logging and hauling cost per thousand board feet (MBF) is subtracted to arrive at the time adjusted stumpage value. The value of the qualifying timber is determined by multiplying the time adjusted stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber. ~~A residual value approach is used to determine the value of species in the easement, which are not present in the harvest area. The prices for species not present in the harvest unit are based on the delivered log price report approved by the small forest landowner office that corresponds closest to the date of the forest practices application, minus the average logging and hauling costs.~~

(iii) The value for timber species that is found in the easement premises but were not found in the harvest area will be valued by multiplying the determined cruise volume by the appropriate stumpage value for timber of the same species shown

on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091.

(3) Determining the easement compensation.

(a) When the ratio of qualifying timber value to the total value of all timber covered under an FPA/N is equal to or less than the high impact regulatory threshold, the compensation offered to the small forest landowner for a forestry riparian easement will be fifty percent of the qualifying timber value.

(b) When the ratio of qualifying timber value to the total value of all timber covered under an FPA/N exceeds the high impact regulatory threshold, the compensation offered to the small forest landowner for a forestry riparian easement will be fifty percent of the qualifying timber value up to the high impact regulatory threshold. Full compensation is given for the remaining qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = value of qualifying timber;

Vh = value of harvested timber; and

t = high impact of regulatory threshold (19.1% for western Washington, 12.2% for eastern Washington)

Compensation for easement = $((Vq/(Vq+Vh))-t)*(Vq+Vh))+(t*(Vq+Vh)/2)$

(~~3~~4) Removal of any qualifying timber before the expiration of the forestry riparian easement must be in accordance with the ~~forest practices~~forests and fish rules and the terms of the easement. There shall be no reduction in compensation for reentry.

WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner.

(1) ~~The compensation offered to the small forest landowner will be 50% of the fair market value of the qualifying timber established under the process described in WAC 222-21-045, plus the compliance and reimbursement costs, subject to the following exceptions:~~

~~(a) If the high impact regulatory threshold is exceeded for an area covered by an approved forest practices application, then the compensation offered will be increased to 100% for the value of the qualifying timber where the high impact regulatory threshold is exceeded. Use the following calculation:~~

~~Where:~~

~~Vq = value of qualifying timber;~~

~~Vh = value of harvested timber;~~

~~t = high impact of regulatory threshold (19.1% for Western Washington, 12.2% for Eastern Washington);~~

~~TV = total value of all timber covered under FPA = Vq +Vh; and~~

~~HIO - high impact override = (Vq/TV) t;~~

~~Compensation for easement = (HIO*TV)+~~ $\left(\frac{t*TV}{2}\right)$

~~See Section 17 of board manual for example.~~

~~(b)~~ All compensation and reimbursement to the small forest landowner is subject to available funding.

(2) If funding is not available, the small forest landowner office will maintain a priority list for compensation and reimbursement to the small forest landowner. Priority will be based on (a)

date of ~~receipt of forest practices application and (b) date of receipt of~~ the completed harvest status questionnaire and (b) the date of receipt to the FPA/N.

(3) The small forest landowner office shall make an easement compensation offer in the form of a purchase and sale agreement to the small forest landowner. The small forest landowner shall accept or reject the conditions of the purchase and sale agreement in writing and submit it to the small forest landowner office.

(4) ~~Reimbursement costs~~ The state of Washington shall offer reimbursement to the small forest landowners ~~for easement layout are subject to the work being acceptable to the department~~ once a contract has been executed for the forestry riparian easement. The small forest landowner office shall determine how the reimbursement ~~costs~~ to the small forest landowner will be calculated. ~~The small forest landowner office will send the small forest landowner a notice of compensation decision within 60 days of completion of the timber cruise.~~

(~~4~~5) Compensation for a forestry riparian easement associated with an approved ~~forest practices application~~FPA/N, or for an easement where an approved FPA/N for timber harvest cannot be obtained because of restrictions per forests and fish rules will ~~not~~ be paid ~~until~~when:

(a) The department has ~~documented~~ received a harvest status questionnaire affirming completion of harvest for the approved FPA/N(s) associated with an application for the forestry riparian easement;

(b) The department has verified that ~~there has been compliance with~~ the ~~rules requiring leave trees in the easement area~~ landowner has no outstanding violations under chapters 76.09 or 76.13 RCW or any associated forest practices rules;

(c) Any dispute over the amount of compensation or eligibility or other matter involving the forestry riparian easement has been resolved; and

(d) The forestry riparian easement has been executed and delivered to the department.

(~~5~~6) ~~Compensation for a forestry riparian easement for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under these rules adopted under RCW 76.09.055 or 76.09.370 will not be paid until:~~

~~(a) The department has verified that there has been compliance with the rules requiring leave trees in the easement area; and~~

~~(b) Any dispute over the amount of compensation or eligibility or other matter involving the forestry riparian easement has been resolved; and~~

~~(c) The forestry riparian easement has been executed and delivered to the department.~~

Compensation for any qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

NEW SECTION

WAC 222-21-055 Reimbursement to the department. If, within the first ten years after receipt of compensation for a forestry riparian easement, a small forest landowner sells the land on which a forestry riparian easement is located, to a landowner that does not meet the criteria as a small forest landowner, then the selling small forest landowner must reimburse the state for the full compensation received for the forestry riparian easement. If the land on which a forestry riparian easement is located consists of multiple land parcels and the selling small forest landowner sells parcels that consist of only a portion of the forestry riparian easement, the reimbursement amount will be determined based on the ratio of volume of qualifying timber within the portion of the forestry riparian easement on the land that is sold, to the total volume of qualifying timber. The selling small forest landowner must make full payment for this reimbursement within one year of sale of the land the forestry riparian easement occupies. In addition, the department will continue to hold, in the name of the state, the forestry riparian easement for the full term of the easement.

~~WAC 222-21-060 Commercially reasonable harvest.~~ ~~The small forest landowner office will use the following criteria to determine if an area covered by a forest practices application involves a commercially reasonable harvest. The proposed harvest must meet all of the following requirements:~~

~~(1) The harvest unit includes or borders a riparian area;~~

~~(2) The application is for a Class III or Class IV Special forest practice or a Class II that is a renewal of a Class III or Class IV Special;~~

~~(3) The harvest is not a Class IV General conversion or covered by a conversion option harvest plan;~~

~~(4) The landowner is not eligible for the 20 acre exemption under WAC 222-30-023;~~

~~(5) The value of the timber in the harvest unit, excluding qualifying timber, is equal to or exceeds the minimum required by department of revenue for taxing purposes ($1000); and~~

~~(6) The taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045, unless otherwise approved by the small forest landowner office. (See the board manual.)~~

~~WAC 222-21-061 Criteria when commercially reasonable harvest is not possible.~~

~~The small forest landowner office will use the following criteria to determine if a forest practices application for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible and an approved application for harvest cannot be obtained because of restrictions under the forest practices rules. The proposed harvest must meet all of the following requirements:~~

~~(1) The application has been disapproved based on rules adopted under RCW 76.09.055 or 76.09.370 that require the area covered by the application to be left unharvested; and~~

~~(2) The application is for a Class III or Class IV Special forest practice; and~~

~~(3) The harvest is not a Class IV General conversion or covered by a conversion option harvest plan; and~~

~~(4) The landowner is not eligible for the 20 acre exemption under WAC 222-30-023; and~~

~~(5) The value of the qualifying timber is equal to, or exceeds, the minimum required by the department of revenue for taxing purposes ($1,000).~~

~~WAC 222-21-065 Uneconomic to harvest.~~ ~~The small forest landowner office will use the following criteria to determine whether timber is qualifying timber because it is rendered uneconomic to harvest by rules adopted under RCW 76.09.055 or 76.09.370. The proposed harvest must meet all of the following requirements:~~

~~(1) The timber could have been included in a commercially reasonable harvest unit by the small forest landowner if there were no additional requirements imposed by rules adopted under RCW 76.09.055 or 76.09.370.~~

~~(2) The area is not reasonably accessible because of requirements imposed by rules adopted under RCW 76.09.055 or 76.09.370.~~

~~(3) The unit must have no reasonable unit size alternative which if used would make the area economical to harvest.~~

~~(4) The cost to access the harvest unit plus the cost to harvest must equal or exceed 35% of the stumpage value in the portion of the unit considered to be uneconomic. The small forest landowner office will determine costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester method to calculate stumpage values and~~

~~allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred, as part of the cost calculations.~~

WAC 222-21-070 Blowdown and salvage. After execution of a forestry riparian easement, qualifying timber may not be salvaged, including removal of blowdown, without prior written permission from the department. Prior to removal, the small forest landowner office and the small forest landowner must negotiate the terms of removal and reimbursement to the state, if any. ~~Qualifying timber that blows down off the easement premises that presents a nuisance may be moved back onto the easement premises without permission from the department.~~

WAC 222-21-080 Eminent domain. If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its remaining interest in the easement based upon the following formula:

Where:
C - Is the compensation to the department for the state's remaining interest in the easement;
O - Is the original compensation for the easement paid to the small forest landowner by the state;
P - Is the proportion of the forestry riparian easement extinguished or terminated;
CPIo - Is the ~~U.S.~~ Consumer Price Index for all ~~urban~~ Urban ~~consumers~~ Consumers as published by the U.S. Bureau of Labor Statistics for the month in which the original compensation was determined;
CPIc - Is the ~~U.S.~~ Consumer Price Index for all ~~urban~~ Urban ~~consumers~~ Consumers as published by the U.S. Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;
I - Is the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;
R - Is the number of years remaining on the easement at the time of extinguishment or termination.
$C = O*P*(CPIc/CPIo)*(1-(1/(1.+I)^{R}))/(1-1/(1+I)^{50}))$

WAC 222-21-090 Internal department of natural resources review of small forest landowner office ~~compensation~~ decisions. ~~Within 30 days after the date of the notice of compensation decision, the small forest landowner may submit a written request for review to the supervisor of the department or his or her designee. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor will issue a written response within 30 days.~~ Any person who wishes to appeal written decisions of the small forest landowner office pertaining to application eligibility, easement valuation, and related decisions may submit a request for review within thirty days after the date of the small forest landowner office's written decision. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor of the department or designee will issue a written response within thirty days of receipt of the request for review and this response shall constitute the department's final decision.