February 1, 2012

MEMORANDUM

TO: **Forest Practice Board**

FROM: **Sherri Felix, Policy Analyst, Forest Practices Division** SF

SUBJECT: **Notice of Forest Practices to Affected Indian Tribes Rule Making - Request for Adoption**

On February 14, 2012, I will request the Board adopt with no modifications the proposed rule language that received public review. This language was the consensus proposal from the Timber/Fish/Wildlife Cultural Resources Roundtable to clarify WAC 222-20-120 and resolve issues with the required landowner-tribe meetings. Additionally, this rule making corrects the western Washington riparian management zone clumping strategy in WAC 222-30-021 (1)(c)(ii) by simply replacing old Class IV-special language with the Class IV-special language the Board adopted in its 2008 historic sites rule making.

At your November 8, 2011 meeting, the Board approved filing a *Proposed Rule Making* (CR-102) with the Office of the Code Reviser which included the consensus proposed rule language from the Timber/Fish/Wildlife Cultural Resources Roundtable, a preliminary economic analysis, and rule making hearing information. This rule making is categorically exempt from State Environmental Policy Act (SEPA) review pursuant to WAC 197-11-800(19).

The Board received eight comments (oral and/or written) on its proposed rule language amendments prior to the close of the comment period on January 6, 2012. Some comments were in favor of the rule amendments as proposed while other comments suggested modification to the proposed rule amendments. Additionally the Board received one written comment on January 12, 2012 following their January 5 oral comments. All written comments are enclosed.

The Board is not considering new or amended rules to achieve resource objectives. Therefore, the analysis of existing approved long-term applications required by subsection (4) of WAC 222-20-016 *Small forest landowner long-term applications* does not apply.

Enclosed for your review is the proposed rule language with no modifications, the draft Concise Explanatory Statement, the comment letters, and the final economic analysis. Upon your adoption of this rule, staff will:

- Finalize the Concise Explanatory Statement,

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- Complete the rule implementation plan pursuant the Administrative Procedure Act, chapter 34.05 RCW, and
- File a CR-103 *Rule Making Order* with the Office of the Code Reviser that includes the adopted rule language.

Should you have any questions about this rule making before your Board meeting, please feel free to contact me at sherri.felix@dnr.wa.gov or 360-902-1446.

SF/
Enclosures

Forest Practices Board
Notice of FP to Affected Indian Tribes Rule Making
Proposed Rule for CR-103 Filing
February 2012

WAC 222-20-120 Notice of forest practices that may contain cultural resources to affected Indian tribes.

(1) The department shall notify affected Indian tribes of all applications in geographic areas of ~~concern to~~interest that have been identified by such tribes, including those ~~involving~~ areas that may contain cultural resources~~, identified by the tribes~~.

(2) Where an application ~~involves~~ is within a tribe's geographic area of interest and contains cultural resources the landowner, at the tribe's discretion, shall meet with the affected tribe(s) prior to the application decision due date with the objective of agreeing on a plan for protecting the archaeological or cultural value. ~~The department may condition the application in accordance with the plan.~~

(3) ~~Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the department of archaeological and historic preservation (DAHP).~~ The department will consider the requirements in subsection (2) complete if prior to the application decision due date:

(a) The landowner meets with the tribe(s) and notifies the department that a meeting took place and whether or not there is agreement on a plan. The department shall confirm the landowner's information with the tribe(s); or

(b) The department receives written notice from the tribe(s) that the tribe(s) is declining a meeting with the landowner; or

(c) The tribe(s) does not respond to the landowner's attempts to meet and the landowner provides to the department:

(i) written documentation of telephone or e-mail attempts to meet with the tribe's designated cultural resources contact for forest practices, and

(ii) a copy of a certified letter with a signed return receipt addressed to the tribe's cultural resources contact for forest practices requesting a meeting with the tribe; or

(d) The department receives other acceptable documentation.

(4) The department may condition the application in accordance with the plan.

WAC 222-30-021 *Western Washington riparian management zones.

These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See board manual section 7 for riparian design and layout guidelines.

*(1) **Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities

provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

. . .

(c) **Outer zones.** Timber harvest in the outer zone must leave twenty riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	**Leave tree spacing**	**Tree species**	**Minimum dbh required**
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive Features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

(I) Seeps and springs;

(II) Forested wetlands;

(III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;

(IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological sites or ~~historical~~ historic archaeological resources as defined in RCW 27.53.030;

(VII) Historic sites ~~registered with~~eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(~~g~~f); or

(VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

. . .

ECONOMIC ANALYSIS
Forest Practices Board
Rule Making Affecting the Notice of Forest Practices to Affected Indian Tribes

By Gretchen Robinson, Natural Resource Specialist
Department of Natural Resources
February 2012

The Forest Practices Board (Board) is proposing to amend WAC 222-20-120, *Notice of forest practices to affected Indian tribes*. The proposed amendments fit the criteria for "significant legislative rules" in the Administrative Procedure Act (RCW 34.05.328).[1] Before adopting significant legislative rules agencies are required, in part, to do the following:

- Determine the rule is needed to achieve the general goals and specific objectives of statute;
- Analyze alternatives to rule making and the consequences of not adopting the rule;
- Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented; and
- Determine that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the goals and objectives.

Those requirements are fulfilled in this preliminary economic analysis.

GOALS AND OBJECTIVES

The goal of amending WAC 222-20-120 is to establish an improved process for forest landowners to meet their obligations related to contacting tribes and planning for cultural resource protection.

The Forest Practices Act (chapter 76.09 RCW) lists policies associated with maintaining a viable forest products industry consistent with public resource protection. The act declares it is in the public interest to create and maintain rules that, among many other goals, "… foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state …"[2]

The proposed rule amendment promotes cooperative relationships between forest landowners and tribes.[3] It also clarifies the opportunities that tribes have to work with landowners to protect cultural resources of value to them, and it provides certainty for landowners that their obligations can be met within forest practices application (FPA) time limits.[4] The rule proposal, therefore, achieves the

[1] The Board is also proposing to correct references to laws pertaining to historic archaeological resources in WAC 222-30-021(1)(c)(ii)(A). Those amendments do not qualify as significant legislative rules because they do not change the effect of that section; they are not, therefore, included in this analysis.
[2] RCW 76.09.010(2)(i).
[3] "Forest landowners" or "landowners" in this document means those persons responsible for the conduct of forest practices activities, including managers of public and private forest lands.
[4] Application time limits are explained in WAC 222-20-020.

Forest Practices Act policy stated above by helping to maintain the forest products industry while promoting relationships and coordination among forest landowners and tribes.

CONTEXT

The proposal is a recommendation from the Timber/Fish/Wildlife Cultural Resources Roundtable. The Roundtable is a multi-caucus group whose participants are representatives of individual tribes, large and small forest landowners, and state agency staff representing the Department of Archaeology and Historic Preservation (DAHP) and the Department of Natural Resources' (DNR's) Forest Practices Division and Forest Resources and Conservation Division.

Part of the Roundtable's purpose is to provide insight to the Forest Practices Board on cultural resources issues affecting forest practices and provide consensus rule making recommendations for the Board's consideration.[5] In regard to WAC 222-20-120, in the past couple of years the Roundtable has received input from tribes, landowners, DAHP and DNR that the process in current rule does not provide clear procedures. The Board is now considering the draft rule proposal that DNR staff presented to the Board at its May 10, 2011 meeting on behalf of the Roundtable.[6]

WAC 222-20-120 was first adopted in 1987 to implement measures in the Timber/Fish/Wildlife Agreement to:

> *… accommodate tribal concerns [related to cultural resources], while providing landowners with the opportunity to resolve any conflicts in a timely and cooperative manner. These measures will also preserve the anonymity of these designated sites which is a large concern to the affected tribes.*[7]

The intent was, and still is, for landowners to meet with tribes within FPA approval time limits with the objective of agreeing on a plan for protecting cultural resources.[8] The rule adopted at the time, and as it exists today, is as follows:

> ***WAC 222-20-120 Notice of forest practices to affected Indian tribes.***
> *(1) The department shall notify affected Indian tribes of all applications of concern to such tribes, including those involving cultural resources, identified by the tribes.*
> *(2) Where an application involves cultural resources the landowner shall meet with the affected tribe(s) with the objective of agreeing on a plan for protecting the archaeological or cultural value. The department may condition the application in accordance with the plan.*
> *(3) Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the department of archaeological and historic preservation (DAHP).*

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[5] The purpose, membership, and other information about the Timber/Fish/Wildlife Cultural Resources Roundtable can be seen in its charter; go to http://www.dnr.wa.gov/Publications/bc_tfw_crc_charter_final.pdf.

[6] Background information on the draft rule can be found in the file labeled, "20-120 Rule Making-Felix.pdf " at http://www.dnr.wa.gov/Publications/bc_fp_materials_20110510.pdf .

[7] Timber/Fish/Wildlife Agreement, 1987, p. 38. http://www.dnr.wa.gov/Publications/fp_tfw_agreement_19870217.pdf

[8] WAC 222-20-020 describes application time limits.

The major problems with the current rule language are:

- The implication that landowners cannot fulfill the requirement to meet with tribes if communication does not take place; and
- The implication that DNR cannot approve FPAs unless the landowner meets with the tribe.

This has caused difficulty for landowners, tribes, and DNR. There are instances where landowners have contacted tribes as prescribed by the rule and have not received a return communication from a tribe. The tribe may not have any concerns with the proposed activities, but the current rule does not address what landowners should do when there is no response from a tribe. DNR must receive documentation that landowner-tribe communications took place in order to approve the landowner's application.[9]

DNR reports it has disapproved, and landowners have withdrawn, FPAs based on the lack of a response from a tribe, although this has occurred on only a small proportion of FPAs. (Forest Practices Application Review System [FPARS] records show in the years 2005 through 2010, only 343 out of 30,023 FPAs, or 1.1 percent, included proposed activities in the location of a cultural site.[10]) But when a disapproval or withdrawal does occur due to the lack of a response from a tribe it can be costly for landowners. This is discussed in the "Cost-Benefit Analysis" to follow.

PROPOSED RULE

The proposed change to WAC 222-20-120 creates a clearer FPA process, clarifies terminology, and eliminates language that imposes requirements on tribes. A clear process is accomplished through a proposed new subsection 3. It offers alternative means by which landowners can fulfill their obligations and DNR will consider that the landowner-tribe meeting requirement is met:

> *(3) The department will consider the requirements in subsection (2) complete if prior to the application decision due date:*
>
> *(a) The landowner meets with the tribe(s) and notifies the department that a meeting took place and whether or not there is agreement on a plan. The department shall confirm the landowner's information with the tribe(s); or*
>
> *(b) The department receives written notice from the tribe(s) that the tribe(s) is declining a meeting with the landowner; or*
>
> *(c) The tribe(s) does not respond to the landowner's attempts to meet and the landowner provides to the department:*
>
> *(i) written documentation of telephone or email attempts to meet with the tribe's designated cultural resources contact for forest practices, and*

[9] Often landowners must contact more than one tribe. This depends on how many tribes have previously selected the geographic area of the landowner's FPA in the Forest Practices Application Review System administered by the Department of Natural Resources. The singular "tribe" is used in this document, but this can also mean more than one tribe depending on the situation.

[10] The percentage of FPAs identified as located in areas with cultural sites varied from a low 0.6 percent of the total number of FPAs in 2005 and 2007, to a high of 2.1 percent in 2010.

(ii) a copy of a certified letter with a signed return receipt addressed to the tribe's cultural resources contact for forest practices requesting a meeting with the tribe; or

(d) The department receives other acceptable documentation.

In other words, DNR can approve an FPA if one of the alternative means (a) through (d) is carried out, as long as there are no other problems with the FPA.

The proposed rule also:

- Eliminates language imposing requirements on the tribes.
- Adds clarity to two phrases in the current rule. "Applications of concern" is replaced with "applications in geographic areas of interest that have been identified by such tribes", and "including those involving cultural resources" is replaced with "including those areas that may contain cultural resources."

COST-BENEFIT ANALYSIS

Description of Costs

The proposed rule would create practically no additional cost, if any, on those required to comply with it. Inherent in both the current and proposed rules are costs for:

- Landowners to contact tribes;
- Both landowners and tribes to communicate if tribes choose to respond to landowners' attempts to do so;
- Both landowners and tribes to create a plan for cultural resource protection if tribes choose to discuss a plan; and
- Landowners to notify DNR that such meetings and planning did or did not take place.

The only new cost impact from the proposed rule is extremely minor. The scenario in subsection (3)(c) would result in the minor cost of providing a copy of a certified letter requesting a meeting with the tribe and a signed receipt. There would be no change in costs associated with scenarios described in subsections (3)(a) and (3)(b) because they do not represent a change from the current process. The scenario described in subsection (3)(d), "the department receives other acceptable documentation", cannot be evaluated for new costs to landowners.

Description of Benefits

The benefits of the proposal primarily go to forest landowners whose forest practices proposals are on lands that intersect with cultural resources. The proposal creates a clear pathway for landowners to carry out a good faith effort to solicit a response from tribes and receive an approved FPA from DNR if there is no response. Without this pathway, landowners who do not receive a response from a tribe do not receive an approved FPA and cannot carry out proposed forest practices activities within their scheduled timeframe.

Landowners can lose income when an FPA is disapproved or withdrawn due to the lack of documentation of the landowner-tribe meeting. This loss of income can occur when landowners are

not allowed to sell their timber within a particular window of economic opportunity; stumpage values can change or scheduled operators and equipment may not be available outside the landowner's planned timeframe.

The benefit of the proposed rule for landowners, therefore, is the prevention of lost income that can occur if landowners do not receive a response from tribes in spite of their efforts to do so. The proposed rule provides certainty for landowners that their obligations regarding the landowner-tribe meeting can be met within their FPA time limits and their activities can take place within their scheduled timeframe.

The rule proposal also benefits tribes. Certain tribes have expressed concern that the current rule creates the perception of tribes as regulators, which is not the case. The proposed rule explicitly states that the meeting is at the discretion of the tribes.

Comparison of Benefits and Costs

For this analysis, it is reasonable to conclude that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs.

LEAST BURDENSOME ALTERNATIVE ANALYSIS

RCW 34.05.328(1)(e) requires agencies to determine, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute the rule implements.[11] Alternatives ways to address the problems with WAC 222-20-120 are listed below. The Board is proposing Alternative 3, which is considered the least burdensome alternative for those required to comply with it.

Alternative 1 – Eliminate WAC 222-20-120.
This is not a viable solution. The rule is needed to promote cooperative relationships between forest landowners and tribes, which is a policy of the Forest Practices Act; it facilitates landowner-tribal communications when forest practices activities intersect with cultural resources.

Alternative 2 - Add the phrase "at the tribe's discretion" to the meeting requirement sentence in subsection (2).
Subsection (2) of the rule requires the landowner-tribe meeting where an FPA is within a tribe's geographic area of interest and contains cultural resources. Adding language to explicitly state that this meeting is discretionary for tribes would make the rule less burdensome than the current rule. The landowner could receive an approved FPA even if a tribe decides not to meet. If the tribe responds that it does not want to meet, the landowner can receive an approved application. However, this is not the preferred alternative because if the tribe does not respond to the landowner's request to meet, the landowner cannot provide documentation to DNR for the FPA.

[11] The related goals are explained under the heading, "Goals and Objectives" in this document.

Alternative 3 – Preferred alternative. Add the phrase "at the tribe's discretion" to the meeting requirement sentence, and provide alternative means for landowners to fulfill the meeting requirement.
The proposed rule is the least burdensome alternative for forest landowners and tribes, because it includes the concept of tribal discretion and sets in rule a variety of scenarios by which DNR will consider the landowner-tribe meeting requirement completed.

SMALL BUSINESS IMPACTS

The Regulatory Fairness Act (chapter 19.85 RCW) requires state agencies to prepare a small business economic impact statement (SBEIS) for proposed rules that will impose more than minor costs on businesses. The purpose of the SBEIS is to look at how a rule might impact small businesses. When these impacts are identified the agency must try to find ways to reduce those impacts.

As stated under "Description of Costs", the only new costs, if any, for landowners resulting from the rule proposal would be extremely minor. The rule does not meet the threshold of imposing more than minor costs on businesses and therefore an SBEIS is not required.

SUMMARY

The benefits of the proposed rule are greater than the costs for those required to comply with it. The proposed rule imposes practically no additional costs, if any, to the costs of complying with the current rule. It benefits both forest landowners and tribes. Landowners are assured closure in their efforts to coordinate with tribes with the objective of agreeing on a plan for protecting cultural resources. Language is revised to be explicit that tribal involvement is discretionary.

The proposed rule is the least burdensome of three alternatives considered for those required to comply with it. Not changing the rule is the most burdensome for landowners and is not acceptable to tribes that are reviewing FPAs. The alternative to only make the meeting with tribes discretionary does not provide a clear pathway for landowners to carry out a good faith effort to solicit a response from tribes. The Forest Practices Board's preferred alternative provides both the explicit statement that a meeting is at the tribes' discretion, and a clear pathway for landowners to meet their obligations.

The proposed rule does not meet the threshold of imposing more than minor costs on businesses, and therefore a small business economic impact statement is not required.

STATE OF WASHINGTON
FOREST PRACTICES BOARD

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As required by
the Administrative Procedure Act
Chapter 34.05 RCW

DRAFT
CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY

ADOPTION OF AMENDMENT TO THE FORST PRACTICES RULES
WAC 222-20-120 *Notice of Forest Practices to Affected Indian Tribes*
and
WAC 222-30-021 (1)(c)(ii) western Washington riparian zone clumping strategy

Prepared by: Sherri Felix
February 1, 2012

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Introduction

Washington state agencies are required to provide a concise explanatory statement to any person upon request or from whom the agency receives comments during a rule making (RCW 34.05.325(6)). Before an agency adopts a rule, the agency:

> *…shall prepare a concise explanatory statement of the rule:*
> *(i) Identifying the agency's reasons for adopting the rule;*
> *(ii) Describing differences between the text of the proposed rule, as published in the register and the text of the rule as adopted, other than editing changes, stating the reason for the differences; and*

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Content of Rule Amendments and Reasons to Adopt

The Forest Practices Board's rule making titled Notice of Forest Practices to Affected Indian Tribes amends the following two rules:

- WAC 222-20-120 *Notice of forest practices to affected Indian tribes*
- WAC 222-30-021 (1)(c)(ii) western Washington riparian zone clumping strategies

<u>WAC 222-20-120</u>
The amendments to Notice of Forest Practices to Affected Indian Tribes are designed to accomplish the following:

- Call attention to the fact that this rule includes applications that may involve cultural resources.
- Clearly state that the department is to send applications to a tribe for review based on the tribe's designated areas of interest, rather than only the applications the tribe has a concern with.
- Resolve ongoing issues with the requirement that the landowner and tribe "shall meet" when the landowner's application involves a cultural resource.
- Remove the requirement that the tribe must determine whether an agreed to landowner-tribe plan will or will not be forwarded by the department to the Department of Archaeology and Historic Preservation.

The main issue with this rule is the landowner-tribe meeting requirement. When an application involves a cultural resource, the landowner and the tribe are required to meet with the objective of agreeing on a plan to protect the cultural resource. Therefore the rule requires the tribe to meet with the landowner, even when the tribe has no concern about the particular forest practice. The result of not meeting is a disapproved application. The amendments to the rule specify the meeting is at the discretion of the tribe and provide criteria by which documented good faith efforts by the landowner to talk with the tribe can suffice for the meeting requirement when there is no response from the tribe.

<u>WAC 222-20-021 (1)(c)(ii)</u>
The amendments to the western Washington riparian zone clumping strategies simply replace old Class IV-special language with the new Class IV-special language the Board adopted in its 2008 Historic Sites rule making.

Comments – Summary, Commenters, and Responses

<u>Summary</u>
The Board received a total of eight comments on its amendments to WAC 222-20-120 *Notice of Forest Practices to Affected Indian Tribes*. Comments varied from supporting the amended language as proposed to suggesting changes to the proposed language.

The Board did not receive any comments on its amendments to the western Washington riparian zone clumping strategies in WAC 222-30-021 (1)(c)(ii).

Commenters

At the January 3, 2012 Olympia hearing and the January 5, 2012 Ellensburg hearing, comments were received from the following:

- Longview Timber Corporation (oral and Written comments #12-01)
- Cowlitz Indian Tribe (oral comment #12-02)
- Washington Forest Protection Association (oral and written comments #12-03)
- Hancock Timber Resource Group (oral comment #12-04)
- Puyallup Tribe of Indians (oral comment #12-05)
- Confederated Tribes and Bands of the Yakama Nation (oral and written comments # 12-06)

Separate from the hearings, the Board also received comments from the following:

- Muckleshoot Indian Tribe (written comment #12-07)
- Rayonier (written comment # 12-08)
- Washington Forest Protection Association (additional written comments also #12-03)

After the comment due date, the Board also received written comments from the Puyallup Tribe of Indians. See the tribe's oral comment #12-05.

Responses *To be updated upon adoption of final rule if different than proposed rule.*

- Comment #12-04, and comment #12-06: We support the proposed language, and we support the language, oppose any further amendments, and support development of a rule specific to tribes concerns with natural resources applications.

  Response: Comment noted as supporting the language that was proposed by the Timber/Fish/Wildlife Cultural Resources Roundtable for public review.

- Comment #12-05: We are generally supportive of the intent of the proposal and its existing content but we are also interested in broader issues work on forest practices WACs including how the change in the WAC title affects the broader program.

  Response: Comment noted as in support of proposed language and requesting follow-up work to determine how this amended WAC now relates to the other forest practices WACs.

- Comments #12-02 and #12-07: The amendment to the WAC title infers there is a new WAC for applications that do not contain any cultural resources and implies that notice to affected tribes is predicated solely on the potential presence of cultural resources.

  Response: The WAC title amendment identifies the full scope of the WA. That is, it not only requires notice to tribes of forest practices applications, it also sets the process for addresses cultural resources issues with applications.

- Comments #12-01, #12-03, and #12-08: The proposed language is not sufficiently clear in identifying the cultural resources targeted by the rule and overly general interpretations or boiler plate letters of concern may trigger unnecessary meeting requirements so, we recommend additional language that specifies who identifies the cultural resource.

  Response: The cultural resources targeted by the rule are defined in the Board's definition of "cultural resources" in WAC 222-16-010. The department relies on various experts to identify these cultural resources and listing the experts in rule precludes the opportunity to recognize a different expert than listed.

- Comment # 12-08: The amendments do not allow the landowner to take advantage of the Class IV-special.

  The standards for the Class IV-special exemption for cultural resources in WAC 222-16-050 are not affected by and not the subject of this rule making.

Differences between Proposed and Final Rule

To be completed upon adoption of final rule.

Adoption Date

The expected adoption date is February 14, 2012 at the Forest Practices Board meeting. If adopted then, the rule would become effective in March-April 2012. *To be updated upon adoption of final rule.*

Rule MakingTimeline and Opportunities to Participate

05/11/2010	Forest Practices Board meeting: Consider approval of notice to public of rule making intent on Notice of Forest Practices to Affected Indian Tribes. Opportunity to comment at the meeting prior to Board action.
05/2010-11/2011	Forest Practices Board's TFW Cultural Resources Roundtable develops rule amendments
06/28/2010	*Preproposal Statement of Inquiry* (CR-101) published in the Washington State Register (WSR 10-14-038 filed 06/28/2010)
06/28/2010	Forest Practices Rule Making Activity update about rule making intent on Notice of Forest Practices to Affected Indian Tribes sent to interested parties.
05/10/2011	Forest Practices Board meeting: Consider approval of draft rule language, for 30-day review pursuant to Forest Practices Act. Opportunity to comment at meeting prior to Board action.
05/12-06/12/2011	30-day review of draft rule language by Washington Department of Fish and Wildlife and counties (RCW 76.09.040(2)) and affected Indian tribes.
08/09/2011	Forest Practices Board meeting: Consider approval of draft rule language for public review and comment. Opportunity to comment at Board meeting prior to Board action.
10/04/2011	Forest Practices Rule Making Activity update about public review and comment on the rule making sent to interested parties.
10/05/2011	*Proposed Rule Making* (CR-102) with hearings information, proposed rule language, and preliminary economic analysis published in Washington State Register (WSR 11-19-009 filed 09/07/2011). Public review and comment open through January 6, 2012.

11/08/2011	Forest Practices Board meeting: Response from TFW Cultural Resources Roundtable on Notice of Forest Practices to Affected Indian Tribes rule making. Opportunity to comment at meeting during general comment period.
12/13/2011	Forest Practices Rule Making Activity update about rule making hearings information sent to interested parties.
12/16/2011	DNR Media Advisory on rule making heatings for Notice of Forest Practices to Affected Indian Tribes.
01/03/2012	Rule making hearing in Olympia
01/05/2012	Rule making hearing in Ellensburg
01/06/2012	Due date for comments on Notice of Forest Practices to Affected Tribes rule proposal