PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Forest Practices Board

☒ **Preproposal Statement of Inquiry was filed as WSR** 10-18-046, WSR 09-18-031, and WSR 10-18-044.
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

Title of rule and other identifying information: (Describe Subject)
Amend Title 222 WAC as it relates to forest biomass harvest, watershed analysis reviews, and the addition of threatened or endangered species habitat in the Riparian Open Space Program.

Hearing location(s):
Ellensburg: Department of Natural Resources
713 E. Bowers
509.925.8510
Date: March 24, 2011 Time: 6 p.m.

Olympia: Natural Resources Building
1111 Washington Street SE, Room 172
360.902.1400
Date: March 30, 2011 Time: 6 p.m.

Sedro Wolley: Department of Natural Resources
919 N. Township
360.856.3500
Date: March 31, 2011 Time: 6 p.m.

Submit written comments to:
Name: Patricia Anderson, DNR Forest Practices Division
Address: PO Box 47012
Olympia, WA 98504-7012
e-mail forest.practicesboard@dnr.wa.gov
fax (360) 902-1428 by (date) 5 p.m. on April 1, 2011

Assistance for persons with disabilities: Contact Forest Practices Division at (360) 902-1400 by March 14, 2011
TTY (360) 902-1125

Date of intended adoption: May 10, 2011
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The purpose of the proposal is to:

- Add forest biomass harvest to the definition of "forest practice."
- Amend rules relating to the Riparian Open Space Program to implement Substitute Senate Bill 5401 (2009 session).
- Amend rules to better ensure that watershed analysis prescriptions continue over time to be protective enough to warrant an exemption from Class IV-special classification.

Reasons supporting proposal:
Forest Biomass - There is an emerging industry in Washington State to convert biomass to energy and energy products. Adding forest biomass harvest to the definition of "forest practice" in WAC 222-16-010 is intended to ensure the public understands that forest biomass harvest is a forest practice and subject to the resource protection measures required in Title 222 WAC and chapter 76.09 RCW.

Riparian Open Space Program - In 2009, the legislature amended RCW 76.09.040 to allow for the purchase of conservation easements on forest lands designated as habitat for threatened or endangered species; this is in addition to conservation easements on forest lands in migrating stream channels. The Board is proposing rule changes to incorporate the provisions of the legislation into the forest practices rules.

Continued on Attachment A

Statutory authority for adoption:
RCW 76.09.010, 76.09.040

Statute being implemented:
RCW 76.09.040

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE
February 11, 2011

NAME (type or print)
Peter Goldmark

SIGNATURE

TITLE
Chair

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 11, 2011
TIME: 12:20 PM

WSR 11-05-062

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

Name of proponent: (person or organization)
Forest Practices Board

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..Gretchen Robinson, Dan Pomerenk, Sherri Felix	1111 Washington Street SE, Olympia	(360) 902-1400
Implementation....Marc Engel	1111 Washington Street SE, Olympia	(360) 902-1390
Enforcement.....Darin Cramer	1111 Washington Street SE, Olympia	(360) 902-1088

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name: Patricia Anderson
Address: Department of Natural Resources
P.O. Box 47012
Olympia, WA 98504-7012

phone (360) 902.1413
fax (360)902.1428
e-mail patricia.anderson@dnr.wa.gov

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name: Patricia Anderson
Address: Department of Natural Resources
P.O. Box 47012
Olympia, WA 98504-7012

phone (360) 902.1413
fax (360)902.1428
e-mail patricia.anderson@dnr.wa.gov

☐ No: Please explain:

ATTACHMENT A

Watershed Analysis Reviews – After recent intense storm events that caused extensive landslides in some areas of the state, the Board became concerned about whether the rules related to mass wasting watershed analysis prescriptions are adequate for protecting public resources. The proposed rules specify a process for the review (“reanalysis”) of watershed analysis prescriptions, and clearly give the Department of Natural Resources authority to withdraw prescriptions if required reviews are not completed. The proposal is consistent with recommendations from the Forest Practices Adaptive Management Program presented to the Board on November 9, 2010.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-10-030 *SEPA policies for potentially unstable slopes and landforms. In addition to SEPA policies established elsewhere in this chapter, the following policies apply to forest practices described in WAC 222-16-050 (1)(d) relating to construction or harvest on potentially unstable slopes or landforms.

(1) In order to determine whether such forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit the following additional information, prepared by a qualified expert as defined in subsection (5) of this section. The qualified expert must describe the potentially unstable landforms in and around the application site and analyze:

(a) The likelihood that the proposed forest practices will cause movement on the potentially unstable slopes or landforms, or contribute to further movement of a potentially unstable slope or landform;

(b) The likelihood of delivery of sediment or debris to any public resources, or in a manner that would threaten public safety; and

(c) Any possible mitigation for the identified hazards and risks.

(2) The department's threshold determination will include an evaluation of whether the proposed forest practices:

(a) Are likely to increase the probability of a mass movement on or near the site;

(b) Would deliver sediment or debris to a public resource or would deliver sediment or debris in a manner that would threaten public safety; and

(c) Such movement and delivery are likely to cause significant adverse impacts.

If the department determines that (a), (b) and (c) of this subsection are likely to occur, then the forest practice is likely to have a probable significant adverse impact.

(3) The department will evaluate the proposal, using appropriate expertise and in consultation with other affected agencies and Indian tribes.

(4) Specific mitigation measures or conditions must be designed to avoid accelerating rates and magnitudes of mass wasting that could deliver sediment or debris to a public resource or could deliver sediment or debris in a manner that would threaten public safety.

(5) Qualified expert for the purposes of this section and for reanalysis of watershed analysis mass wasting prescriptions under WAC 222-22-030 means a person licensed under chapter 18.220 RCW as

either an engineering geologist or as a hydrogeologist (if the site warrants hydrologist expertise), with ((~~3~~)) at least three years of field experience in the evaluation of relevant problems in forested lands.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-10-035 *Watershed analysis SEPA policies. When the department considers a watershed analysis for approval ((~~as in~~)) under WAC 222-22-080 or 222-22-090, the department will perform a review under SEPA as a nonproject proposal. When making the SEPA threshold determination ((~~for a watershed analysis~~)), the department shall only make a determination of significance if, when compared to rules or prescriptions in place at the time of the analysis or the ((~~5-year review~~)) reanalysis, the prescriptions will cause a probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-10-125 Exemption from RCW 43.21C.030 (2)(c). Decisions pertaining to the following are not subject to any procedural requirements implementing RCW 43.21C.030 (2)(c): Approval of forest road maintenance and abandonment plans, approval of future timber harvest schedules involving east-side clear cuts, acquisitions of conservation easements pertaining to forest lands in the ((~~riparian~~)) rivers and habitat open space program; and acquisitions of conservation easements pertaining to forest lands in riparian zones under the forest riparian easement program.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-12-010 Authority. These forest practices rules are adopted pursuant to chapter 76.09 RCW, RCW 76.13.100 through 76.13.130, and RCW 77.85.180 through 77.85.190. Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the ((~~riparian~~)) rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.370, and 76.13.120(9).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.

Those rules marked with an asterisk (*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-12-090 Forest practices board manual. When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on**

streams needed for use with WAC 222-30-040.

(2) Standards for identifying channel migration zones and bankfull channel features.

(3) **Guidelines** for forest roads.

(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.

(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird ((~~[Group]~~)) Group survey protocol dated January 6, 2003, and formally ((~~[titled] [filed on] on~~)) titled *Methods for Surveying Marbled Murrelets in Forests: A Revised ((~~Protocal~~)) Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board((~~[-]~~)) -recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data;

and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for ((~~riparian~~)) rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

AMENDATORY SECTION (Amending WSR 10-23-077, filed 11/15/10, effective 12/16/10)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the pollution control hearings board established in RCW 43.21B.010.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) ((~~or~~)), 222-22-060(2), or 222-22-090.

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or

hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

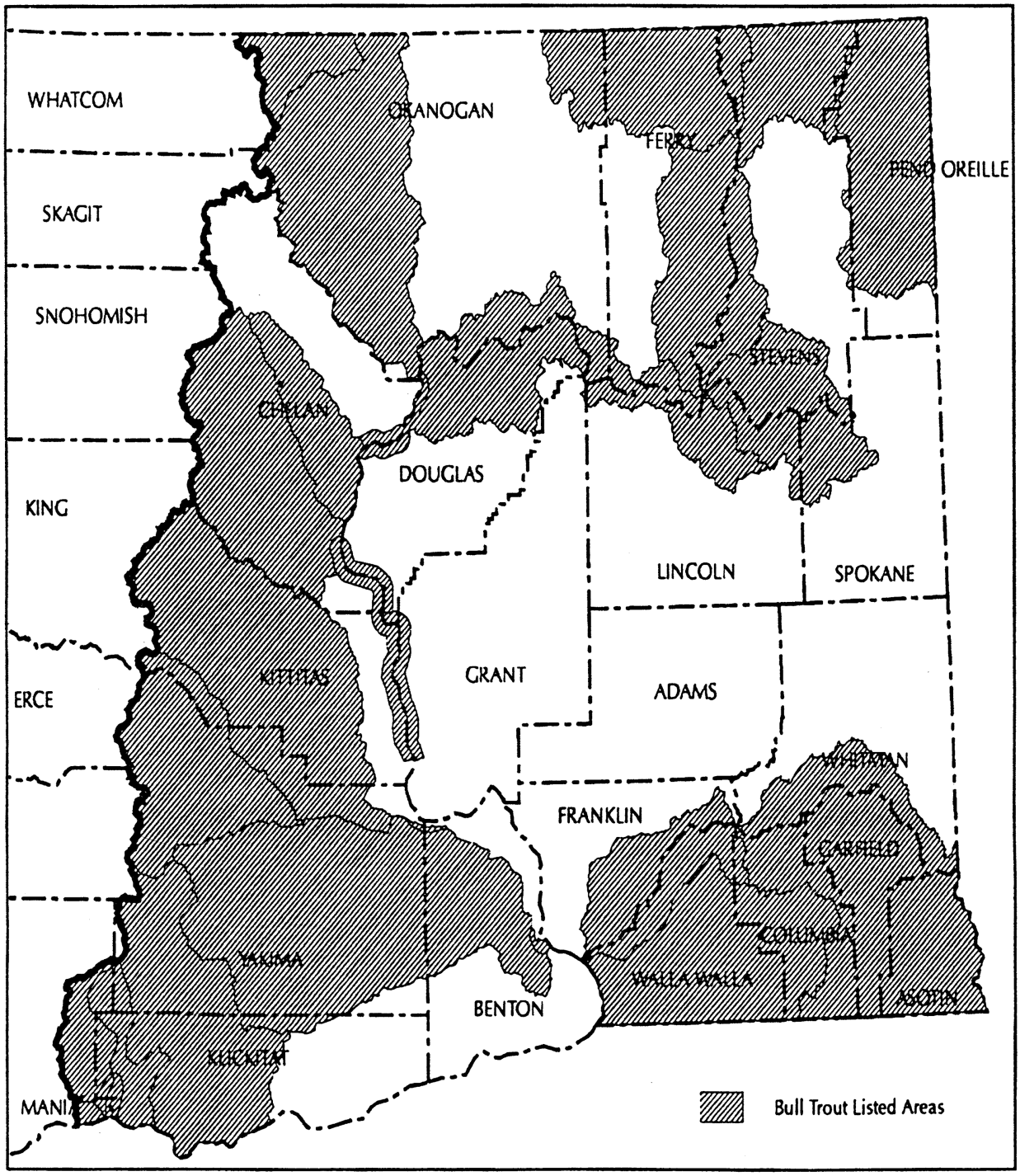
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(b) or revised pursuant to 16 U.S.C. § 544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. § 544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. § 544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. § 544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).
- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.
- Preparation for, or construction of, any structure requiring local government approval.
- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.
- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Date of receipt," as that term is defined in RCW 43.21B.001, means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map

"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by

flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;
- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;
- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber <u>or forest biomass</u>, including but not limited to:

Road and trail construction;
Harvesting, final and intermediate;
Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water

movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

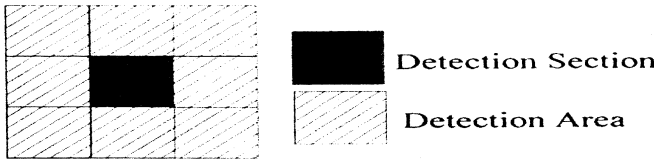
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality

control methods established by and available from the department of fish and wildlife.

"Notice of a conversion to a nonforestry use" means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or

conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting

does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	**Mixed conifer habitat type**
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering,

shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington,** the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington,** the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

(a) Establishing any new forest road;

(b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

(a) All road work located within an existing forest road prism;

(b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone

standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	**50-year site index range** (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) **For Eastern Washington**

Site class	**100-year site index range** (state soil survey)	**50-year site index range** (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl conservation advisory group" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl

conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of

wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Unconfined ((~~avulsing~~)) stream" ((~~means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement~~)) see WAC 222-23-010(2).

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the resource assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include resource assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity and the ongoing reviews and reanalyses completed under WAC 222-22-090.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the

production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 08-17-092, filed 8/19/08, effective 9/19/08)

WAC 222-16-050 *Classes of forest practices. There are ((~~4~~)) four classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) **"Class IV - special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Groundwater recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of

potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports, review of approved watershed analysis mass wasting prescriptions pursuant to WAC 222-22-090(6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with ((~~an~~)) approved prescriptions from the watershed analysis ((~~(or as modified through the five-year review process)~~)); ((~~and~~))

(C) The applicable prescriptions ((~~is~~)) are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*(e) Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites 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; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic

preservation is part of the proposed application, and the landowner states this in the application.

*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) ((~~in the watershed analysis~~)).

*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV - general."** Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the SEPA.

(3) **"Class I."** Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of

material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the

bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use. No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; ((~~and~~))

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal((~~.~~))<u>; and</u>

(iv) ((~~Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary five-year review of the watershed analysis.~~)) <u>If the renewal is for a multiyear permit and the area of that permit is not located within an area subject to watershed reanalysis under WAC 222-22-090(6).</u>

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

*(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over ((~~1~~)) one acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights

subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*(n) Any filling of wetlands, except where classified as Class IV forest practices.

*(o) Multiyear permits.

*(p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

WAC 222-20-080 Application and notification expiration. (1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval, with the following exceptions:

(a) Multiyear permits are effective for three to five years. A multiyear permit for lands included in a watershed analysis pursuant to chapter 222-22 WAC is not renewable if a ((~~five-year~~)) watershed ((~~analysis review~~)) reanalysis is found necessary by the department and has not been completed and approved, or the department has rescinded the prescriptions that would have applied to the permit.

(b) Small forest landowner long-term applications are effective for terms of three to fifteen years.

(2) A notification is effective for a term of two years beginning five days from the date it is officially received.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-22-020 Watershed administrative units. *(1) For purposes of this chapter, the state is divided into areas known as watershed administrative units (WAUs). The department shall, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, local ((~~government~~)) governmental entities, forest ((~~land owners~~)) landowners, and the public, define WAUs throughout the state. The department shall identify WAUs on a map.

*(2) WAUs should generally be between ((~~10,000~~)) ten thousand to ((~~50,000~~)) fifty thousand acres in size and should be discrete hydrologic units. The board recognizes, however, that identified watershed processes and potential effects on resource characteristics differ, and require different spatial scales of analysis, and the department's determination of the WAUs should recognize these differences. The board further recognizes that mixed land uses will affect the ability of a watershed analysis to predict probabilities and identify causation as required under this chapter, and the department's conduct and approval of a watershed analysis under this chapter shall take this effect into account.

*(3) The department is directed to conduct periodic reviews of the WAUs adopted under this chapter to determine whether revisions are needed to more efficiently assess potential cumulative effects. The department shall consult with the departments of ecology((~~,~~)) and fish and wildlife, affected Indian tribes, forest ((~~land owners~~)) landowners, local ((~~government~~)) governmental entities, and the public. From time to time and as appropriate, the department shall make recommendations to the board regarding revision of watershed administrative units.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-030 Qualification of watershed resource analysts, specialists, ((~~and~~)) field managers, and qualified experts. *(1) The department shall set the minimum qualifications for analysts participating in level 1 assessments conducted under WAC 222-22-050, for specialists participating in level 2 assessments conducted under WAC 222-22-060, ((~~and~~)) for field managers participating in recommendation of prescriptions under WAC 222-22-070, and for analysts, specialists, and field managers participating in reanalysis under WAC 222-22-090. The minimum qualifications shall

be specific for the disciplines needed to participate in level 1 and level 2 assessments and in the recommendations of prescriptions, and shall include, at a minimum, formal education in the relevant discipline and field experience. Minimum qualifications for analysts participating in level 2 assessments should typically include a graduate degree in the relevant discipline. A reanalysis of mass wasting prescriptions under WAC 222-22-090 requires a qualified expert as defined in WAC 222-10-030.

*(2) The department shall coordinate with relevant state and federal agencies, affected Indian tribes, forest ((~~land owners~~)) landowners, local ((~~government~~)) governmental entities, and the public to seek and utilize available qualified expertise to participate in watershed analysis or reanalysis.

*(3) Qualified analysts, specialists, ((~~and~~)) field managers, and qualified experts shall, while and only for the purpose of conducting a watershed analysis or monitoring in a WAU, be duly authorized representatives of the department for the purposes of RCW 76.09.150.

*(4) An individual may qualify in more than one science or management skill. Qualification under subsection (1) of this section shall be effective for ((~~5~~)) five years. When a qualification expires, a person requesting requalification shall meet the criteria in effect at the time of requalification.

*(5) The department shall provide and coordinate training for, maintain a register of, and monitor the performance of qualified analysts, specialists, ((~~and~~)) field managers, and qualified experts by region. The department shall disqualify analysts, specialists, ((~~and~~)) field managers, and qualified experts who fail to meet the levels of performance required by the qualification standards.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-040 Watershed prioritization. (1) The department shall ((~~determine, by region, the order in which it will analyze~~)) prioritize WAUs((~~. The department shall cooperate~~)) for the purposes of this section and for reviews under WAC 222-22-090 in cooperation with the departments of ecology((~~,~~)) and fish and wildlife, affected Indian tribes, forest ((~~land owners~~)) landowners, and the public ((~~in setting priorities~~)). ((~~In setting priorities or reprioritizing WAUs, the department~~)) The prioritization shall consider the availability of landowner participation and assistance and the availability and assistance that may be provided by affected Indian tribes and local ((~~government~~)) governmental entities.

*(2) ((~~Except as set forth in subsection (3) of this section,~~)) The department ((~~shall~~)) may undertake a watershed

analysis on ((~~each~~)) any WAU((~~, in the order established under subsection (1) of this section~~)). When conducting a watershed analysis, the department shall include available, qualified expertise from state agencies, affected Indian tribes, forest landowners, local governmental entities, and the public.

*(3) The owner or owners of ten percent or more of the nonfederal forest land acreage in a WAU may notify the department in writing that the owner or owners intend to conduct a level 1 assessment, level 2 assessment, or both, and the prescription recommendation process on the WAU under this chapter, or conduct a reanalysis under WAC 222-22-090, at their own expense. The notice shall identify the teams proposed to conduct the watershed analysis or reanalysis, which shall be comprised of individuals qualified by the department pursuant to WAC 222-22-030. The department shall promptly notify any owner or owners sending notice under this subsection if any member of the designated teams is not so qualified. Within ((~~30~~)) thirty days of delivering a notice to the department under this subsection, the forest ((~~land owner~~)) landowner or owners shall begin the level 1 assessment under WAC 222-22-050 or, at its option, the level 2 assessment under WAC 222-22-060, or the reanalysis under WAC 222-22-090. An approved forest ((~~land owner~~)) landowner team shall, while and only for the purposes of conducting a watershed analysis or reanalysis in a WAU, be a duly authorized representative of the department for the purposes of RCW 76.09.150. The board encourages forest ((~~land owners~~)) landowners conducting assessments under this chapter to include available, qualified expertise from state and federal agencies, affected Indian tribes, forest ((~~land owners~~)) landowners, local ((~~government~~)) governmental entities, and the public.

*(4) Before beginning ((~~an~~)) a watershed analysis in a WAU, the department or the forest ((~~land owner~~)) landowner conducting the analysis shall provide reasonable notice, including notice by regular United States mail where names and addresses have been provided to the department, to all forest ((~~land owners~~)) landowners in the WAU, and to affected Indian tribes. The department or the forest ((~~land owner~~)) landowner conducting the analysis shall provide reasonable notice to the public and to state, federal, and local ((~~government~~)) governmental entities, by, among other things, posting the notice conspicuously in the department's office ((~~of the departmental~~)) in the region containing the WAU. The notice shall be in a form designated by the department and give notice that an analysis or reanalysis is being conducted, by whose team, the time period of the analysis or reanalysis, and the dates and locations in which the draft analysis or reanalysis will be available for review and comment.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-22-045 Cultural resources. (1) Any watershed analysis initiated after July 1, 2005, is not complete unless the analysis includes a completed cultural resource module. Cultural resources module completeness is detailed in Appendix II of the module and includes affected tribe(s) participation, appropriate team qualification, required maps and forms, assessment of tribal and nontribal cultural resources, peer review of assessment, management strategies based on causal mechanism reports from synthesis, and agreement on the management strategies by affected tribes, landowners and land managers on the field managers team and, where applicable, the department of archaeology and historic preservation.

(2) When conducting a watershed ((~~analysis revisions~~)) reanalysis pursuant to WAC 222-22-090((~~(4)~~)), the cultural resources module is not required if the watershed analysis was approved by the department prior to the date in subsection (1) of this section. However, the board encourages use of the cultural resources module upon such review.

(3) The department does not review or approve cultural resources management strategies because their implementation is voluntary. The department of archaeology and historic preservation must be consulted and agree on all management strategies involving sites registered on the department of archaeology and historic preservation's archaeological and historic sites data base and all resources that require mandatory protection under chapters 27.44 and 27.53 RCW.

(4) The cultural resources module may be conducted as a stand-alone method separate from a watershed analysis to identify, protect, and manage cultural resources. When used as a stand-alone methodology:

(a) Selected components of the methodology may be used as the participants deem necessary or the module may be used in its entirety.

(b) The methodology may be used at a variety of geographic scales and may be initiated by tribes, land managers or landowners. Landowner or land manager initiation is not limited by the minimum ownership threshold requirements in this chapter. Nothing in this rule grants any person or organization initiating the cultural resources module as a stand-alone method any right of entry onto private property.

(c) Watershed analysis notice requirements to the department do not apply.

(d) Participants are encouraged to engage people that meet the minimum qualifications to conduct the module as set by this chapter.

(e) In order for a stand-alone module to be incorporated into a watershed analysis, the module must have been conducted in accordance with the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-22-050 Level 1 watershed resource assessment. *(1) To begin a watershed resource analysis on a WAU, the department shall assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1). A forest ((~~land owner~~)) landowner or owners acting under WAC 222-22-040(3) may assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1) or, at its option, may begin the analysis as a level 2 resource assessment under WAC 222-22-060. Each level 1 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include a person or persons qualified in the following:

(a) Forestry;
(b) Forest hydrology;
(c) Forest soil science or geology;
(d) Fisheries science;
(e) Geomorphology;
(f) Cultural anthropology; and
(g) Archaeology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis*.

*(2) The level 1 team shall perform an inventory of the WAU utilizing the methodology, indices of resource condition, and checklists set forth in the manual in accordance with the following:

(a) The team shall survey the WAU for fish, water, and capital improvements of the state or its political subdivisions, and conduct an assessment for cultural resources.

(b) The team shall display the location of these resources on a map of the WAU, except mapping of tribal cultural resources sites must be approved by the affected tribe. The location of archaeological sites shall be on a separate map that will be exempt from public disclosure per RCW 42.56.300.

(c) For public resources (fish, water, and capital improvements of the state or its political subdivisions):

(i) The team shall determine the current condition of the resource characteristics of these resources, shall classify their condition as "good," "fair," or "poor," and shall display this information on the map of the WAU. The criteria used to determine current resource conditions shall include indices of resource condition, in addition to such other criteria as may be included in the manual. The indices will include two levels, which will distinguish between good, fair, and poor conditions.

(ii) The team shall assess the likelihood that identified

watershed processes in a given physical location will be adversely changed by one forest practice or by cumulative effects and that, as a result, a material amount of water, wood, sediment, or energy (e.g., affecting temperature) will be delivered to fish, water, or capital improvements of the state or its political subdivisions. (This process is referred to in this chapter as "adverse change and deliverability.") (For example, the team will address the likelihood that road construction will result in mass wasting and a slide that will in turn reach a stream.) The team shall rate this likelihood of adverse change and deliverability as "high," "medium," "low," or "indeterminate." Those likelihoods rated high, medium, or indeterminate shall be displayed on the map of the WAU.

(iii) For each instance of high, medium, or indeterminate likelihood of adverse change and deliverability identified under (c)(ii) of this subsection, the team shall assess the vulnerability of potentially affected resource characteristics. Criteria for resource vulnerability shall include indices of resource condition as described in (c)(i) of this subsection and quantitative means to assess the likelihood of material adverse effects to resource characteristics caused by forest practices. (For example, the team will assess the potential damage that increased sediment caused by a slide reaching a stream will cause to salmon spawning habitat that is already in fair or poor condition.) The team shall rate this vulnerability "high," "medium," "low," or "indeterminate" and shall display those vulnerabilities on the map of the WAU. If there are no other criteria in the manual to assess vulnerability at the time of the assessment, current resource condition shall be used, with good condition equivalent to low vulnerability, fair condition equivalent to medium vulnerability, and poor condition equivalent to high vulnerability.

(iv) The team shall identify as areas of resource sensitivity, as provided in table 1 of this section, the locations in which a management response is required under WAC 222-22-070(3) because, as a result of one forest practice or of cumulative effects, there is a combination of a high, medium, or indeterminate likelihood of adverse change and deliverability under (c)(ii) of this subsection and a low, medium, high, or indeterminate vulnerability of resource characteristics under (c)(iii) of this subsection:

Table 1

Areas of Resource Sensitivity and Management Response

		Likelihood of Adverse Change and Deliverability		
		Low	**Medium**	**High**
Vulnerability	**Low**	Standard rules	Standard rules	Response: Prevent or avoid
	Medium	Standard rules	Response: Minimize	Response: Prevent or avoid
	High	Standard rules	Response: Prevent or avoid	Response: Prevent or avoid

Likelihood of Adverse Change and Deliverability

	Low	Medium	High

The team shall display the areas of resource sensitivity on the map of the WAU.

(v) The decision criteria used to determine low, medium, and high likelihood of adverse change and deliverability shall be as set forth in the manual. A low designation generally means there is minimal likelihood that there will be adverse change and deliverability. A medium designation generally means there is a significant likelihood that there will be adverse change and deliverability. A high designation generally means that adverse change and deliverability is more likely than not with a reasonable degree of confidence. Any areas identified as indeterminate in the level 1 assessment shall be classified for the purposes of the level 1 assessment as medium until a level 2 assessment is done on the WAU under WAC 222-22-060, during which the uncertainties shall be resolved.

(d) For cultural resources, the team shall follow the methodology outlined in the cultural resources module to determine the risk call for cultural resources based upon resource vulnerability and resource importance.

(e) The team shall prepare a causal mechanism report regarding the relationships of each process identified in (c) and (d) of this subsection. The report shall demonstrate that the team's determinations were made in accordance with the manual. If, in the course of conducting a level 1 assessment, the team identifies areas in which voluntary corrective action will significantly reduce the likelihood of material, adverse effects to the condition of a resource characteristic, the team shall include this information in the report, and the department shall convey this information to the applicable ((~~land owner~~)) landowner.

*(3) Within ((~~21~~)) twenty-one days of mailing notice under WAC 222-22-040(4), the level 1 team shall submit to the department its draft level 1 assessment, which shall consist of the map of the WAU marked as set forth in this section and the causal mechanism report proposed under subsection (2)(e) of this section. If the level 1 team is unable to agree as to one or more resource sensitivities or potential resource sensitivities, or the causal mechanism report, alternative designations and an explanation ((~~therefor~~)) therefore shall be included in the draft assessment. Where the draft level 1 assessment delivered to the department contains alternative designations, the department shall within ((~~21~~)) twenty-one days of the receipt of the draft level 1 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

*(4) If the level 1 assessment contains any areas in which the likelihood of adverse change and deliverability or resource vulnerability are identified as indeterminate under this section or if the level 1 methodology recommends it, the department shall

assemble a level 2 assessment team under WAC 222-22-060 to resolve the uncertainties in the assessment, unless a forest ((~~land owner~~)) landowner acting under WAC 222-22-040(3) has conducted a level 2 assessment on the WAU.

*(5) Pending the completion of the level 2 assessment, if any, on the WAU, the department shall select interim prescriptions using the process and standards described in WAC 222-22-070 (1), (2), and (3) and 222-22-080(3) and shall apply them to applications and notifications as provided in WAC 222-22-090 (1) and (2). Before submitting recommended interim prescriptions to the department, the field managers' team under WAC 222-22-070(1) shall review the recommended prescriptions with available representatives of the jurisdictional management authorities of the fish, water, capital improvements of the state or its political subdivisions, and cultural resources in the WAU, including, but not limited to, the departments of fish and wildlife, ecology, and affected Indian tribes.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-22-060 Level 2 watershed resource assessment. *(1) The department, or forest ((~~land owner~~)) landowner acting under WAC 222-22-040(3), may assemble a level 2 assessment team either((~~, in the case of a forest land owner~~)), to begin a level 2 watershed ((~~analysis~~)) assessment or to review the level 1 assessment on a WAU. The level 2 team shall consist of specialists qualified under WAC 222-22-030(1). Each level 2 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include a person or persons qualified in the following:

(a) Forestry;
(b) Forest hydrology;
(c) Forest soil science or geology;
(d) Fisheries science;
(e) Geomorphology;
(f) Cultural anthropology; and
(g) Archaeology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to designate one qualified member of the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis*.

*(2) The level 2 team shall perform an assessment of the WAU utilizing the methodology, indices of resource condition, and

checklist set forth in the manual in accordance with the following:

(a) If a level 1 assessment has not been conducted under WAC 222-22-050, the assessment team shall complete the tasks required under WAC 222-22-050(2), except that the level 2 team shall not rate any likelihood of adverse change and deliverability or resource vulnerability as indeterminate.

(b) If the level 2 team has been assembled to review a level 1 assessment, the level 2 team shall, notwithstanding its optional review of all or part of the level 1 assessment, review each likelihood of adverse change and deliverability and resource vulnerability rated as indeterminate and shall revise each indeterminate rating to low, medium, or high and shall revise the map of the WAU accordingly.

*(3) Within ((~~60~~)) sixty days of mailing notice under WAC 222-22-040(4) where a watershed analysis begins with a level 2 assessment or within ((~~60~~)) sixty days of beginning a level 2 assessment after completion of a level 1 assessment, the level 2 team shall submit to the department its draft level 2 assessment, which shall consist of the map of the WAU and the causal mechanism report.

*(4) The level 2 team shall endeavor to produce a consensus report. If the level 2 team is unable to agree as to one or more areas of resource sensitivity or the casual mechanism report, alternative designations and an explanation ((~~therefor~~)) shall be included in the draft assessment. Where the draft level 2 assessment delivered to the department contains alternative designations or reports, the department shall within ((~~30~~)) thirty days of the receipt of the draft level 2 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-22-070 Prescriptions and management strategies. *(1) For each WAU for which a watershed analysis is undertaken, the department, or forest ((~~land owner~~)) landowner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified under WAC 222-22-030(1). The team shall include persons qualified in the disciplines indicated as necessary in watershed analysis methods, and shall generally include a person or persons qualified in the following:

(a) Forest resource management;

(b) Forest harvest and road systems engineering;

(c) Forest hydrology;

(d) Fisheries science or management;

(e) Cultural anthropology and/or archaeology, depending on the

cultural resources identified in the assessment.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis*.

*(2) Each forest ((~~land owner~~)) landowner in a WAU shall have the right to submit prescriptions to the department or the forest ((~~land owner~~)) landowner conducting the watershed analysis ((~~prescriptions~~)) for areas of resource sensitivity on ((~~its~~)) their land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

*(3) For each identified area of resource sensitivity, the field managers team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend prescriptions to the department ((~~prescriptions~~)). These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(c)(iv), the likelihood of adverse change and deliverability that has the potential to cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest ((~~land owners~~)) landowners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Restoration opportunities may be included as voluntary prescriptions where appropriate;

(c) Each set of prescriptions shall provide for an option for an alternate plan under WAC 222-12-040, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity;

(d) The rules of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.; and

(e) The forests and fish riparian permanent rules((~~, when effective,~~)) supersede all existing watershed analysis riparian prescriptions with the exception of riparian management zones for exempt 20-acre parcels, when watershed analysis prescriptions were in effect before January 1, 1999. (See WAC 222-30-021, 222-30-022, and 222-30-023.) No new riparian prescriptions will be written after completion of the riparian ((~~management zone~~)) function assessment report during a watershed analysis.

*(4) For each identified cultural resource area of resource sensitivity, the field managers team shall develop cultural resources management strategies in consultation with the assessment team and affected tribe(s).

(a) If a management strategy involves a site registered on the department of archaeology and historic preservation's archaeological and historic sites data base, data recovery at an archaeological site, or any resource that requires mandatory protection under chapters 27.44 and 27.53 RCW, the field managers team shall submit the management strategy to the department of archaeology and historic preservation for agreement.

(b) The management strategies should be reasonably designed to protect or allow the recovery of resources by measures that minimize or prevent or avoid risks identified in the assessment.

(c) Management strategies resulting from conducting a cultural resources module are voluntary, not mandatory prescriptions, whether the module is conducted as part of a watershed analysis or as a stand-alone method separate from watershed analysis. However, the mandatory protections of resources under chapters 27.44 and 27.53 RCW still apply.

(5) The field managers team shall submit the recommended prescriptions, monitoring recommendations and cultural resources management strategies to the department within ((~~30~~)) thirty days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within ((~~21~~)) twenty-one days of the submission to the department of the level 1 assessment under WAC 222-22-050.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-22-075 Monitoring. *In connection with any watershed analysis that is not a ((~~revision (~~)) reanalysis under WAC 222-22-090((~~(4))~~)), the monitoring module will be required to be completed but implementation of monitoring recommendations would be voluntary unless otherwise required by existing laws and rules, or required by an HCP implementation agreement. Implementation of the monitoring recommendations will be encouraged when needed as part of the statewide effectiveness monitoring program.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-22-080 *Approval of watershed analysis. (1) Upon receipt of the recommended prescriptions and management strategies

resulting from a level 1 assessment under WAC 222-22-050, a level 2 assessment under WAC 222-22-060, or a ((~~level 1 assessment under WAC 222-22-050 where a level 2 assessment will not be conducted~~)) reanalysis under WAC 222-22-090, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology((~~,~~)) and fish and wildlife, affected Indian tribes, local ((~~government~~)) governmental entities, forest ((~~land owners~~)) landowners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the recommended prescriptions and management strategies, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

*(2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, capital improvements of the state or its political subdivisions, ((~~and~~)) or cultural resources.

*(3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) ((~~For~~)) The prescriptions, ((~~that they~~)) will not accomplish the purposes and policies of this chapter and ((~~of the Forest Practices Act,~~)) chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090((~~(3)~~)).

*(4) If the department does not approve the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

(5) To become final, all watershed analyses must be reviewed under SEPA on a nonproject basis. SEPA review may take place concurrently with the public review in subsection (1) of this section. ((~~(~~))See WAC 222-10-035.((~~)~~)) SEPA must be completed within two years from the date the department approves the watershed analysis under subsection (1) of this section or the watershed analysis will expire. This expiration does not require SEPA review and sunsets the watershed analysis for the WAU. The department shall notify the landowners in the WAU that the watershed analysis has expired.

(6) The department will not review or approve cultural resource management strategies because their implementation is voluntary.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-22-090 Use ((~~and~~)), review, and reanalysis of a watershed analysis. *(1) Where a watershed analysis has been completed and approved for a WAU under this chapter:

(a) Any landowner within the WAU may apply for a multiyear permit to conduct forest practices according to the watershed analysis prescriptions. This permit is not renewable if a ((~~five-year review~~)) reanalysis is found necessary by the department under subsection (6) of this section and either the reanalysis has not been completed and approved or the department has rescinded the prescriptions.

(b) Nonmultiyear forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest ((~~land owner~~)) landowners shall use in conducting the forest practice in the area of resource sensitivity;

(c) The department shall assist operators, timber owners, and forest ((~~land owners~~)) landowners in obtaining governmental permits required for the prescription ((~~(~~)). See WAC 222-50-020 and 222-50-030((~~)~~));

(d) The department shall confirm that the prescription selected under (a) and (b) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

(e) The department shall not further condition forest practices applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practices applications and notifications outside an area of resource sensitivity in a WAU, except:

(i) For reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU((~~, and except~~)); or

(ii) To correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

*(2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices ((~~on~~)) in a WAU after the date the notice is mailed under WAC 222-22-040(4) commencing a watershed analysis on the WAU shall be conditioned to require compliance with interim, draft, and final

prescriptions, as available.

Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

*(3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, ((~~and~~)) field managers, and qualified experts as determined under WAC 222-22-030. Subsequent watershed analysis and monitoring recommendations in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

*(4) ((~~Where the condition of resource characteristics in a WAU are fair or poor~~)) To keep watershed analyses current, the department shall determine if and when a reanalysis of a watershed analysis is necessary to evaluate the effectiveness of the prescriptions applied under this chapter to the WAU in providing for the protection and recovery of the resource ((~~characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a period of 3 years, the department shall repeat the watershed analysis in the WAU~~)). The department shall determine which watershed analysis modules and prescriptions need to be included in the reanalysis. Review and reanalysis of a watershed analysis shall be conducted in accordance with this chapter and board manual section 11, standard methodology for conducting watershed analysis, except that:

(a) The reanalysis may be conducted on areas smaller than the entire WAU in the case of subsection (6)(a) of this section; and

(b) The reanalysis shall be conducted only on the areas affected in the case of subsection (6)(b) or (c) of this section.

(5) Entities with an interest in maintaining prescriptions the department has identified for reanalysis are responsible for committing sufficient resources to complete a reanalysis in addition to the available resources provided by the department to administer the reanalysis process.

((~~Aside from the foregoing,~~)) (6) Once a watershed analysis is completed and approved on a WAU, ((~~it~~)) the department shall ((~~be revised in whole or in part~~)) conduct a review to determine if a reanalysis is necessary, upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, ((~~if necessary~~)) and every five years thereafter; or

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU; or

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a ((~~12~~)) twelve-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a ((~~12~~)) twelve-month period unless the department determines, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, forest ((~~land owners~~)) landowners, and the public, that a longer period is reasonably necessary to allow the prescriptions selected to produce improvement((~~; or~~

~~(d) The request of an owner of forest land in the WAU, which~~

~~wishes to conduct a watershed analysis at its own expense.~~

~~Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions~~)).

(7) Once the department has determined that a watershed reanalysis is necessary under subsection (6) of this section:

(a) The department shall notify the forest landowners in the WAU, the departments of ecology and fish and wildlife, affected Indian tribes, relevant federal agencies and local governmental entities, and the public.

(b) Prior to the start of the reanalysis, the department shall determine and clearly delineate on a map the areas on which the reanalysis is to be conducted.

(c) The department, in its review of forest practices applications within the mapped reanalysis area, will classify proposed forest practices undergoing reanalysis, if necessary per WAC 222-16-050.

(d) The department shall determine if the forest landowners in the WAU want to participate in the reanalysis and commit sufficient resources to complete the reanalysis process in accordance with subsection (5) of this section:

(i) If no forest landowners in the WAU wish to participate and commit resources, then the department may rescind the watershed analysis prescriptions after conducting SEPA review. If the department rescinds prescriptions, it shall notify the landowners in the WAU.

(ii) If a landowner wishes to participate and commit resources, then the department in consultation with the departments of ecology and fish and wildlife, affected Indian tribes, forest landowners, and the public shall establish a timeline for the reanalysis. If the timeline for completion is not being met, the department may adjust the timeline or, after conducting SEPA review, rescind the watershed analysis prescriptions. If the department rescinds prescriptions, it shall notify the landowners in the WAU.

(e) Upon receiving recommendations from the reanalysis, the department shall select prescriptions in accordance with WAC 222-10-035 and 222-22-080(1).

(f) Reanalyses must be reviewed under SEPA on a nonproject basis.

(8) Regardless of subsection (7) of this section, the owner or owners of ten percent or more of the nonfederal forest land in the WAU may conduct a watershed reanalysis at any time at their own expense and the reanalysis may be conducted on areas smaller than the entire WAU.

Chapter 222-23 WAC

((~~RIPARIAN~~)) RIVERS AND HABITAT OPEN SPACE PROGRAM

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-23-010 Policy and definitions. (1) **Policy.** The legislature determined that it is in the public interest to acquire (by purchase or donation) ((~~an interest in~~)) conservation easements on forest lands within unconfined ((~~avulsing~~)) channel migration zones ((~~that are offered for acquisition by the landowner, and therefore established a riparian open space program in RCW 76.09.040 to be administered by the department. The purpose of the acquisition is to provide for ecological protection and fisheries enhancement~~)) and forest lands containing a critical habitat for threatened or endangered species as designated by the board. The rivers and habitat open space program (formerly known as the riparian open space program), established in RCW 76.09.040, is for these forest lands voluntarily enrolled by the landowner. The department may acquire ((~~either the fee interest in or~~)) a permanent conservation easement over such lands. The purpose of this program, which will be administered by the department, is to provide for ecological protection and fisheries and wildlife enhancement. This chapter implements the ((~~riparian~~)) rivers and habitat open space program (hereinafter referred to in this chapter as "program"). In any circumstance where qualifying channel migration zone lands or qualifying critical habitat lands are not acquired by the department through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.

(2) **Definitions.** ((~~As used in this chapter,~~)) The following ((~~terms shall have the following meanings~~)) definitions apply to this chapter:

(a) "Qualifying channel migration zone (CMZ) land((~~(~~))s((~~). "See~~))" means those forest lands located within an unconfined channel migration zone. Qualifying CMZ lands are eligible for easement acquisition if they meet the standards in WAC 222-23-020((~~(1)~~)) (5).

(i) An "unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term

loss of riparian forest adjacent to the stream. A merchantable stand of timber may exist within the zone and is considered a part of the channel migration zone. The unconfined channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.

(ii) An "unconfined stream" is generally:

(A) A fifth order or larger water;

(B) Less than two percent gradient; and

(C) Found in a valley more than four times wider than the bankfull width of the channel.

(b) ((~~An "unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone and are considered a part of the channel migration zone. The unconfined avulsing channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.~~)) "Qualifying critical habitat lands" means those forest lands that qualify as one or more of the critical habitats (state) defined in WAC 222-16-080 including forest lands that have existing plans or evaluations described in WAC 222-16-080(6). Qualifying critical habitat lands are eligible for easement acquisition if they meet the standards in WAC 222-23-020(5).

(c) ((~~An "unconfined avulsing stream" is defined in WAC 222-16-010.~~)) "Unacceptable liabilities" means exposure to undesirable responsibilities or problems as determined by the department. 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 that may jeopardize the department's ability to maintain ecological protection, and fisheries and wildlife enhancement of the qualifying lands. Unacceptable liabilities may exist when the applicant is unwilling or unable to provide reasonable indemnification to the department.

(d) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW 70.102.010(5), and 70.105D.020(10), and solid waste as defined in RCW 70.95.030(23).

(e) "Conservation easement" means a voluntary, legally enforceable land preservation agreement between the landowner and easement holder to permanently limit the type and amount of alteration of identified habitat or CMZ on the subject property while the landowner retains ownership.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-23-020 Submitting and processing of applications for the ((~~riparian~~)) rivers and habitat open space program. (1)

((~~Qualifying CMZ land(s). Lands that qualify for the riparian open space program are those lands located within an unconfined avulsing channel migration zone and are, as of the date an application is submitted to the department under this section, identified in records of the applicable county assessor as being classified or designated as forest land under chapter 84.33 RCW or as being subject to current use taxation as forest land under chapter 84.34 RCW. Qualifying CMZ lands may be placed in the riparian open space program whether they represent all or just a portion of the lands within the channel migration zone along a particular stream segment. That is, the lands to be placed in the program may include all of a landowner's lands located within the channel migration zone up to the boundary between that zone and the RMZ core area, or lands to be included may include only a portion of a landowner's lands within an unconfined avulsing channel migration zone of a given stream segment. Likewise, where more than one landowner owns land within the channel migration zone of a given stream segment, any landowner may elect to participate in the riparian open space program without regard to participation of neighboring landowners.~~

~~Land does not qualify for the riparian open space program where the department has determined that:~~

~~(a) The lack of legal access to the land is likely to materially impair the department's ability to administer the riparian open space program with respect to the land;~~

~~(b) All persons having an interest of any description in the land, including, but not limited to, joint tenancy, tenancy in common, holder of easement, or holder of lien or security interest, have not agreed to convey or subordinate such interests to the state to the extent deemed necessary by the state to transfer the fee or easement free of or superior to any such interest;~~

~~(c) The land is subject to unacceptable liabilities as defined in WAC 222-23-020(4); or~~

~~(d) There is any other circumstance making the land unsuitable for fisheries enhancement or ecological protection.~~

~~(2)~~)) **Rivers and habitat open space application.** An owner or owners of qualifying ((~~CMZ~~)) lands may apply to the department to place the qualifying CMZ lands or qualifying critical habitat lands within the ((~~riparian open space~~)) program. ((~~Applications for the riparian open space program may, at the landowners' option, be submitted at the same time as a forest practices application for adjoining or nearby forestlands, or may be submitted separately (and without reference to or the requirement of a current forest practices application).~~)) The department will accept or reject the program application based on eligibility for an easement acquisition. The application for the ((~~riparian open space~~)) program shall be in writing on a form provided by the department ((~~and~~)). The application shall contain ((~~the following~~)) information the department determines is necessary to assess whether the land qualifies for the program, as well as the following information (see board manual section 18 for details):

(a) ((~~Name, address, and telephone number of applicant(s);~~

~~(b) Contact name and telephone number for questions concerning~~

~~the application;~~

~~(c) Location and description of the land proposed for inclusion in the program, including estimated acreage,~~)) A description of the methods ((~~used by~~)) the landowner used to ((~~determine~~)) propose that the land ((~~is qualifying CMZ land and a map showing the approximate boundary between the channel migration zone and the adjoining RMZ core area (and in situations were the latter is not applicable, a description of the process the landowner used to determine that the qualifying CMZ land is within an unconfined avulsing stream channel migration zone);~~

~~(d) Tax parcel identification number(s) that contain the qualifying CMZ land;~~

~~(e) List of all persons having any right or interest in the land covered by the application for the riparian open space program and a description of such right or interest;~~

~~(f) The stumpage value area and hauling zone in which the qualifying lands lie (see map at WAC 458-40-640).~~

~~(g) A map of the qualifying CMZ land~~)) meets the eligibility for easement acquisition criteria;

((~~(h)~~)) (b) A statement indicating the landowner's desire to place the land covered by the application within the ((~~riparian open space~~)) program and whether the landowner wishes to ((~~convey the qualifying land in fee or convey only~~)) grant a conservation easement to the state on both land and trees or in trees only;

((~~(i)~~)) (c) Whether the landowner wishes to receive the statutory compensation for the conveyance or wishes to donate the qualifying ((~~CMZ~~)) lands;

((~~(j)~~)) (d) Whether the landowner ((~~representative submitting the application~~)) is aware of the presence of any hazardous substances on the lands;

((~~(k) Description and documentation of the legal and physical access to the land being acquired;~~

~~(l) The type of boundary description proposed by landowner (survey or other description); and~~

~~(m) Any other information DNR determines is necessary to assess whether the land qualifies for the riparian open space program.~~

~~(3)~~)) (e) A statement affirming that the person or persons submitting the application stating they are the landowner and believes that the information contained in the application and its supporting materials is true and complete.

(2) **Review and processing of application.** ((~~Within ninety days of receipt of~~)) The application process will follow the program funding cycle process described in board manual section 18. After the department receives a complete and accurate application for the ((~~riparian open space~~)) program, the department ((~~shall preliminarily determine (and advise the applicant) whether lands proposed for the riparian open space program appear to meet the requirements of this chapter and of RCW 76.09.040 (3) and (4), and, if so, whether there is funding available for the purchase~~)) will make a preliminary determination whether the application is eligible for the easement acquisition. This determination is subject to the department's complete review, and subsequent

confirmation of all information required for the program and ((~~eligibility of the land as~~)) identification of qualifying ((~~for the program~~)) lands. ((~~If~~)) After the preliminary determination ((~~is that the land qualifies for the program and if funding is available for the proposed purchase~~)) of eligibility, ((~~then~~)) the following shall occur ((~~within the ninety days following notice to the landowner of the preliminary determination~~)):

(a) The landowner, in cooperation with the department, shall delineate on the ground the boundary line ((~~between~~)) of the ((~~CMZ and the RMZ core area; following which,~~)) qualifying lands as indicated in the application;

(b) The department shall verify the appropriateness of ((~~that~~)) the delineation ((~~, determine the standards for the boundary description (i.e., a survey or other)~~)) of qualifying lands using the procedure outlined in board manual section 18, make a final determination whether there are any unacceptable liabilities on the lands proposed for inclusion in the program, and communicate the foregoing to the landowner.

(c) The department will rate, rank, and fund, as described in WAC 222-23-025(1), the eligible applications for each category of qualifying CMZ lands or critical habitat lands and for each funding cycle using a standardized scoring system.

(d) The department will prepare a combined preliminary project priority list, after evaluation and scoring of all applications.

(e) The department will submit the preliminary project priority list to the state legislature for budget consideration.

(f) The department will notify the applicant in writing of the funding decision for their application, subject to available funding from the legislature.

(g) For those applications determined to be funded, and if the department determines there are no unacceptable liabilities on the lands, the department shall follow the guidelines in WAC 222-23-030(2) and the landowner shall ((~~mark~~)) enhance the boundary (as verified) using ((~~tree tags or other long-term~~)) boundary marking methods specified by the department.

((~~(4) Unacceptable liabilities. As used in this section, unacceptable liabilities are created by the presence of hazardous substances on the qualifying CMZ lands or by other condition that creates such a liability to the department that may jeopardize the department's ability to maintain fisheries enhancement or the ecological protection of the qualifying CMZ lands, and with respect to which liability the applicant is unwilling or unable to provide reasonable indemnification to the department. If the department finds unacceptable liabilities with respect to qualifying CMZ lands, the department may reject the landowner's application.~~

~~(5) Preparation of conveyance documents. Within ninety days following placement in the field of the long-term boundary between the CMZ and the RMZ core area as provided for in subsection (3) of this section, the following shall occur:~~

~~(a) The landowner shall:~~

~~(i) Traverse the boundary to determine the acreage of the qualifying lands;~~

~~(ii) Either perform a legal land survey or otherwise document~~

~~the boundaries consistent with the requirements of WAC 222-23-030(3), as applicable; and~~

~~(iii) Prepare a map of the qualifying CMZ lands suitable for recording.~~

~~(b) The department shall:~~

~~(i) Conduct and finalize a cruise of the timber on the qualifying CMZ lands;~~

~~(ii) Determine the statutory compensation to be paid to the landowner;~~

~~(iii) Prepare conveyance documents consistent with this chapter; and~~

~~(iv) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.~~

~~(6)~~)) (h) For those applications determined to be eligible but not funded, the application will be returned to the applicant. At any time thereafter, the applicant may resubmit the application with or without revision. This resubmitted application will be placed on the next available funding cycle and will be reprioritized under the process described in (c) through (g) of this subsection.

(i) For those applications determined to be ineligible for reasons other than funding, the department must notify the landowner of the reason(s) and the application will be rejected.

(j) Once the landowner completes the boundary enhancement required in (g) of this subsection, the department shall:

(i) Perform a traverse of the boundary of the qualifying lands;

(ii) Conduct and finalize a cruise of the timber on the qualifying lands;

(iii) Determine the statutory compensation to be paid to the landowner;

(iv) Prepare conveyance documents consistent with this chapter; and

(v) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

(3) **Timber cruise.** ((~~The~~)) For the purpose of determining the compensation, a timber cruise will be conducted by the department using a cruiser acceptable to the department and the landowner ((~~and~~)), using ((~~generally accepted~~)) a cruise methodology determined by the department and sampling intensity acceptable to both parties. ((~~The timber cruise shall measure all trees within the lands to be conveyed that contain measurable log volume and develop all information (species and grade) with respect to those trees necessary to apply the stumpage tables developed by the department of revenue pursuant to RCW 84.33.091; this includes volume by species and grade sufficient to apply the department of revenue stumpage tables in WAC 458-40-640, 458-40-650 and 458-40-660 (1) and (2).~~)) The department will provide the cruise data to the landowner((~~,~~)). Within thirty days thereafter, the landowner shall advise the department whether the cruise results are acceptable. The landowner or the department may, at their option,

perform a check cruise.

((~~(7)~~)) (4) **Compensation for conveyances.** RCW 76.09.040(3) specifies the compensation the department shall pay for ((~~purchases~~)) the conveyance of ((~~qualifying CMZ lands~~)) a conservation easement under this chapter, unless the landowner chooses to donate the ((~~property in fee or donate a~~)) conservation easement. The department will calculate compensation based on stumpage and land use value tables described in (a) and (b) of this subsection. The tables applied will be those in effect as of the date the complete timber cruise is received by the department for new or resubmitted applications.

(a) ((~~Fee interests. For conveyances of fee interests, the department shall pay for both the land value and the timber value, as determined in this subsection. The land value component shall be the acreage of qualifying CMZ lands to be conveyed multiplied by the average per acre value of all commercial forest land in Western Washington or the average for Eastern Washington, whichever average is applicable to the qualifying CMZ lands. The department shall determine the Western and Eastern Washington averages based on the land value tables established by RCW 84.33.120 and revised annually by the department of revenue (see WAC 458-40-540). The timber value component of the compensation shall be based on the cruise volume multiplied by the appropriate department of revenue stumpage values from the stumpage value table for the applicable stumpage value area and hauling distance zone. The stumpage value tables to be applied are those found in WAC 458-40-660(2). Except as provided in (c) of this subsection, the tables applied shall be those in effect as of the date the application under this section is submitted to the department by the landowner.~~

~~(b) Conservation easements. Conservation easements shall be perpetual and not for a term of years.~~)) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation shall only include the timber value component, as determined ((~~as set forth in subsection (7)(a) of this section~~)) by the cruise volume multiplied by the appropriate stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091.

(b) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation shall include the timber value component plus such portion of the land value component as determined just and equitable by the department. The timber value component will be as set forth in (a) of this subsection. The land value component must be the acreage of qualifying lands to be conveyed, multiplied by the average per acre value. The department shall determine the averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue with separate values for western and eastern Washington.

((~~(c) Adjustment in compensation. Where the department does not complete its duties as required in subsections (3) through (5) of this section within the required time period or the department is unable to complete the acquisition because of a lack of funds or~~

~~other reason, the landowner has the option to require that the department recompute the compensation based on the most recently published land value and stumpage value tables.~~

~~(8) Management options. In any circumstance where qualifying CMZ lands are not acquired by the department in fee or through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.~~))

(5) **Qualifying lands.** The lands proposed in an application must include qualifying CMZ lands or qualifying critical habitat lands that are eligible for easement acquisition as follows:

(a) Qualifying lands are lands that, once a complete application is received, are identified in records of the applicable county assessor as being assessed and taxed either under chapter 84.33 RCW as designated forest land or under chapter 84.34 RCW as current use classification timber land or open space.

(b) Qualifying lands are lands owned by an individual, partnership, corporation or other nongovernmental entity.

(c) Lands do not qualify for the program where the department has determined that:

(i) The lack of access to the land is likely to materially impair the department's ability to administer the program with respect to the land;

(ii) The land is subject to unacceptable liabilities. See WAC 222-23-010 (2)(c).

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-23-025 Priorities for conveyances and funding--Use of lands conveyed. (1) **Priorities for conveyances and funding.** ((~~The legislature recognized, in RCW 77.85.180(4), that the adoption of forest practices rules consistent with the forests and fish report will impose substantial burdens on forest landowners. The purpose of this program, which will be administered by the department, is to compensate landowners and provide for ecological protection and fisheries enhancement.~~)) The department shall ((~~prioritize~~)) rate, rank, and fund eligible CMZ applications ((~~under this section~~)) separately from eligible critical habitat applications based on ((~~the following criteria (not in priority order): Order of receipt, ecological value (including importance to salmonids, water quality benefits, quality of habitat, site significance, etc.), and immediacy of need. If funding is or becomes unavailable to consummate a conveyance with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option) be kept on file at the department pending the future availability of funding~~)) conservation benefits and landowner management options. See board manual section 18 for the rating, ranking and funding details for

qualifying lands. The department will consult with representatives of affected Indian tribes, department of fish and wildlife, and department of ecology as necessary for technical expertise. ((~~The board will include, in its reports to the legislature required in RCW 76.09.380, a review of this program with recommended amendments, as necessary, to accomplish the goals of this program.~~))

(2) **Use and management of lands and easement interests acquired under ((~~riparian~~)) rivers and habitat open space program.** Subject to the exceptions set forth in this subsection (or as otherwise provided in the ((~~conveyance or~~)) easement documents), the lands ((~~conveyed or~~)) subject to the conservation easements under this chapter shall be managed by the department only in a manner necessary for ecological protection ((~~or~~)), and fisheries and wildlife enhancement. The ((~~conveyance of lands~~)) easements under the ((~~riparian open space~~)) program shall not create a right of public access to ((~~the conveyed lands~~)) or across adjoining or other lands owned by the landowner ((~~conveying property or~~)) granting an easement ((~~under the riparian open space program~~)).

(3) **Transfer of ((~~fee or~~)) easement interest or management responsibility.** After acquisition of ((~~a fee or~~)) an easement interest in qualifying ((~~CMZ~~)) lands, the department may transfer its interest in such lands by a recorded instrument to another state agency, a local governmental entity within which the lands lie, or a private nonprofit nature conservancy corporation (as defined in RCW 64.04.130). Alternatively, the department may contract with one or more of the foregoing entities to exercise the department's management authority over the qualifying ((~~CMZ~~)) lands. Any such contract will include provisions fully advising the contracting party of the rights of the landowner under this chapter and the conveyance instrument. The department shall notify the landowner of any transfer of its interest in the qualifying ((~~CMZ~~)) lands or any transfer of management responsibilities over those lands, provided that failure to so notify the landowner shall not affect the validity of the transfer.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-23-030 Conveyance forms and procedure. (1) ((~~**Fee interest.** Conveyance of a fee interest in qualifying lands shall be by deed with limited warranties. Deeds will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved and shall be in a form acceptable to the department and the landowner. Prior to closing, the landowner shall procure a title report or title history for the lands being conveyed, provided that in the case of qualifying CMZ land being donated to the department, the department shall pay the cost of the~~

~~report.~~

~~(2)~~)) **Conservation easement.** Conveyances of a conservation easement shall be through execution by the landowner and the department of a conservation easement in a form acceptable to the department and the landowner. The easement shall be perpetual and not for a term of years. The easement will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved. Prior to closing, the landowner shall procure a ((~~litigation guarantee or~~)) preliminary title ((~~history~~)) insurance report from a title company, provided that in the case of an easement being donated to the department, the department shall pay the cost of the ((~~guarantee or other~~)) report.

((~~(3)~~)) (2) **Description standards.** The description of the qualifying lands being conveyed shall be a legal land survey description ((~~or, if~~)) unless the cost of securing the survey would be unreasonable in relation to the value of the lands conveyed. When the department determines a survey ((~~is~~)) need not ((~~being~~)) be performed, the description shall ((~~include the township, range, section, and legal subdivision, and utilize a map at a scale of 1:400 indexed either to one legal land survey point or two geopositional system points plus a GPS traverse of the boundary between the CMZ and the RMZ core area, tied to one legal land survey point or two geopositional system points, or other description~~)) be in the form that can depict the location of the lands conveyed without relying on verbal evidence, or another form acceptable to the department.

((~~(4)~~)) (3) **Closing and recording.** Upon execution of the conveyance documents and other documents required for closing, the department shall pay any compensation owed to the landowner and record the conveyance documents. The department shall pay the recording fees. No compensating taxes under chapters 84.33 and 84.34 RCW shall be owed. Title insurance premiums and any real estate excise tax owed shall be paid by the landowner conveying the ((~~property or~~)) easement.

(4) **Internal department of natural resources procedure for review of decisions.** Certain decisions of the department pursuant to this chapter may be appealed to the supervisor of the department or his or her designee. Any person that wishes to appeal final written decisions of the department pertaining to the following procedural determinations: Application eligibility, application prioritization, easement valuation, and related decisions made may submit a request for review within thirty days after the date of the department's final written notice of procedural determination. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor will issue a written response within thirty days. The supervisor's written response shall constitute the department's final decision.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT
Forest Practices Board
Rule Making Affecting Watershed Analysis, Riparian Open Space and Forest Biomass
January 28, 2011

SMALL BUSINESS IMPACTS

A small business economic impact statement is required by the Regulatory Fairness Act (chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with 50 or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

WATERSHED ANALYSIS RULE MAKING

OBJECTIVES

The Forest Practices Board is considering changes to Title 222 WAC related to watershed analysis. The rule proposal implements RCW 76.09.040 which states, "Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 … the board shall adopt forest practices rules … that … establish minimum standards for forest practices . . . (and) . . . allow for the development of watershed analyses." Among the purposes and policies stated in chapter 76.09 RCW is "… that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection …"

The intent of the proposed rule change is to ensure that timber harvest and road construction[1] within watershed administrative units (WAUs) with approved watershed analyses is conducted with all the public resource protections (i.e., water, fish, wildlife, and capital improvements) afforded in chapter 76.09 RCW and Title 222 WAC, and to ensure that forest practice activities do not increase the risk, frequency, and severity of landslides. The proposal is the result of the Board's reconsideration of the continued use of watershed analysis mass wasting prescriptions as a Class IV-special exemption.

CONTEXT

The Forest Practices Board (Board) adopted the watershed analysis rules, chapter 222-22 WAC, in 1992. The required steps and technical requirements for watershed analysis resource assessments and developing prescriptions and management strategies are found in WACs 222-22-050 through -070 and Board Manual section 11, "Standard Methodology for Conducting Watershed Analysis". WAC 222-22-080 and -090 describe the approval process and the use and review of watershed analysis, respectively.

Watershed analysis uses "modules" to examine mass wasting (landslides), surface erosion, hydrologic change, riparian function, stream channel, fish habitat, water quality, water supply, public works, and cultural resources. The individual module assessments are used to identify the cause-and-effect relationships between potential hazards and vulnerable resources to locate areas of resource sensitivity. Prescriptions are written for each of the areas of resource sensitivity to address the types of forest practices that have a potential to impact vulnerable resources. Landowners' forest practices applications that implement the prescriptions are SEPA-exempt for the issue covered by the prescription.

PROPOSED RULE

[1] The term "timber harvest and road construction" is used throughout this document as a shortened reference to the forest practices listed in WAC 222-16-050(1)(d): ". . . timber harvest or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas."

The proposed rule language modifies the review process to ensure that reviews and updates occur and are paid for by those who elect to continue to use this process to protect resources. The Adaptive Management Program recommended rule changes to the Board at its November 2010 meeting. The changes are concentrated in WAC 222-22-090, "Use and Review of Watershed Analysis". Those pertinent to this economic analysis are as follows:

- The department is required to review the prescriptions from approved watershed analyses every five years, determine whether a reanalysis is necessary, and determine which modules and prescriptions are required to be included in the reanalysis. *WAC 222-22-090 (4) and (6).* The term "reanalysis" is introduced; it is the process that takes place to evaluate the effectiveness of WSA prescriptions.
- If the department determines reanalysis is necessary, the landowner(s) interested in maintaining those prescriptions are responsible for committing sufficient resources to complete the reanalysis for the WAU, including hiring the professionals required to conduct the assessments. *WAC 222-22-090 (5).*
- Reanalysis of mass wasting prescriptions requires a "qualified expert" as defined in current rule. *WAC 222-10-030 (5).*
- If no landowners choose to participate in the reanalysis, or if the timeline set for completion of the reanalysis is not met, the department may rescind the prescriptions. *WAC 222-22-090 (7)(d)(ii).*

IMPACT OF PROPOSED RULE CHANGE ON EXISTING WATERSHED ANALYSES

The main impact of the rule proposal is on private forest landowners in the 52 approved watershed analyses and is caused by the requirement that DNR conduct reviews of all approved watershed analyses to determine whether reanalysis is necessary. If DNR determines reanalysis is necessary, the eligible sponsors will need to decide whether they want to incur the costs of conducting a reanalysis to retain the mass wasting prescriptions or opt out of the WSA mass wasting prescriptions. The impact on other landowners in the WAU will depend on the sponsors' decisions. This is described and analyzed in more detail in the cost-benefit analysis.

It is important to note that the proposed rules were written to be broad enough to cover the need for reanalysis of all of the watershed analysis prescriptions (not just mass wasting). However, the impetus for the proposed rule change is to make sure that the mass wasting prescriptions are up-to-date and it is the Board's intent that DNR's focus at this time should only be on determining the need for reanalysis on mass wasting modules, not any of the others. Also, DNR foresees a need to require reanalysis for only the mass wasting prescriptions in the near-term. This analysis, therefore, will consider the impact on landowners who currently use WSA mass wasting prescriptions and whose situation in that regard may change if the rule is adopted.

It is already known that 19 of the 52 watershed analyses will not be undergoing reanalysis. DNR is the sponsor of those 19 and has determined it will not sponsor reanalyses of mass wasting prescriptions. See **Figure 3**.

FIGURE 3

Summary of Reanalysis Intent on Approved Watershed Analyses

	Maintain Mass Wasting Prescriptions			Relinquish Mass Wasting Prescriptions	To Be Determined	TOTAL
	Meets Reanalysis Requirement	Reanalysis Not Likely Required	Expected to Conduct Reanalysis	Expected to Opt Out of WSA-- No Reanalysis		
DNR Regulatory (Forest Practices)				14		14
DNR State Lands				5		5
Timber Company w/HCP Requirement	7					7
Other Timber Companies		3		5	18	26
TOTAL	7	3	0	24	18	52

The sponsor of seven of the 52 watershed analyses is a timber company whose habitat conservation plan (HCP) with the federal services[2] requires that it perform five year reviews of the prescriptions in these seven watershed analyses. This company has been reviewing the prescriptions and has a schedule in place for five-year reviews. This sponsor is meeting the requirement for reanalysis by its ongoing efforts to meet its HCP obligations. The rule proposal, therefore, will have no direct impact on these seven watershed analyses.

The timber company sponsors of the remaining 26 watershed analyses may or may not decide to undertake reanalysis. However, DNR has projected that it will likely not require reanalysis for mass wasting prescriptions on three of these WSAs based on their relatively lower number of annual landslides per square mile as interpreted from historical aerial photo records.

We can project further that five of the 23 remaining watershed analyses are very unlikely to undergo reanalysis. DNR Forest Practices staff informally polled WSA sponsors about whether they would conduct reanalysis if DNR determined it was necessary. The sponsors of these five watershed analyses said they would not. The sponsors of the remaining 18 watershed analyses did not respond, presumably because they are waiting to see the final rule before making a decision. None of the timber companies said that they were interested in conducting reanalysis in order to maintain the WSA mass wasting prescriptions.

In summary, of the 52 approved watershed analyses, it is assumed that the sponsors of 24 will not conduct a reanalysis (19 DNR and five no interest), the sponsor of seven would be considered to be already meeting the requirement for reanalysis by its ongoing HCP obligations, DNR will not require reanalysis on three, and the sponsors of the remaining 18 have not indicated their intent.

SMALL BUSINESS ANALYSIS

Two data sets generated by DNR's GIS were used to analyze impacts to "small businesses". An analysis using both allows us to conclude that small businesses would not be disproportionately impacted by the rule proposal.

The first data set provided tax parcel and landowner information for 37 of the 52 approved WSAs where such data was available (eight of the 37 had only partial data coverage). A total of 904,000 acres of forest land is contained in the 37 WSAs (represented in whole or in part). The tax parcels are classified into ten land use designations, the most common being "Resource Production and Extraction", which contains 92 percent of the total acreage and is the land use most likely to be subject to timber harvest and road construction activities, and regulation under the Forest Practices Act.

In the data available representing land ownership in all the approved WSAs, there are 766,000 acres in the Resource Production and Extraction category which are owned by 1339 different entities (landowners). Of these 1339 landowners, 15 had over 50 employees and the remaining 1324 are "small businesses" as that term is defined in chapter 19.85 RCW. Seventy percent (70%) of this land, 539,000 acres, is owned by "large businesses" which have an average holding of 36,000 acres. The "small businesses" are further divided into 1302 individuals and 21 land organizations (which include conservation organizations and real estate investment firms). The land organizations own 120,000 acres total, or 16 percent, averaging 5700 acres each, while the individuals own 106,000 acres total, or 14 percent, averaging 81 acres each.

Not all forest lands within the approved WAUs will be impacted by this rule; only lands that are associated with potentially unstable slopes and landforms will be impacted. Such data was available in a second DNR GIS data set that listed each tax parcel that intersects with a mapped MWMU within each of the approved WSAs. This data set had information for 18 WSAs which had both tax parcel data and MWMU data in GIS

[2] "Federal services" means the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA), which review and approve habitat conservation plans (HCPs) under the federal Endangered Species Act.

(except three of the 18 had only partial coverage). The data for three WSAs where DNR is unlikely to require reanalysis was removed from the data set, leaving 15 WSAs in our sample. These 15 WSAs accounted for 444,000 acres of the total WSA acreage in the Resource Production and Extraction category in the first data set. There are 11 "large businesses" owning 387,000 acres, or over 87 percent of the total acres in these WSAs, and an average of 35,000 acres each. There are ten land organizations that own 30,000 acres, or 7 percent, averaging 3000 acres each. There are 350 individual landowners that own the remaining 26,000 acres, or six percent, averaging 75 acres each.

In the second data set composed of a sample of 15 WSAs, there are tax parcels totaling 222,500 acres that intersect with MWMUs, indicating that those lands include areas with potentially unstable slopes or landforms. Of the total parcel acreage, the portion in areas with potentially unstable slopes or landforms is substantially less. Eight large companies own 206,200 acres or 92.7 percent of the acres associated with unstable slopes, an average of 61,000 acres each. Three land organizations own 8000 acres, or 3.6 percent, which is an average of 2600 acres each. Forty individuals own 8300 acres, or 3.7 percent and averaging 208 acres each. See **Figure 4** for a detailed breakdown of ownership by category in the 15 WSAs in the sample data. The sample shows that "large businesses" own 94 percent or more of the acreage in tax parcels intersecting with MWMUs in 13 of the 15 WSAs, and 87 and 83 percent in the other two. "Small businesses" (individuals and land organizations) owned one percent or less of the acreage in tax parcels intersecting with MWMUs in 11 of the 15 WSAs.

FIGURE 4

Summary of Ownership of Lands With Potentially Unstable Slopes and Landforms in Selected WSAs

WSA	A	B	C (pt.)	D (pt.)	E	F	G	H	I	J	K	L (pt.)	M	N	O
Acres in Tax Parcels with MWMUs in WSA	1,297	4,611	5,488	13,226	16,413	7,890	12,094	7,556	8,636	26,251	13,330	12,103	26,379	41,930	25,320
Parcels with MWMUs in WSA	3	1	2	2	3	7	3	1	2	5	1	1	2	10	20
# of Tax Parcels with MWMUs in WSA	11	29	89	113	119	73	167	30	40	290	189	82	190	718	242
PERCENTAGE OF UNSTABLE SLOPE AREA BY OWNERSHIP															
Sponsor Timber Company Owner	94%	100%	76%	89%	94%	86%	85%	100%	100%	99%	100%	100%	100%	57%	74%
Other Timber Company Owner(s)			(1) 24%	(1) 11%	(1) 5%	(1) 1%	(2) 15%							(2) 40%	(1) 9%
Conservation and Holding Cos. (#)					(1) 0.5%	(2) 11%								(1) 3%	
Individual(s) (#)	(2) 6%					(3) 2%			(1) 0.1%	(4) 1%			(1) 0.3%	(6) 1%	(18) 17%

Another indicator of the impact on the large and small landowners is the number of intersections (as opposed to acres) of tax parcels and MWMUs. Large businesses had 2217, or 94 percent, of the 2370 tax parcels intersecting with MWMUs in the second data set. Small businesses had 153 parcels (37 for land organizations and 116 for individuals) intersecting with MWMUs, or 6 percent of the total in the sample.

Based on the sample data available[3], "small businesses" own only 7.3 percent of the acreage in tax parcels and only 6 percent of the number of tax parcels associated with unstable slopes or landforms in approved WSAs. This compares with 13 percent of the total acreage in the Resource Production and Extraction category in the second data set with 15 WSAs, and 30 percent of the total acreage in that land use category in the first data set with 37 WSAs.

Based on the sample data available, "large businesses" own a disproportionate share of the tax parcels associated with unstable slopes--92.7 percent by acreage of tax parcels and 94 percent by number of tax

[3]The data used in this analysis was not based on a sampling technique, but rather was determined by the available data across the 52 approved WSAs. The WSAs (in their entirety or in part) do not appear to be geographically unrepresentative of the 52 WSAs.

parcels. Therefore, we conclude it is highly likely that "small businesses" will not be disproportionally impacted by the proposed rule.

Reducing Costs for Small Businesses

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is no disproportionate impact on small businesses.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

In so far as WSA sponsors elect to opt out of the mass wasting prescriptions and not conduct and pay for reanalysis, there may be more work for "qualified experts" (engineering geologists and hydrogeologists) conducting geotechnical reports on potentially unstable slopes and landforms in the forested environment. If one out of 100 FPAs in the 24-42 WSAs where the WSA sponsor elects to opt out of the mass wasting prescriptions will now require a qualified expert's geotechnical report, then there would be a demand for an average of 4.8 to 8.4 new reports per year, at a total cost of $20,500-36,000 per year. This work would support less than a half time job for a geotechnical expert if that one person got all the new work. It is more likely that the additional work would be dispersed among several of the existing experts and would therefore not create any new jobs. Therefore, it is estimated that no jobs will be created or lost as a result of the new rule.

SUMMARY

The rule proposal affects 52 approved watershed analyses encompassing 68 Watershed Administrative Units (WAUs), or nine percent of the 754 forested WAUs in Washington.

Owners of all lands with potentially unstable slopes or landforms in 24-42 approved WSAs will potentially incur costs if the sponsor elects to opt out of reanalysis. If an FPA under standard rules is proposed on a "rule identified" potentially unstable slope or landform it would be Class IV-special and the landowner would need to pay for a qualified expert's geotechnical report and complete a SEPA checklist, together estimated to cost $4275 on average. It is not possible to accurately characterize the potential total cost impact across all the approved WSAs.

It is highly likely that "small businesses" (50 or more employees in the state) will not be disproportionately impacted by the proposed rule. Based on available sample data, large businesses (more than 50 employees) own a disproportionate share of forest lands associated with Mass Wasting Mapping Units (MWMUs)--92.7 percent by acreage of tax parcels and 94 percent by number of tax parcels that intersect with MWMUs.

It is estimated that no jobs will be created or lost as a result of the new rule.

RIPARIAN OPEN SPACE PROGRAM RULE MAKING

OBJECTIVES

The Forest Practices Board is considering a rule change to implement amendments to the Riparian Open Space program made by Substitute Senate Bill (SSB) 5401 in the 2009 legislative session. The Riparian Open Space Program is authorized in the Forest Practices statute, chapter 76.09 RCW, and covered under the forest practices rules in Title 222WAC.

The Board's objective is to make changes to chapter 222-23 WAC as required to bring it into conformance with the legislative changes made to the Riparian Open Space Program as codified in RCW 76.09.040.

CONTEXT

As part of legislation implementing the Forests and Fish Report in 1999, the Legislature added the Riparian Open Space Program to the Forest Practices Act. The program was established to provide landowners compensation for islands of forested lands within unconfined avulsing channel migration zones[4] that could no longer be legally harvested under the new changes to the forest practices laws. The Department of Natural Resources was directed to purchase qualifying riparian lands isolated by river channels (in fee or in a conservation easement interest) in order to dedicate the use of that land for public ecological protection and fisheries enhancement.

To date, DNR has purchased 12 conservation easements under the Riparian Open Space program on 923 acres of qualifying lands for a total amount of approximately $3,592,000. Funding for the program is subject to legislative appropriation specific to the program each biennium. Legislative appropriations to date have exceeded expenditures under the program because it has been difficult for landowner-applicants to meet the requirement that the timbered islands on their property were created by avulsion, an abrupt (sudden and perceptible) change in the course of a stream, rather than a gradual and imperceptible one. All the Riparian Open Space acquisitions to date have been by conservation easement because none of the applicants under the program were willing to sell their qualifying land in fee.

SSB 5401 made four major changes to the existing law that established the Riparian Open Space Program:

1. Changed the type of channel migration zone lands eligible for acquisition from “unconfined avulsing channel migration zones” to “unconfined channel migration zones”, removing the requirement to provide evidence of avulsion;
2. Expanded the lands eligible for acquisition to include private forest lands that contain critical habitat for threatened or endangered species as designated by the Board, greatly increasing the amount of lands potentially eligible and taking them beyond riparian areas into the larger forested lands of the state;
3. Removed the authority for DNR to purchase fee title interest in eligible lands, allowing acquisition of permanent conservation easements only; and
4. Gave the landowner a choice to convey an interest either in the land (with the trees) or in the trees only (this option was previously authorized by the Board in rule in 2001).

SSB 5401 was introduced on behalf of the Northern Spotted Owl Working Group which was established as a part of the settlement of litigation that concerned habitat for the owl. The group worked to develop incentives for private landowners to support and protect endangered and threatened species on their lands. This bill significantly expands the original Riparian Open Space program by providing a mechanism to compensate landowners for forested lands which cannot be harvested under forest practices rules because they contain critical habitat for a threatened or endangered species.

The amount of compensation to be paid to the landowner for a conservation easement on qualifying lands is determined by applying a cookbook formula multiplying the timber cruise volume on the qualifying land by timber stumpage values established elsewhere in RCW for timber harvest excise tax purposes. If an interest in the land is being conveyed in addition to the trees, compensation includes an additional amount equal to the acreage of the qualifying land multiplied by forest land value tables established elsewhere in RCW and revised annually by the Department of Revenue.

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[4]The original Riparian Open Space legislation contained the following definitions:

> “Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.
>
> “Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes.

PROPOSED RULE

The changes made in the Riparian Open Space statute by SSB 5401 require several changes to rule language for the program in chapter 222-23 WAC (the four major changes are described above). The first change noted above (dropping "avulsing") will also require a change to a definition in WAC 222-16-010. Forest Practices staff recommends changing the title of chapter 222-23 WAC from "Riparian Open Space Program" to "Rivers and Habitat Open Space Program", which would require changes in WAC 222-10-125, WAC 222-12-010, and WAC 222-12-090 where the title of the program is referenced.

SMALL BUSINESS ANALYSIS

There are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change since conveying a conservation easement and receiving compensation is voluntary on the part of the business (landowner), whether it is a large business, a small business, or an individual. Therefore there is no disproportionate cost impact on small businesses.

Reducing Costs for Small Businesses

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is therefore no disproportionate impact on small businesses.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the small business economic impact statement include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

Processing and completing a conservation easement transaction under the program may require work by timber cruisers, surveyors, and title insurance officers in private businesses. The program's impact on jobs is proportional to the amount of the appropriation and the number of transactions. To date, there have been 12 transactions completed under the Riparian Open Space Program in the 8 years from 2001 to 2009. At this level of activity, there is no significant impact on the number of jobs created or lost.

Even though the proposed rule change greatly expands the acreage of potentially qualifying lands, adopting the rule change itself does not have an impact on jobs because that is dependent upon the level of the related appropriations and the number of transactions. If larger appropriations are provided for the program in future biennia, there would be more work for timber cruisers, surveyors, and title companies, but the work would probably be absorbed by existing job positions unless the amount of appropriations for the program becomes exceedingly higher than it has been in the past.

CONCLUSIONS

Since participating in the program is voluntary, the rule proposal does not:

- Impose a burden on owners of qualifying land, whether or not they elect to convey a conservation easement on their property; or
- Have a disproportionate cost impact on small businesses.

The rule change itself does not have an impact on jobs. Any additional work created for timber cruisers, surveyors, and title companies by the program would be absorbed by existing job positions unless the amount of appropriations for the program becomes exceedingly higher than it has been in the past.

FOREST BIOMASS RULE MAKING

OBJECTIVES

The Forest Practices Board is considering a rule change to make clear and reinforce that harvest of forest biomass is considered to be a forest practice under the Washington forest practices statute, chapter 76.09 RCW, and the forest practices rules in Title 222 WAC.

The Forest Practices Board and the Department of Natural Resources already consider that forest biomass harvest is a forest practice that falls under the authority of the state's forest practices law and regulation. The proposed rule change will ensure that other affected parties will have the same understanding.

The proposed rule change explicitly clarifies that forest biomass harvests are forest practices. It implements RCW 76.09.040 which states, "Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 . . . the board shall adopt forest practices rules … that … establish minimum standards for forest practices." Among the purposes and policies stated in Chapter 76.09 RCW is "… that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection …" The intent of the proposed rule change is to ensure that forest biomass harvest is conducted with all the public resource protections (i.e., for soils, water, fish, wildlife, and capital improvements) afforded in chapter 76.09 RCW and Title 222 WAC.

The Board's objective in adding "or forest biomass" to the definition of "forest practice" is to ensure the public's understanding that activities related to forest biomass harvesting and on-site processing are forest practices activities and therefore subject to all of the protections and standards provided through Title 222 WAC.

CONTEXT

The Forest Practices Board is considering this rule change because of the greatly increased interest over the last several years in the use of forest biomass as an alternative energy source. The slash composed of residual branches, needles, and treetops left over from timber harvest operations, once regarded as a waste product, is now being considered a renewable resource for energy production and a new economic opportunity. There has been an increase in the removal of biomass from Washington's forests for energy generating projects as well as for pre-commercial thinning, forest health, and wildfire fuel reduction purposes. There are new players in the emerging forest biomass field who are not part of the forestry industry and who may not be well informed on forestry issues and forest practices laws and regulations. There may also be parties in the forest industry, including landowners, who are not aware that forest biomass removal is considered to be a forest practice like timber harvest and related forest management activities and as such is subject to the same public resource protections.

Department of Natural Resources (DNR) forest practices staff members have observed an increase in forest biomass removed from Washington's forests. Most landowners and operators are identifying and documenting these activities in their forest practices applications (FPAs), mostly in conjunction with other timber harvest activities. However, DNR field staff members are noting that some forest biomass removal activities are going on unreported and without FPA regulatory review and approval, especially stand-alone operations not conducted along with other forest practices activities.

This could be due to the rules not being clear that activities related to forest biomass harvest and removal are forest practices the same as activities related to timber harvest. The risk under the status quo is that forest landowners and operators will not be aware that the same permitting requirements and natural resource protections apply to these activities as they do activities related to timber harvest.

When a landowner or operator proposes forest practices activities, including forest biomass removal, all of the associated activities must be noted on the FPA. This gives DNR the opportunity to condition

applications prior to the activities taking place, and ensure that public resources are protected during and after operations.

PROPOSED RULE

The proposal is to add the words "or forest biomass" to the definition of "forest practice" in WAC 222-16-010 as shown below.

*WAC 222-16-010 *General definitions*

. . .

"Forest practice" *means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber* <u>or forest biomass</u>*, including but not limited to:*

Road and trail construction;
Harvesting, final and intermediate;
Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

. . .

The proposed rule clarifies that activities associated with forest biomass harvest are forest practices activities and as such are required to be included on FPAs.

ASSUMPTIONS

The following assumptions are made in the small business impact analysis:

1. There is some level of forest biomass harvest occurring in Washington's forests that is not being reported on FPAs and is therefore being done without FPA review and approval by DNR.
2. There is an increased likelihood and degree of negative impact on public resources resulting from forest biomass harvest activities that occur without DNR forest practices review and approval.
3. Forest biomass harvest is already subject to forest practices regulation, although some forest landowners and operators may not be aware that it is.
4. To the extent the proposed rule change increases awareness, it will increase the amount of information required in FPAs for timber harvest that also include activities associated with forest biomass harvest, and it is likely to increase the number of FPAs for stand-alone forest biomass harvest projects.

SMALL BUSINESS ANALYSIS

Since there are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change, there is no disproportionate cost impact on small businesses.

<u>Reducing Costs for Small Businesses</u>

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. Since there is no impact on costs for any businesses, large or small, there is no disproportionate impact on small businesses.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule." There is no change in the number of jobs resulting from adopting the proposed rule change because it doesn't affect the level of forest biomass harvest activity.

CONCLUSIONS

A comparison of the estimated potential impact to small businesses and the ten percent of the largest businesses that are required to comply with the rule shows that there is no impact on any businesses and therefore the rule would not disproportionally impact small businesses.

The analysis concludes that the rule will have no impact on overall employment.