

**Recommendations for the Forestry Riparian Easement Program  
September 27, 2010**

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**Background**

The 1999 Salmon Recovery Act (Act) was passed to assist in providing substantial and sufficient recovery of salmon while maintaining a viable forest products industry. The Act included a key component which required the establishment of a Small Forest Landowner Office (SFLO). The SFLO was established in the Forest Practices Division of the Department of Natural Resources to provide assistance to small forest landowners as they implemented the Forest Practices Rules. The SFLO administers programs for small forest landowners including the Forestry Riparian Easement Program and the Family Forest Fish Passage Program, provides assistance to small forest landowners in the alternate planning process and with completing forest practices applications.

The Legislature created the Forestry Riparian Easement Program (FREP) in 1999 to help offset the diminishing economic viability of small forest landowners from increasing regulatory requirements (RCW 76.13.100). FREP purchases 50-year conservation easements along riparian areas from small forest landowners. FREP was designed to compensate small forest landowners for 50-89 percent of the value of trees in riparian areas which they are prohibited from harvesting by the Forest Practices Rules. FREP fulfills a core commitment of the Forest & Fish Report and the Forest Practices Habitat Conservation Plan. Establishing 50-year forestry riparian easements facilitates compliance with the Clean Water Act and aids in the restoration of Puget Sound. FREP also helps safeguard the state against claims of regulatory takings.

**Introduction**

In the Supplemental Capital Budget for the 2010 Legislative session (ESHB 2836§ 3041(6)), the legislature directed the Department of Natural Resources (DNR) to work with interested stakeholders to develop recommendations for changes to the FREP. These recommendations are to clarify eligibility provisions, add prioritization criteria to ensure funding of highest priority easements first and to find efficiencies in the acquisition process. The legislature further directed DNR to consider including elements of the budget proviso criteria (stated in ESHB 2836, §

3041(3) and (4)) in the recommendations. DNR was instructed to make FREP recommendation's in the form of proposed legislation (attachment B).

DNR provided draft recommendations to interested stakeholders and solicited participation via mail and email invitations to three open house public meetings. The meetings were held in Spokane, Centralia, and Olympia. These meetings were held to receive feedback on draft program revisions based on elements in the budget proviso and additional reform criteria proposed by staff. DNR also provided an email address, located on DNR's FREP and SFLO websites, for stakeholders that could not participate in the open houses, to provide comments on the draft recommendations. All comments that were generated from the open houses and received through email are posted to the website (attachments D and E) and were also emailed to all the interested stakeholders (attachment C).

The overwhelming stakeholder response received through the open house meetings and written comments was to not add prioritization or eligibility criteria to FREP. Stakeholders believe FREP is a mitigation commitment made by the legislature to all small forest landowners with the adoption of the Forests and Fish Report (FFR), to offset the disproportionate economic impacts the FFR rules would have on small forest landowners. Small forest landowners believe prioritization has already occurred in that FREP focuses on riparian areas determined to be necessary for sustaining and restoring aquatic species covered by the Forest Practices Habitat Conservation Plan. Adding eligibility and prioritization criteria would be redundant, increase administrative costs and exclude some small forest landowners from the FREP mitigation.

The following are staff recommendations for each of the elements found in the budget proviso. Some of the elements that ESHB 2836 established as high and low priority criteria were not incorporated into this proposal due to stakeholder opposition or added administrative complexity. This complexity would increase staff time as well as reduce the amount of money available for riparian easement purchases. Staff is recommending several eligibility criteria, some based on proviso elements, and continuing use of the date of receipt of completed harvest to prioritize funding. Staff also recommends adding one new prioritization element from the budget proviso, that being FREP applications for lands under a long term forest stewardship plan recognized by the department.

- I. **2010 Budget Proviso Elements Proposed as Eligibility Criteria for Legislation (if an applicant meets one or more they would be ineligible for FREP)**
  - A. **Proviso element (4b): The applicant has had legal ownership for less than five years, except when the applicant is a lineal descendant of a landowner meeting this criterion.** Staff recommends a version of this 2010 Budget Proviso element as an eligibility criterion. Applicant(s) that have purchased the land associated with the easement area after July 1, 2011, unless the property was legally transferred from a lineal ancestor. Landowners that purchased their land after July 1, 2011 made their forest land investment under the current regulatory climate; therefore, the economic impact of the rules should have been reconciled at the time of the transaction.
  - B. **Proviso element (4c): The applicant has an outstanding violation of the forest**

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<sup>1</sup> Date the Legislation becomes effective.

**practices act under chapter 76.09 RCW.** Staff recommends expanding the existing verification of compliance with Forest Practices Rules regarding leave trees in the easement areas to forest practices violations not yet reconciled.

- C. **Proviso element (4e): The application is for land on which other conservation easements have been executed and recorded on the title.** Staff recommends proposing a version of the 2010 Budget Proviso element as an eligibility criterion. The proposed change is necessary because of the statute definition of Qualifying Timber. The proposed clarification to the Qualifying Timber definition would make those trees under existing harvest restrictions ineligible due to another conservation easement.

## II. New Eligibility Criteria Proposed for Legislation

- A. **Staff recommends the SFLO determine the applicant qualifies as a small forest landowner on the date the forestry riparian easement occurs rather than on the date receipt of the forest practice application.** Staff recommends verification of small forest landowner status to the more relevant forestry riparian easement transaction date.
- B. **All rule identified unstable slope areas outside of the riparian management zones are ineligible as qualifying timber.** Staff recommends adding this eligibility criterion to the Legislation. Two key reasons staff is proposing carrying this eligibility criterion forward are:
1. The Forestry Riparian Easement Program RCW 76.13.120 states, "...the state should acquire easements along riparian and other sensitive aquatic areas..." Unstable slopes are not listed within this language.
  2. Staff has seen a disproportionate amount of funds used for purchase of riparian easements on unstable slopes. FREP funds would be focused to the acquisition of riparian areas for the protection of aquatic resources and areas made uneconomic to harvest. More than \$3million of FREP funds have been utilized for purchase of unstable slopes.

## III. 2010 Budget Proviso Elements Proposed as Prioritization Criteria for Legislation

- A. **Proviso element (3d): Lands that are certified by a forest certification program recognized by the department.** Staff recommends proposing a version of the 2010 Budget Proviso element as a prioritization criterion. Landowners whose land are under a long term forest stewardship plan recognized by the department have invested in forest management and are less likely to convert their land to another use.

## IV. 2010 Budget Proviso Elements not Proposed as Prioritization Criteria for Legislation

- A. **Proviso element (3a): The greatest proportion of riparian buffer impacted in the related forest practices application.** This criterion would increase administrative cost and complexity in implementation, diminishing funds available for easement acquisitions and there is potential for manipulating forest practice application size and number in order to increase funding priority.

- B. Proviso element (3b): Lands in deferred tax status of classified timber land or classified open space as defined in RCW 84.34.020.** Landowners have a variety of reasons for having their forest land in different tax status, and the local government entity ultimately determines the eligibility for tax designation.
- C. Proviso element (3c): Lands at greatest risk of conversion to other land uses as determined by county zoning and land classifications and proximity to urban growth areas or other areas of concentrated land development.** This criterion would favor applications in areas with dense populations, favors western Washington over eastern Washington and would likely pose greater compliance risk.
- D. Proviso element (3e): The applicant has not received a forestry riparian easement since July 1, 2007.** This criterion could encourage larger harvest units and accelerated harvests in order to aggregate harvest activities into one easement application.
- E. Proviso element (3f): The applicant is not a nonprofit organization.** Forest Practices rules do not currently differentiate nonprofit organizations from other small forest landowners.
- F. Proviso element (3g): The applicant has been waiting three years or more for a forestry riparian easement purchase.** Because staff recommends retaining the prioritization element “first in line - first in time,” this criterion would be redundant.
- G. Proviso element (4a): The forest management activities for the aggregated ownership of the landowner referenced in the application, his or her spouse, and his or her children exceed the small forest landowner definition in RCW 76.13.120(2) (c).** Individuals can have various ownership names that make verification difficult. Changing this provision to include aggregated ownership would add complexity and decrease the authenticity of the results.
- H. Proviso element (4d): The applicant is in default on a financial obligation to an agency of the state including noncompliance with a child support order under RCW 74.20A.320.** The increased cost and complexity to verify applicants are not in default of financial obligations to the state would diminish funds available for easement acquisitions.
- I. Proviso element (4f): The land is owned by a nonprofit organization that does not have deferred tax designations of either classified timber land or classified open space as defined in RCW 84.34.020 and does not have a county-recognized forest management plan.** A landowner meeting this criterion would be extremely rare and is a combination of two previous criteria already addressed.

**V. Acquisition Process Improvements Proposed for Legislation**

Below are staff’s recommended improvements to the program’s acquisition process which are not in the 2010 Budget Proviso.

- A. Initiate cruising contracts as soon as possible after receipt of documentation of harvest completion (Harvest Status Questionnaire) and eligibility confirmation.** This will allow DNR to cruise the easement area as soon as possible after harvest, solving the current problem of lost value to the landowner through fire, insects, storm damage, and wind-thrown trees.

- B. Establish the dollar value of the easement based on receipt of the documentation of harvest completion (Harvest Status Questionnaire).** This change will establish transaction values closer to the completion date of the harvest and reduce administrative costs.

**Conclusion**

The Department of Natural Resources, in response to ESHB 2836§ 3041(6), has developed recommendations for changes to the FREP. Those recommendations include: clarified eligibility provisions, added prioritization criteria to ensure funding of highest priority easements first and identified efficiencies in the acquisition process. The department's recommended legislation considered the budget proviso criteria regarding eligibility and prioritization, feedback from interested stakeholders, and recommendations from DNR staff.