

1 **FOREST PRACTICES BOARD**

2 February 13, 2002

3 Natural Resource Building

4 Olympia, Washington

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7 **Members Present:**

8 Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board  
9 Fran Abel, General Public Member  
10 Lloyd Anderson, General Public Member/Independent Logging Contractor  
11 Toby Murray, General Public Member  
12 Tom Laurie, Designee for Director, Department of Ecology  
13 Lee Faulconer, Designee for Director, Department of Agriculture  
14 Judy Turpin, General Public Member  
15 Keith Johnson, General Public Member/Small Forest Landowner  
16 Robin Pollard, Designee for Director, Office of Trade and Economic Development  
17 John Mankowski, Designee for Director, Department of Fish and Wildlife  
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19 **Members Absent:** Bob Kelly, General Public Member  
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21 **Staff:** Lenny Young, Debora Brown Munguia, Patricia Anderson, [Paddy O'Brien](#) and Jay Walsh  
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23 **CALL TO ORDER**

24 Pat McElroy called the meeting to order at 9:00 a.m. Patricia Anderson gave the emergency briefing.  
25 McElroy introduced Tom Laurie as the new Board Member, representing the Department of Ecology.  
26 McElroy thanked Dick Wallace and presented him with a plaque for his many years of work on Forests  
27 and Fish. Introductions were made. The Board received public comments on recreation and aesthetic  
28 prior to the Board's discussion.  
29

30 **MOTION:** Judy Turpin moved to approve the October 23 & 24, 2001 meeting minutes.

31 **SECONDED:** Keith Johnson

32 **ACTION:** Motion passed unanimously.  
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34 **MOTION:** Judy Turpin moved to approve the November 14, 2001 meeting minutes as  
35 amended.

36 **SECONDED:** John Mankowski  
37

1 **Board Discussion**

2 McElroy noted one correction to the November 14, 2001 meeting minutes. The change is on page 13,  
3 line 9; change “received by” to “received from”.

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5 **ACTION:** Motion passed unanimously as amended.

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7 **REASONABLE USE**

8 McElroy stated, as indicated in a memo from Lenny Young, that the Department has been asked to reduce  
9 a number of things for the general fund budget reductions. The reasonable use rule has been  
10 recommended as one of nine tasks to be delayed.

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12 **MOTION:** McElroy moved that the Forest Practices Board direct staff to discontinue with rule  
13 making efforts for the reasonable use rule due to budget constraints; however, the  
14 Board may reengage in rulemaking at a later date.

15 **SECONDED:** Judy Turpin

16 **ACTION:** Motion passed unanimously.

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18 **LEGISLATIVE UPDATE**

19 Lenny Young provided a summary of the legislative activities that may impact forest practices. Currently  
20 the bills moving through their respective houses are as follows:

21 HB 2311 is an act relating to small forest landowners that clarifies the terms of the SFLO’s Advisory  
22 Committee members, eliminates the compensation reduction for timber harvest re-entry into approved  
23 forestry riparian easements, clarifies the Department’s authority to compensate small forest landowners  
24 for the cost of Forest Riparian Easements and directs the Forest Practices Board to continue ongoing  
25 efforts to develop alternate plans for small forest landowners. It also directs the Board to provide the  
26 legislature with a written progress report by July 1, 2003.

27  
28 HB 2399 is an act relating to Class IV forest practices in urbanizing areas and extends the date for local  
29 governments to gain authority to regulate Class IV general forest practices from December 31, 2001—  
30 December 31, 2005.

31  
32 HB 2570 extends the date for the state to receive Federal Endangered Species Act assurances through an

1 incidental permit that would be supported by a Habitat Conservation Plan (HCP) from June 30, 2003 –  
2 June 30, 2005, which is the estimated date for completion of the HCP.

3

4 HB 2809 relates to forest pesticide application, and under certain conditions exempts the application of  
5 pesticides in forests from the direct supervision requirements of the Washington Pesticide Application  
6 Act.

7

8 SB 6241 is an act relating to Christmas trees, excluding Christmas trees cultivated by agricultural  
9 methods covered under the Forest Practices Act. The Department supports the first substitute version that  
10 arose from testimony provided by staff asking that the term “cultivated by agricultural methods” be  
11 referenced or defined. RCW 84 was incorporated into the definition, which will provide operational  
12 direction to the field.

13

14 SB 6306 relates to cultural resources with respect to forest practices. It allows contextual interpretation  
15 of terms defined in RCW 76.09, which means that the definitions in this chapter apply throughout the  
16 chapter unless the context requires otherwise. This Bill also defines cultural resources in the forest  
17 practice definitions, and it proposes to add cultural resources to the definition of public resources. The  
18 Department provided neutral testimony at the hearing. The contextual interpretation is potentially  
19 problematic, and is being researched further. Keith Johnson asked if DNR was opposed, and McElroy  
20 responded that the Department’s regulatory programs did not take a position on the bill but instead  
21 provided a fiscal note that assessed the cost to implement it. Young stated that State Lands opposed the  
22 structure of the bill, not its direction. Johnson asked if the analysis of the cost is available. Young  
23 responded that a fiscal breakdown could be provided.

24

25 SB 6400, relating to biodiversity conservation, directs and provides funding for the Interagency  
26 Committee on Outdoor Recreation to contract for a Biodiversity Conservation Committee. This  
27 Committee is directed to develop recommendations for a statewide Biodiversity Conservation Program  
28 that would feature a statewide landscape management program replacing the Shoreline Management Act,  
29 the State Environmental Policy Act (SEPA), and the Forest Practices Act. The Department opposes the  
30 first substitute version of this bill because it proposes to abolish the Forest Practices Act.

31

32 SB 6727 requires the Department of Fish and Wildlife to prohibit activities that harm or disturb salmon

1 spawning beds during egg incubation periods. The Department is concerned that the current language of  
2 this bill, which states that “activities that harm or disturb salmon spawning beds” and “other physical  
3 disturbance of the salmon spawning beds,” would include forest practices adjacent to salmon spawning  
4 streams that might result in sedimentation of the streams or elevated water temperatures. This would  
5 create regulatory authority within the Department of Fish and Wildlife over Forest Practices that would  
6 overlap the Forest Practices Act. This problem does not seem to be the intent of the bill, and Young is  
7 hopeful that this language can be reviewed before it goes further.

8

9 **PUBLIC COMMENT**

10 Bill Wilkerson, Washington Forest Protection Association (WFPA), stated that the WFPA is strongly  
11 opposed to another rule making on recreation and aesthetics. Wilkerson referenced a letter from the  
12 Governor that opposed the petition and he suggested the Board look at the notice provisions that affect  
13 forest practices throughout the state. Wilkerson also suggested an evaluation of the existing notice  
14 provisions to fully understand them before deciding to add notice provisions. Wilkerson believes that  
15 someone should have a conversation with the Governor’s Office to find out how much is known about the  
16 adequacy of the existing provisions. Wilkerson and his industry members believe that the provisions  
17 provide adequate notice throughout the state on forest practices.

18

19 Court Stanley, Port Blakely Tree Farms, firmly believes that forest management, including logging in  
20 visually sensitive areas, should continue to be a voluntary process. Both big and small landowners are  
21 managing effectively in visually sensitive areas. Stanley stated that there cannot be a set prescription for  
22 an aesthetics rule, but rather it should be left up to the landowners on a site-by-site basis. In addition, this  
23 process should remain voluntary because most industrial and non-industrial landowners are going through  
24 certification. Some are looking at Forest Stewardship Council, some at Sustainable Forestry Initiative,  
25 both of which have processes in them to inventory, catalog, and develop guidelines for lands in visually  
26 aesthetic areas.

27

28 Lloyd Hedglin, a small tree farmer, shared some recent changes that he feels will effect how Forests and  
29 Fish rules are administered. (See Attachment A for a copy of Hedglin’s comments).

30 Nels Hanson, Washington Farm Forestry Association (WFFA) and a small forest landowner stated that  
31 stream typing is in the developmental stages in designing a model that will not require going out and  
32 examining the stream. Hanson believes a model is more adaptable and valuable to landowners that own a

1 large basin, so that the model's inaccuracies in one spot will average out. Hanson estimated that the  
2 model would be about 50% accurate in the transition of streams from fish bearing to non-fish bearing.  
3 McElroy asked Hanson if the standard was 95%, not 50%. Hanson did not know if a standard had been  
4 established. Mankowski stated that the Forests and Fish Agreement has a policy direction to develop a  
5 model with 95% accuracy where the last fish habitat is, with further direction to split the 5% error rate 50-  
6 50 so that half the time the 5% is over-extended, and half the time it's under-extended. Hanson continued  
7 by stating that electro-shocking presently verifies this inaccuracy and overrides the model. However, if  
8 electro-shocking is terminated, he believes there should be an alternative to verify or override the model.  
9 Hanson believes that electro-shocking should not be terminated until this kind of mechanism is in place.

10

11 Joseph Pavel, Northwest Indian Fisheries Commission (NWIFC), was concerned with managing for fish  
12 presence. Pavel stated that there are many reasons why you may or may not find a fish in a particular  
13 habitat. One of the issues is where to place the break point of stream types, once an operator has found  
14 the last fish in the survey. Stakeholders are not able to reach a consensus on this issue. Pavel suggests  
15 that the Board Manual Section 13 be amended and those questions be referred to an experienced ID team  
16 that can best determine what constitutes habitat.

17

18 Pete Heide, Washington Forest Protection Association (WFPA), expressed his support of the adoption of  
19 Board Manual Section 13, as presented today. Heide believes that the interim water-typing rule is similar  
20 to the emergency rule that the Board put in place in 1997. At that time, the Manual was developed to  
21 implement that rule. The Forests and Fish discussions talked in great length about an interim rule while  
22 the model was being developed; however, they were unable to agree upon an interim rule. Therefore, the  
23 Board agreed to continue the emergency rule, which was based on the Manual at that time. All of the  
24 support from industry for the Forests and Fish rule, including the interim water-typing rule, was because  
25 future versions of the manual would be essentially the same as it had been in the past. Heide stated that  
26 they are moving to a habitat-based system with the modeling approach. Heide briefly stated the  
27 industry's concerns. The first concern is about Manual procedures that allow significant downgrading of  
28 waters from previous Type 3 streams to a non-fish status. Industry believes that the issue is addressed  
29 through the new requirement that surveyors have a pre-meeting with the Department of Fish and Wildlife  
30 and affected tribes to ensure the correct protocol. This would prevent attempts to downgrade streams that  
31 biologists believe should have fish or streams that have man made blockages below that prevent fish flow.  
32 The other concern refers to the effort that is required during the application protocol. According to the

1 Manual, surveys must include a two-person crew at all times. The biologists have recommended this and  
2 they believe it is scientifically justified.

3  
4 Alan Engstrom, Real-Estate Attorney, addressed the proposed WAC regulations for the small forest  
5 landowner forestry riparian easement program. Engstrom stated that approximately half of the small  
6 forest landowners in the state also have a residence attached to their property. Approximately 90% of that  
7 half also has a mortgage on that property. Engstrom stated that DNR's interpretation of the easement  
8 program is that landowners are required to obtain a subordination of that mortgage instrument, which he  
9 feels is unwarranted. Furthermore, Engstrom believes that DNR requires landowners to obtain this  
10 subordination, or clear the mortgage, prior to being paid by the DNR. The DNR's interpretation is not to  
11 allow an escrow closing that would satisfy the mortgage lender. Instead, Engstrom suggested that DNR  
12 allow the payments for these easements to occur in escrow closings. Engstrom believes that the  
13 interpretation comes from WAC 222-21-020 (f).

14  
15 Pat McElroy asked Lenny Young if this was an operational issue and Young explained that it is at the  
16 interface of operations and policy. Young also stated that Engstrom's comment has been forwarded to the  
17 Office of the Attorney General to find a solution within the current rule structure.

18  
19 Engstrom continued to say that the problem is that DNR states there is no authority to use that escrow  
20 process. Engstrom's proposed clarification is for the Board, in the appropriate cases, to authorize escrow  
21 closings per WAC 222-21-020 (f).

22  
23 McElroy stated that the Board is not in a position to address rules without having the advice from the  
24 Attorney General's Office. McElroy suggested that Engstrom keep working with DNR on this issue.  
25 McElroy also stated it is reasonable to assume that HB 2311 will pass which will require rule making  
26 in this arena again, and he suggested that the Board revisit this topic then. John Mankowski commented  
27 that the Board's Small Landowner Committee has a plan that deals with landowner easements.  
28 Mankowski also stated that the Committee is looking for ways to streamline it and make it simpler and  
29 easier to get through. Mankowski suggested that Engstrom's comments be made available to the Board's  
30 Joint Policy Technical Task Force and let the Board's sub-committee screen out some of the pertinent  
31 facts and recommendations. Engstrom concluded by suggesting that the wording in subsection "C", that  
32 states "any other liability where the liability..." should have inserted into it "after granting the easement."

1 This way it will be clear to Department staff that the escrow process could occur before the easement  
2 granting.

3

4 Alan Soicher commented on the SEPA wildlife rule making. Soicher stated that the Board has room for  
5 progress on wildlife rules, but does not think that an exemption is the solution. Soicher stated that the  
6 site-specific review that could occur with individual forest practice applications would no longer exist if  
7 there were exemptions of this type. Soicher also stated that the state agencies, and the affected tribes, are  
8 not always consulted in the development of a Habitat Conservation Plan, and therefore may not  
9 participate. Soicher concluded by stating that if the Board decides to proceed with this rule making, there  
10 should be language that demands the agencies and tribes be involved with the development of Habitat  
11 Conservation Plans.

12

13 **RULE MAKING – 222-21 WAC**

14 Kim Sellers presented the proposed rule changes to the forestry riparian easement program to the Board.  
15 The rule changes would allow a group of previously exempt small forest landowners to be eligible for the  
16 forestry riparian easement program as well as allow some landowners to be reimbursed for easement  
17 costs, in addition to business, occupation, and real-estate excise taxes. The rule changes would also  
18 allow landowners some flexibility in their timber evaluation date. The proposed changes the Board is  
19 considering are the result of stakeholder consensus, and include similar language that was approved by  
20 the Board on November 14, 2001. A few minor corrections have also been made and include WAC and  
21 RCW references and deletion of a repeated reference.

22

23 Five comments were received; two in support of the rule, one opposed and two were undeclared. Sellers  
24 concluded that staff recommends that the Board approve the proposed permanent rule.

25

26 **MOTION:** McElroy moved that the Forest Practices Board adopt the proposed permanent rule  
27 proposal for Chapter 222-21 WAC, Small Forest Landowner Forestry Riparian  
28 Easement Program, as presented today including the staff recommended changes  
29 and direct staff to file the CR103 with the Code Reviser and further allow staff the  
30 authority to correct any typographical errors if needed.

31 **SECONDED:** John Mankowski

32 **ACTION:** Motion passed unanimously.

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**RULE MAKING – SEPA WILDLIFE**

Ashley DeMoss presented the proposed SEPA Wildlife rule to the Board. This rule is designed to provide consistency with WAC 222-16-080 subsection 6, which is the Class IV special exemption for forest practices consistent with wildlife conservation agreements. The proposed rule is the result of consensus negotiations among stakeholders.

During the public comment period, the Board received two comments. One comment supported the rule with recommendations for changes and one comment opposed the rule making and recommended that this exemption be conditioned. McElroy stated that the purpose of this rule was related to an oversight in the original rule making that did not provide for those already in existence.

**MOTION:** Toby Murray moved that the Forest Practices Board accept for public review the negotiated permanent rule proposal as presented today for Chapter 222-10 WAC, State Environmental Policy Act Guidelines, and that staff file the CR-102 with the Code Reviser to begin the permanent rule-making process.

**SECONDED:** Lloyd Anderson

**Board Discussion**

Judy Turpin believes the language should be consistent; there are some agreements that are subject to public comment under the Endangered Species Act. Turpin stated that public comment on the agreements is not the same as having environmental review. The federal government determines whether or not these agreements are exempt from the National Environmental Policy Act (NEPA), and therefore do not receive environmental review. Therefore, Turpin is hesitant to exempt them from project environmental review under SEPA. Turpin said that the Endangered Species Act is not the same as SEPA or NEPA coverage. Her understanding is that if environmental review had occurred in the past, and as long as there is consistency with the environmental review under the new rule proposal, then people were comfortable in that exemption. Mankowski stated that the Board’s policy on this issue, expressed in the adopted Forests and Fish rules, is that if a landowner or company ~~has~~ seeks an HCP, or a other Federal Endangered Species Act permit, ~~HCP take agreement or an incidental take agreement,~~ then it ~~does not~~ should involve the state and Tribal interests. The Board has already said do not presume you will get state exemptions. This is historically the case in the rules. Since the Board has seen enough HCP’s, Mankowski stated they



1 do need to be at the table for many of them. If the state and/or tribes are at the table, and the HCP is  
2 approved, then they believe this is a legitimate exemption. When this issue arose during Forests and Fish,  
3 to keep it within constraints of aquatic resources, the Board adopted a strong policy to involve the state  
4 and tribes for new HCP's. Mankowski presumes this policy will apply in the future and believes the  
5 Board should continue in this direction--to be consistent with the Forests and Fish Agreement. McElroy  
6 stated that this is providing an opportunity for new HCP's. Turpin agreed, except for the new language,  
7 which includes those who have not gone through environmental review under NEPA. McElroy asked  
8 DeMoss if this came up in the negotiated rule making. DeMoss said that it did not, and added that part of  
9 the challenge is to make sure that they adhere to the concept of it as negotiated rule making. If the  
10 proposal changed today, it would no longer be a negotiated rule making.

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12 **ACTION:** Motion carried, nine support/one opposed.

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14 **EMERGENCY RULE MAKING – LANGUAGE CLARIFICATION**

15 Debora Brown Munguia presented a request for the Board to adopt an emergency rule to preserve public  
16 safety and protect public resources. There was an editing error made during the development of the  
17 permanent rules involving the definition of a Class II forest practice. This is found in WAC 222-16-050  
18 (4). Listed under (e) is “salvage of logging residue” which indicates it should be considered a Class II  
19 forest practice regardless of the presence of other landscape features, such as wetlands or steep unstable  
20 slopes. In the emergency rules, “salvage of logging residue” was part of (d). They have identified the  
21 edit that they believe clarifies the Board's intent, which is to eliminate (e), and insert it at the beginning of  
22 (d).

23  
24 **MOTION:** Toby Murray moved that the Forest Practices Board adopt the emergency rule for  
25 rule clarification on salvage of logging residue in WAC 222-16-050 (4), “Class II”,  
26 as presented today, and that it be filed with the Code Reviser so that it becomes  
27 effective upon filing.

28 **SECONDED:** Judy Turpin

29 **ACTION:** Motion passed unanimously.

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31 **MOTION:** Toby Murray moved that the Forest Practices Board direct staff to file a pre-notice  
32 of inquiry to inform the public that it is considering corrections to WAC 222-16-

1 050(4) Class II forest practices regarding salvage of logging residue.

2 **SECONDED:** Lee Faulconer

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4 **Board Discussion**

5 McElroy stated that the Board adopted an emergency rule that will take effect upon filing, and clarified  
6 the intent of the motion which will direct staff to start the permanent rule making.

7  
8 **ACTION:** Motion passed unanimously.

9  
10 **BOARD MANUAL SECTION 13**

11 Mankowski began by stating that in 1996 and prior, it was believed that water type maps underestimated  
12 the number of fish bearing streams in the state. This was based on field observations by the tribes,  
13 WDFW, DNR, and others. These incidental observations culminated in a scientific study that was  
14 presented to the Board. At that time, the Board believed these maps were inaccurate. The Board adopted  
15 a set of emergency rules that established physical criteria that determined whether there were fish present.  
16 The Board went forward with the understanding that electro-shocking protocol would be developed to  
17 address the areas where they have over-reached on the stream types. Landowners and others have the  
18 opportunity to use electro-shocking in order to prove that streams are non-fish bearing. Mankowski  
19 stated that it is important to note that the protocol was designed to address those streams that are  
20 presumed to be fish bearing, but in fact are not. Forests and Fish has stated that they are going to do  
21 things differently in the future. Forests and Fish recognize that fish use is seasonal and dependent on  
22 habitat conditions. Therefore, we are working to create a habitat-based model to predict where fish exist  
23 based on flows, elevation, and other multi-variable parameters because at some point there will no longer  
24 be electro-shocking. In 1996, the Board adopted emergency rules that determined the physical criteria  
25 used today. The protocol is explained in the manual.

26  
27 Jed Herman presented background information on the development of the Board Manual, Section 13.  
28 Last May, when the Board adopted the permanent rules, there were nine elements where the stakeholders  
29 did not reach consensus. One of the elements was whether electro-shocking should be allowed. The  
30 Board decided to allow it to continue. Turpin asked if Washington Trout was given the opportunity to  
31 review Section 13. Herman said that Washington Trout did approach them, they had a long discussion  
32 about last year's drought conditions, and increasing provisions are being made to increase awareness of

1 these conditions. Young stated that he is pleased that Washington Trout has re-engaged with the forest  
2 practices adaptive management process, and are actively participating in the In-Stream Scientific  
3 Advisory Group. This represents the first environmental group of the state that has re-engaged with an  
4 aspect of the program. Turpin noticed that the term “fish use” is used instead of “fish presence” which is  
5 consistent with the rule and asked what is it referring to. Herman stated that they use the term “fish use”  
6 to avoid the debate of fish absence and fish presence.

7  
8 Page 2 involves requirements to shock streams with a width larger than five feet. Prior to shocking, there  
9 is a requirement to meet with the WDFW region biologists and any affected tribes to discuss protocol  
10 enhancements that may be appropriate for determining fish use in those streams. Also, the drought  
11 conditions section has been updated, which is in direct response to the correspondence with Washington  
12 Trout as well as the scientific collection permits and the blockages to fish passage. Other changes include  
13 some provisional clarifications.

14  
15 **MOTION:** John Mankowski moved that the Forest Practices Board approve the Board Manual  
16 Section 13.

17 **SECONDED:** Judy Turpin

18

19 **Board Discussion**

20 Mankowski suggested replacing the paragraph that begins on line 54 page 2 through line 5 on page 3 as  
21 an amendment for the language on the blockages. The amendment would read as follows: “*The forest  
22 practice rules allow for a stream survey protocol to determine fish use. However, determinations of fish  
23 absence using this protocol generally can be applied only to streams where human made fish blockages,  
24 such as impassable culverts, do not exist below the proposed survey reach. The process used to  
25 determine blockages to fish passage must be documented. Above human made fish blockages, physical  
26 criteria are used to determine the presumption of fish use, unless otherwise approved by the Department  
27 of Natural Resources in consultation with the WDFW, Department of Ecology (DOE), and affected  
28 tribes.*” Mankowski stated that this is consistent with the language that stakeholders had previously  
29 considered and did not object. Herman stated that most of the other changes made were consensus based.

30

31 **MOTION:** John Mankowski moved to amend the previous motion and replace the specific  
32 language.

1 **SECONDED:** Judy Turpin  
2 **ACTION:** Motion passed unanimously as amended.

3  
4 **MOTION:** Judy Turpin moved to add a “Part 7” to the end of Section 13 with the language  
5 provided by the NWIFC. Language to read as follows:  
6 “Part 7. Determining the Upper Boundary of a Type 3 Water  
7 The upper Type 3 Water boundary will be established upstream of the last known  
8 fish presence as applied in these protocols and using one of the following criteria:  
9 a) At a point determined by the ID Team based on surveyor and site evidence  
10 indicating upstream extent of probable fish use; or  
11 b) First point where stream gradient increases and remains above 20% gradient; or  
12 c) First point, meeting one or more of the criteria in Part 6 “Alternatives for  
13 making fish use determinations”; or  
14 d) At a point determined by the ID Team upstream of rule physical criteria based  
15 on clear, reasonable evidence of fish use at adjacent, previously verified  
16 streams having similar physical characteristics.”

17  
18 **SECONDED:** Tom Laurie

19  
20 **Board Discussion**

21 Turpin stated that there should be a way to establish the point based on fish use, and it is not clear that  
22 there is a process for this determination. Turpin put this language before the Board for discussion  
23 purposes and she wanted to ensure that shocking is not used when there may be clear evidence of fish use  
24 above that point. McElroy asked Herman if this was discussed in the stakeholder meetings and Herman  
25 responded this was the first time he had seen the suggested language. McElroy stated that there are a  
26 number of criteria, after which electro-fishing is used to determine fish presence, which re-introduces  
27 physical criteria to the equation. McElroy also believes that the current language is to maintain the status  
28 quo until the habitat-based model is complete. This is an interim fix, and the proposed language goes  
29 beyond the current expectation. Mankowski suggested that DNR work with the stakeholders. If changes  
30 are needed to the manual; they can make amendments at that time.

31  
32 Mankowski would like to see the Board move forward and provide some direction to DNR to implement

1 Section 13 with consideration of on the ground conditions based on fish use, not habitat parameters.  
2 Herman remarked that this starts to introduce problems searching for those criteria where everyone  
3 generally agrees on where the fish would end up as it crosses into fish habitat. McElroy stated that it is  
4 temporary, and asked Turpin if this was satisfactory. Turpin responded that in the near term, she agrees  
5 with the policy, but it might be clearer if it were stated. She thinks that guidance to the Department is a  
6 step forward and this manual section has improved.

7

8 **ACTION:** Turpin withdrew motion.

9 **MOTION:** John Mankowski moved that the Forest Practices Board approve the Board Manual  
10 Section 13, as amended today, and that Department staff and the Board's attorney  
11 have the authority to make changes as necessary for clarity, and to finalize for  
12 distribution. In addition, as a condition of approval for this section, the Department  
13 is directed to work with stakeholders during the upcoming fish survey season in an  
14 effort to consider any future changes to the manual that are needed prior to  
15 subsequent survey seasons, and implement this Board manual with consideration of  
16 on the ground conditions based on fish use.

17 **SECONDED:** Judy Turpin

18 **ACTION:** Motion passed unanimously as amended.

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## 20 **SMALL FOREST LANDOWNER COMMITTEE UPDATE**

21 John Mankowski asked David Dicks, who is facilitating many aspects of Forests and Fish  
22 implementation, to present a report on behalf of the Small Landowner Committee and the Joint Policy  
23 Technical Task Force. Dicks stated that the Task Force is divided into three groups, the first is the  
24 alternate planning process as laid out in Forests and Fish. This process allows a landowner who has a  
25 site-specific situation to propose an alternate plan that will achieve two things: (1) be more economically  
26 viable for the landowner and (2) meet the functional requirements of Forests and Fish. Many of the small  
27 landowners faced situations that are not easily explained without seeing the situation first hand.  
28 Therefore, the Taskforce and Committee toured eight different sites, and it became obvious that there  
29 were many situations that warranted an alternate plan. The Joint Policy Technical Task Force reconvened  
30 and it was clear that technical guidance was needed to have a consistent alternate plan program. The  
31 Technical Committee is now in the process of producing a guidance document, which will review  
32 alternate plans. Dicks stated that if this program were successful, there would be a number of alternate

1 plans and eventually this will need to be regionalized and simplified. However, they have concluded that  
2 in the short term site-specific characteristics need to be seen to base decisions. The Committee would  
3 like to develop templates so the same answers are provided to repeated questions. The idea is to create a  
4 template for a standardized process. Although this is a future goal, they can learn from this process in the  
5 short term, and eventually make it a reality.

6  
7 Steve Stinson shared that the alternate plan document is being developed to attempt to put the alternate  
8 planning process in layman's terms. The current draft has two iterations--one for reviewers, such as  
9 federal review and the second is a guidance document. McElroy cautioned that if a template was  
10 developed, it could result in rule making if the solutions were always the same. Mankowski remarked  
11 that a rule might be an outcome if they realized that there was a better way to go than the guidance  
12 document. Mankowski added that there are areas that need improvement such as making the easement  
13 process simpler, alternate plans as they relate to permits, and long-term planning process for small  
14 landowners. McElroy added that when he provided testimony on HB 2311, he asked the legislature to  
15 give the Board time to let the system work before the Board is directed to engage in additional rule  
16 making. The Board will need to prepare a report to the legislature by the end of 2003 detailing the  
17 process, and how these issues are being handled. Turpin stated that she would be willing to support the  
18 funding necessary to continue to work with these alternate plans. McElroy stated that there should be  
19 support not just for the DNR budget, but also for other agencies. Mankowski stated that he is expecting  
20 WDFW to submit a budget proposal for the 03-05 biennium that should reflect these needs. This was not  
21 envisioned in the original Forests and Fish budget.

## 22 23 **Public Comment**

24 Tom Edwards, representative of the Lummi Nation, presented comments on cultural resources. (See  
25 Attachment B for a copy of Edward's presentation.)

## 26 27 **TFW/ICRAG UPDATE**

28 Pete Heide stated that the TFW Cultural Committee has met three times since November and has made  
29 substantial progress. The Committee recently concluded that the perceived differences between the  
30 landowners and tribes might not be as wide as once thought. The landowners presented a counter-  
31 proposal to the Intertribal Cultural Resources Advisory Group (ICRAG), which has been discussed. The  
32 Committee has been working with a facilitator that has been very helpful to make the process more

1 productive. Lenny Young and Ashley DeMoss attend the meetings and their presence is extremely  
2 important to resolving these issues. There is also participation from the State Office of Historical and  
3 Archaeological Preservation (OHAP), in particular Allison Brooks.

4  
5 Dawn Pucci, Suquamish Tribe, stated that the tribes might not share the same optimism. The  
6 misunderstanding is that ICRAAG did not believe that this proposal was that different from everyone's  
7 objectives. Pucci stated that the tribes are hoping to move forward from here and that the goal is  
8 cooperation and communication. She hopes to continue to make progress. Mankowski asked if Pucci and  
9 Heidi could indicate where the proposal is different from the ICRAAG proposal and what are some of the  
10 policy issues being worked on. Heide stated that the landowners perceived the ICRAAG proposal to be  
11 highly regulatory, which to some extent was a perception that may or may not be reality once the  
12 discussions are complete. The landowner approach involves education and a non-regulatory cooperative  
13 with the tribes. The goals are the same and both are looking at the best way to resolve issues. Pucci  
14 stated that the regulatory aspect of the tribal plan is one small part of it. The WAC revision suggestions  
15 are not new rules, rather clarification of existing processes. Pucci is in agreement with Heide that it is  
16 clear there are process problems, and if those are addressed it would be a step forward. They are trying to  
17 get away from the language of regulatory versus voluntary, and the tribes involved are in agreement that a  
18 voluntary process is the way to go, and that there are many successes in voluntary agreements with state  
19 lands for gathering cultural resources. McElroy shared that it is not clear to him what the relative role of  
20 OHAP is with the Forest Practices Board. McElroy believes that it is a larger problem and that this Board  
21 is possibly the wrong venue to resolve the issues. Keith Johnson stated that cultural resources are not  
22 only an issue in forestlands but in agricultural lands, and even in downtown Seattle. Johnson believes that  
23 the Board has the right and the obligation to do what they can in the forest environment to protect cultural  
24 resources. There is an interactive role between OAHP and DNR, where DNR has an obligation to  
25 provide OAHP information from forest practice applications. McElroy stated that in preparation of  
26 DNR's testimony to the Senate committee on the proposed legislation, it became clear that there is limited  
27 Board rule making authority with respect to cultural resources. It is predominately an arrangement of  
28 inter-governmental and inter-tribal cooperation and coordination. In terms of rule making authority, it is  
29 narrow and is primarily through SEPA. If the long-term objective is to provide protection to cultural  
30 resources, it cannot be solely on forestland. Johnson stated that there are other state and federal agencies  
31 that provide protection elsewhere, and the Board has an obligation to provide protection on state and  
32 private forestlands. McElroy believes that the authority the Board has is rule making, one related to

1 cooperation, conversation, coordination, and classification. The purpose of SB 6306 was to define  
2 cultural resources as public resources, and they currently are not defined as public resources. They are  
3 not defined in the pre-amble to the Forest Practices Act as being those things that the Forest Practices  
4 Board is to address and direct in rule making. Judy Turpin stated that she would be concerned if the  
5 Board backed away from taking an interest in this area, and backing away from what may have been key  
6 to participants in that situation. McElroy stated that he is not suggesting backing away rather suggesting  
7 there may be a larger world that they need to understand. So often, the focus is too narrow and the overall  
8 objective is lost.

9

10 Johnson stated that the Yakama Nation recently told him that there have been about 800 violations that  
11 they believe were done by DNR in dealing with cultural resources. Heide stated that they do not think it  
12 is an either/or situation. There are opportunities for both sides to look at different ways to solve and  
13 address the issue. There are a series of rules and regulations, both federal and state law, that form a  
14 structure of protecting resources, which includes cultural resources. The first thing is to understand what  
15 is available, what is in place, and what is not functioning as well as it should. In the meantime, there are  
16 great opportunities for not only preservation, but also practice of cultural activities by Native Americans.  
17 These are very difficult to regulate, but Native Americans can gain from a voluntary approach what they  
18 would not be able to gain from a regulatory approach. Similarly, there are certain areas where regulation  
19 already exists, and may be required. McElroy concluded that the TFW Committees should continue to  
20 work on this.

21

## 22 **RECREATION/AESTHETIC STRATEGY**

23 Judy Turpin presented a brief history of events leading up to this strategy point. In 1999, the Board  
24 received a petition for rule making from the Mountaineers and the Alpine Lakes Protective Society,  
25 regarding recreation and aesthetics. The Board denied the petition, however, the Board agreed to review  
26 the issue and possible options at a future date. The Board later received a letter from the Governor to  
27 petitioners that appealed the Board's denial. His response included a recommendation encouraging  
28 cooperative actions around key trails, and training of foresters that involved a potential notification rule.  
29 Turpin quoted Governor Locke's letter in which he said, *"I do however think that it would be practical  
30 for the Board to make rules that require reasonable notice to local media outlets, advocacy groups, and  
31 nearby landowners who have registered with the Board that a forest practice permit to harvest timber on  
32 a particular parcel has been applied for. Accordingly, I make that recommendation to the Board."*



1 Turpin shared some suggestions such as monitoring the impact of the new Forests and Fish rules on  
2 recreation and aesthetics, monitoring the success of voluntary efforts, providing guidance and training for  
3 landowner operators and clarification of material damage to public resources, including damage to  
4 developed public trails operated by state and local government, and a classification rule. Another option  
5 included manual inclusion or reference to principals related to designing harvest to make it more visually  
6 pleasing. Another option was expanding the notification rule for park entities, where they register the  
7 park, and notify the owners of that park's applications. The expansion would be to have it apply to trails  
8 that were operated or maintained by state and local governments. Other suggestions were mapping,  
9 inclusion of a question on the application, and several people suggested setting a cooperative process  
10 working with the Interagency Committee on Outdoor Recreation (IAC) to look at the places that most  
11 needed protection and try to develop a way to focus a cooperative process around those trails.  
12

### 13 **PUBLIC COMMENT**

14 Ann Goos, Washington Forest Protection Association, stated that a lot has happened that has been good  
15 for recreation and aesthetics. Since the Board last discussed this issue in May of 2000, there are literally  
16 tens of thousands of acres that have been traded, exchanged, or purchased, which are now in public land  
17 ownership managed by the U.S. Forest Service. There have been additional trades going on, and if all of  
18 the money comes through Congress, and trades continue, they could see as much as 250,000 acres put  
19 into public ownership that is high value recreational land. This is a significant step in the right direction  
20 in terms of protecting some of the trails that were of concern two years ago. In a report developed by  
21 IAC, there were two issues that were of concern to the public--access to trails, and maintenance of  
22 existing facilities. It did not seem that citizens were concerned about the public land trails viewing of  
23 private land activities, nor did there seem to be an expectation that private landowners should mitigate  
24 their actions on the trails. The third highlight from this report is the amount of training, workshops, and  
25 commitment that companies have made to ongoing training on aesthetics and visual harvesting in  
26 sensitive areas. Goos hopes the Board considers the recommendations that were made in May of 2000 to  
27 monitor these activities and that there are talks with the Governor about what is expected on notification.  
28

29 Dave Crooker, Plum Creek Timber Company, commented that recreation and aesthetics is being dealt  
30 with in a positive and tangible way. Crooker cited several examples of Plum Creek's voluntarily working  
31 with the US Forest Service to transfer lands into public ownership that would support recreation and  
32 aesthetics efforts. Crooker states that many problems have been resolved in a cooperative way, and kept

1 the landowner in tact. Crooker's opinion is that the Board made the correct decision two years ago by not  
2 adopting regulations pertaining to recreation and aesthetics. The recent progress validates that decision.

3  
4 Kevin Godbout, Weyerhaeuser Company, reviewed Weyerhaeuser's Environmental Management System,  
5 which was their approach to managing aesthetics. They have achieved third party certification under two  
6 internationally recognized forest certification systems. One is the ISO 14001 Environmental  
7 Management System, and the second is the Sustainable Forestry Initiative. They achieved that milestone  
8 this past summer and that included all of their Washington and Oregon timberlands, which is probably the  
9 world's largest forest certification undertaken for roughly two million acres of land. They should have all  
10 of their forestland certified by 2003 to these two internationally recognized systems. In addition to  
11 certification, Weyerhaeuser did significant training in their western timberlands operation, and are  
12 continuing to invest in their people who address these aesthetics issues. Godbout described many  
13 voluntary actions that Weyerhaeuser has taken, including land exchanges, special management areas, trust  
14 areas and protection of scenic areas and recreational areas.

15 Godbout's point is that not only is Weyerhaeuser looking at recreation, aesthetics, and scenic beauty, but  
16 also at addressing issues like housing and development concurrent with providing recreational  
17 opportunities. Godbout concluded that by working with conservation organizations and the government,  
18 Weyerhaeuser can use market-based mechanisms to address the broad needs of the citizens of the state of  
19 Washington. Market-based mechanisms combined with the independent third party certification achieves  
20 the Forest Practices Board goals of affording protection to recreation and aesthetics, coinciding with the  
21 maintenance of a viable forest products industry.

22  
23 Wade Boyd, Longview Fibre Company, presented comments on aesthetics and recreation. (See  
24 Attachment C for a copy of Boyd's comments.)

25  
26 Peter Goldman, Washington Forest Law Center, recapped the history of aesthetics and recreation cases  
27 before the Forest Practices Appeals Board. Goldman stated that many believe these are cases where  
28 industrial landowners have been hard on the land directly adjacent to public resources such as the Pacific  
29 Crest Trail, important federal trails, and the National Parks. Those cases have worked their way up  
30 through the Forest Practices Appeals Board, and have been presented to the Board under a SEPA rule  
31 (WAC 197-113-05), cumulative effect should trigger SEPA basis. Goldman believes that the best way to  
32 solve the problem is to identify the issue, and develop rules rather than use an indirect SEPA rule to get at

1 the problem. Goldman stated that the Board should not simply sweep this problem under the rug and  
2 assume that voluntary measures are sufficient. Goldman remarked that the environmental community  
3 absolutely supports the efforts that the other speakers mentioned. The point is that there are dozens of  
4 places in this state where existing rules have not protected adjacent public resources, such as Lake  
5 Wenatchee where there were no notice provisions. It took a lot of work, and a lot of commitment to  
6 rectify a situation that might have left the state park with a large clear-cut above it, without any  
7 substantive state rules. An early warning system would prevent being at the mercy of a particular  
8 landowner.

9  
10 Goldman stated that he clearly does not have enough time to address this issue. McElroy remarked that  
11 he wanted to make the record very clear that this subject has been before the Board extensively and that  
12 this is not Mr. Goldman's first chance to discuss this. Goldman stated that this is not a hearing on a  
13 petition, but rather a hearing on whether or not this Board is going to take some initiative to find out what  
14 areas need improvement. He stated there should be attention to the areas where there is inadequate  
15 notice, where there is either a cumulative impact of successive, SEPA exempt forest practices, which do  
16 not themselves have any protection. Goldman is asking for rules that require landscape planning and  
17 notice provisions.

18  
19 Tom Laurie stated that the conversation is continuing concerning protecting aesthetic value and the notice  
20 provisions. Laurie then stated that Goldman was talking about distribution of notices. Too many notices  
21 were coming in, therefore increasing that number would not help, but getting the notices to the right  
22 people would. Goldman suggested a sign on the property to alert the public. Keith Johnson asked if  
23 Goldman had asked the various companies to voluntarily notify the public in this manner and Goldman  
24 answered that he had not. Judy Turpin then stated that the Board did decide to put this discussion on the  
25 agenda to figure out where they would go subsequent to the denial of the petition.

26  
27 John Hempelmann, Cairncross and Hempelmann, shared that his attendance at this meeting is because  
28 Mr. Goldman requested permission to pull the photos that were shown from the record of a pending  
29 Forest Practices Appeals Board case. Hempelmann has been involved with Mr. Goldman in almost all of  
30 the cases that he mentioned. Many of Goldman's cases are history in that they have been resolved and the  
31 photos that were shown were misrepresented. The introduction of those photos into the record was  
32 highly contentious and debated because some of them were taken in locations where visitors of Mount

1 Rainier would not see. The last point Hempelmann wanted to make was that having been involved for  
2 weeks of hearings on recreation and aesthetic issues, he has discovered that aesthetics are subjective.  
3 They have architects, landscape architects and artists, which disagree on what looks good. It is a highly  
4 contentious and difficult concept due to differing opinions. Hempelmann concluded that the best example  
5 of an aesthetics rule is the Urban Design Review, and a number of cities, including the City of Seattle,  
6 have adopted design review panels and criteria in an effort to try to fit new urban development into the  
7 environment. Hempelmann stated that he has been involved in those cases, and they face the same  
8 problems. They are incredibly subjective and contentious, and therefore become bureaucratic appeals  
9 processes. Hempelmann urged the Board to look at the materials presented regarding the steps being  
10 taken in education, training and voluntary action. He stated that the dollars are far better spent on those  
11 things than trying to apply or litigate the rules that this Board might adopt.

12 ***End of Public Comments***

13 Gary Gideon presented an overview to the Board on the forest practice applications and notifications  
14 process. By July 1, 2002, the new application processing system, Forest Practice Application Review  
15 System (FPARS), will make the notification process more efficient. The hard copy mailing will no longer  
16 occur, thus reducing associated postage and paper costs. This will enable DNR to send electronic notices  
17 with attached applications for review. The individual will have the option of opening the email and  
18 following the directions, or entering the system through another porthole to review applications.  
19 Interested parties can sign up through a geographic description, not only by legal descriptions, but will be  
20 able to use existing data systems, such as watershed analysis units, to describe an area somebody might be  
21 interested in. They will automatically be sent an email with all the various information.

22  
23 Mankowski asked if there would be paper copies available for those who do not have web access or  
24 email. Gideon responded that a party will have to ask but it will be available. Gideon stated that all of the  
25 mandatory reviewers have agreed where there will be no hard copy distribution. Mankowski asked how  
26 often does the system fail and Gideon stated that although it is not perfect, it is reliable and DNR is able  
27 to troubleshoot it and fix the problems quickly. Lenny Young stated that they are ready to implement  
28 FPARS sooner than July 1, but they are taking extra time to make sure this works well.

29  
30 Judy Turpin asked which parks are notified and registered. Gideon replied that DNR has guidance for  
31 certain parks that are supposed to be notified if DNR receives an application or notification within 500  
32 feet of the boundaries. For instance, a county or state park should not have to register because they

1 should be doing that automatically. Turpin also asked if there was an internal policy that guides the  
2 regions in this practice for the voluntary process. Gideon replied that it is not a written policy, but has  
3 been uniform throughout the state for many years.

4  
5 Toby Murray asked if DNR notifies cities within their urban growth area, or just within the city limits.  
6 Gideon responded that it is only within city limits and with the smaller cities and towns, the city limits is  
7 the urban growth area. Lloyd Anderson asked if the existing system generates notification to the  
8 interested party upon receipt of an application, or upon the approval of an application. Gideon stated that  
9 notification is generated upon receipt. Anderson asked if someone challenged the application, would it  
10 delay the approval process and Gideon responded that it would depend on the situation. Anderson stated  
11 that it should be approved, and then if someone wanted to appeal it, it would go through the appeal  
12 process. Gideon stated that DNR is obligated, within a small time period, to approve, condition, or  
13 disapprove the application. Fran Abel then asked if an application were under appeal, would the logging  
14 continue and Gideon responded that in many cases it would, unless a motion for stay has been granted by  
15 the Forest Practices Appeals Board. Abel stated that the public is caught by surprise when there is a  
16 forest practice action happening in their neighborhood because they are not getting notified, and unaware  
17 they need to file for a notice. In other land use issues, all of the neighbors are contacted automatically  
18 without being registered as interested parties. The public has the perception that if something major is  
19 going to happen next door, they will be notified. Abel asked why it is not standard operating procedure  
20 for forest practices to automatically notify neighbors and mark the property that is going to be cut.  
21 McElroy stated that there is no way to generate the database that would allow you to do that nor is there  
22 enough money to pay for it. The counties have a database that includes tax records, and can use that to  
23 figure out who lives within 300 feet of a zoning requirement. McElroy stated that it is still time  
24 consuming and costly. If you multiply that by every forest practice application in the state, the cost  
25 would be too high. Abel stated that posting requirements could solve many of these problems. McElroy  
26 stated that posting would be something for the Board to discuss, but DNR has no authority to require it.  
27 Keith Johnson then asked how large the areas could be that are included in the electronic notifications.  
28 Gideon replied that you could conceivably blanket the state. Johnson stated that this might be the  
29 compromise solution that Mr. Goldman is looking for. Lenny Young then stated that we have at least one  
30 person now that has requested to see every RMAP in the State of Washington. When we transition to  
31 electronic format, it will become easier than it ever has been before.

32

1 Turpin stated that her major concern is that people who are not familiar with the system might benefit  
2 from a policy that could be referred to. McElroy suggests putting a policy or a statement on the website  
3 stating that DNR has instituted a new system. Gideon said that a statement could be placed on the  
4 website without developing a policy.

5  
6 Mankowski stated that anyone who wants to get a permit or application could get one, which coincides  
7 with the notification process the Governor asked for in his denial letter of the petition in 1999. McElroy  
8 proposes that the staff write a letter to the Governor, which McElroy would sign on behalf of the Board,  
9 to inform the Governors office of the notification requirements and process. This will relay to the  
10 Governor's office that this is an ongoing process.

11  
12 Turpin asked whether the Board will continue to monitor the activity on all of this and whether the Board  
13 plans to add any guidance language in the manual. If someone is attempting a visually sensitive harvest  
14 and wants some sort of design, is there something they could add to the manual to provide some  
15 assistance. McElroy stated that through the Forest Practices Act, DNR has an obligation to inform the  
16 public. The real role of education is through the Extension Service and the Universities, and maybe the  
17 thing to do is to work through the Extension Service and perhaps even through the Stewardship and Small  
18 Forest Landowner Offices. Turpin stated that they had talked about referencing this in the manual so  
19 people would know where to go. Abel stated that they have not discussed the differences between  
20 guidelines and rules, what the extent of the problem actually is, nor how to get to the core of that problem.  
21 Everyone is acknowledging that there is an issue to be resolved, but have not touched on how to get there.  
22 McElroy stated that it seems as though it depends on what you want to base rules on. Aesthetic to one  
23 person may not be the same for another. McElroy stated that it is subjective so this kind of rule making is  
24 impossible. Abel stated that it is not as subjective as everyone thinks. As a landscape designer, Abel  
25 thinks it is not that difficult to reach a consensus on what is attractive. McElroy stated that they should  
26 look at what the rules already provide in this area. Maybe a way to do it is with upland wildlife as this is  
27 an area that will have a close nexus to this. Turpin stated that there are concerns about trails other than  
28 aesthetics. Turpin suggested that in the process of monitoring the voluntary efforts, they should work  
29 with the IAC and select a smaller universe to monitor rather than taking on every potential recreational  
30 facility in the state, and then follow this over time.

31  
32 Mankowski stated that there are three sides to this issue. The first being the early notice, the second being

1 the case where the people were informed and worked it out with the landowner, and the third being the  
2 early notice, in which the parties were unsuccessful working it out. The last category seems to be the area  
3 that the Board needs to get statistics on. Once the notification problem is fixed, if there is still public  
4 outcry that notice was given but they were not able to resolve it with the landowners, then the Board  
5 needs to look at giving guidance. The Board needs to let the early notice system work, and receive  
6 feedback. Murray added that the new rule package has not even been in effect for any length of time,  
7 which is going to leave 15% – 20% more trees on the landscape with every harvest.

8  
9 McElroy summarized that the Board will send a letter to the Governor that will outline the current  
10 practices, with the minor modification talked about today, of the notification process. The Board will  
11 work through the upland wildlife issue at the same time reviewing the notification process. DNR will  
12 look to identify the instances where the system has failed in the notification process.

#### 13 14 **FOREST HEALTH UPDATE**

15 Karen Ripley and Ashley DeMoss presented to the Board the forest health conditions in Washington  
16 State. Karen Ripley, Forest Entomologist, manages the Forest Health Program for DNR. She is involved  
17 with monitoring forest insects and diseases state wide and provides technical assistance to landowners  
18 with respect to insects and diseases. Ripley provided information about general forest health conditions  
19 and issues that she felt the Board should be aware of as they seek to improve the regulation of forest  
20 practices.

21  
22 Ashley DeMoss provided some information on the Citrus Longhorn Beetle from the Republic of Korea.  
23 The beetle was discovered in August of 2001, and despite its name, it is not just interested in citrus and  
24 fruit trees, it also likes hardwoods and conifers. It attacks trees and eventually kills them, so there are  
25 concerns that if this insect is not effectively controlled and eradicated, it could have a detrimental effect  
26 on DNR's ability to protect public resources in the state of Washington. The challenge we are facing in  
27 terms of the policy and the legality, is that the efforts to distinguish this beetle sit at the intersection of  
28 three statutes. The statutes that need to be changed are the Forest Practices Act, the Insect Pests and Plant  
29 Diseases, and Forest Insect and Disease Control. The Insect Pests and Plant Diseases is the Department  
30 of Agriculture's authority to control and eradicate these exotic pests. Unfortunately, there is an issue  
31 between the intersection of these three statutes, and because of this, there is confusion and delay.

32

1 The disconnect between these statutes needs to be remedied to have efficient and effective relationships  
2 among them to support the control of these pests as well as public resource protection. One of things they  
3 will be looking for in the next legislation is to potentially amend the three statutes. There are no details  
4 on what type of amendments they might be looking for, but in addition to making sure that the  
5 relationships are acknowledged, the forest health statute will be looking to address whether it is effective  
6 in promoting the kinds of solutions so that these insects are not so persistent on the landscape.

7  
8 McElroy stated that Ripley has been instructed to work with the stakeholders in order to update the forest  
9 health statute. If the beetle was found on forest land instead of in an urban area, the only avenue available  
10 would have been to have the Governor declare an emergency to deal with it, they would still most likely  
11 stand aside and not take any action, and then there would have been potential for an appeal. They believe  
12 there should be somebody to make those kinds of decisions, with the important safeguards. Turpin said  
13 that the Board needs to be careful not to write a loophole, which could potentially cause misuse. DeMoss  
14 stated that it is her understanding that the Department of Agriculture would be conducting these  
15 eradicating efforts, and would be conducting the tree removal, not the private entities. Tom Laurie then  
16 stated that it would be interesting to see this information in an ecosystem view that showed other states.  
17 Ripley stated that there is an aggregated map that can be viewed on the Internet, which shows the  
18 Continental United States and data that was collected in a similar fashion to their data. McElroy stated  
19 that they will provide the website to the Board members. McElroy stated that the intersection of the three  
20 statutes that exist without one another is probably the easiest fix. Murray commended the staff for  
21 keeping current with all of this.

22  
23 **MOTION:** McElroy moved to adjourn the meeting.  
24 **SECONDED:** Judy Turpin  
25 **ACTION:** Motion passed unanimously.

26  
27 The regular meeting adjourned at 4:20 p.m.

28  
29 **Executive Session**

30 Board began executive session at 4:20 p.m. and adjourned at 4:30 p.m.