

APPENDIX B

Major Findings and Proposals for 2009 Legislative Action



Securing a Long-term Future for Washington State Working Forest Lands October 30-31, 2008 • Semiahmoo Resort - Blaine, Washington

The Northwest Environmental Forum convened 90 natural resources managers and policy leaders from the forest industry, small private landholders, non-government organizations, tribes and local, state and federal government. The agenda, handouts and attendee lists can be viewed at www.nwenvironmentalforum.org. This Forum report summarizes the findings and makes recommendations for action by the Governor and the 2009 Washington State Legislature.

Purpose of the Forum

This is the fifth Forum to focus on Washington State's working forests. This Forum is responding specifically to a Legislative request in 2007 that laid out the following challenge, as *"recommendations from the College's Northwest Environmental Forum for retaining the highest valued working forest lands at risk of conversion to non-forest uses. These recommendations should include an examination of means to enhance biodiversity through strategic retention of certain lands, as well as economic incentives for landowners to retain lands as working forests and provide ecosystem services. The recommendations shall consider the health and value of the forest lands, the rate of loss of working forest lands in the area, the risk to timber processing infrastructure from continued loss of working forest lands and the multiple benefits derived from retaining working forestlands. The recommendations shall prioritize forest lands in the Cascade foothills, which include the area generally encompassing the non-urbanized lands within the Cascade mountain range and drainages lying between three hundred and three thousand feet above mean sea level and located within Whatcom, Skagit, Snohomish, King, Pierce, Thurston and Lewis counties."*

The Context of the Forum - What defines a Working Forest?

- Sustainably managed for commodity products as well as ecological and social values
- Permanent and un-fragmented land base

What the 2008 Forum intended to accomplish

- Use the recently-developed Forest Land Parcel Data Base to understand the actual and potential loss of forest land by parcelization and development and the magnitude of the loss.
- Overlay the mapped biodiversity values identified by the Washington Biodiversity Council with working forests, and begin to identify protection strategies and incentives.
- Understand the incentives for sustainable forestry that are currently available to landowners and those that would be plausible, recognizing actions that are being taken in other states, as well as in Washington.

- Consider strategies likely to protect working forests from conflicting uses and pressures that may cause conversion to non-forest uses.
- Devise market-based conservation strategies for working forest landowners.
- Address how to bring ecosystem services market payments to forest landowners.
- Consider these actions in the context of the recommendations of the 2006 and 2007 Forums.

Eastern Washington Forests - Major Findings

1. There is real urgency around Forest Health and fire risk, both climate change-related and human-induced. Catastrophic fires are a reality, with major impacts on all values, from biodiversity, threatened and endangered species, to timber supply and public costs. Forest health and fuel reduction treatments are needed on all ownerships. There are critical missing factors in data, including water, aquifers, mill haul costs and fire costs that need to be assembled and evaluated.
2. Market stimulation is vital for:
 - a. Retention of milling infrastructure
 - b. Additional mobile milling capacity
 - c. Development of renewable energy resources
3. Three (3) specific Working Forest zones must be addressed:
 - a. Northeast work zone (including Spokane County) issues are:
 - Forest health for large landowners (state, federal, tribes) – coalition now working
 - Conversion risk for smaller owners requires a specific set of incentives to retain in forestry, in the area north of Spokane
 - b. Central east work zone (Okanogan/Chelan) issues are:
 - Major federal and ESA issues (lynx, spotted owl, salmon) exist
 - Dispersed recreation and real estate conversion are problems
 - Infrastructure for processing is a major problem
 - c. Southeast work zone (Yakima, Klickitat-Blue Mountains) issues are:
 - I-90 corridor development
 - East slope Cascades checkerboard ownership and conversion risk
 - Landscape stewardship efforts are underway, such as the TAPASH collaboration
 - Klickitat/Goldendale (with Portland influenced conversion) may be a separate issue and there is an need for incentives focused on small landowners

Proposals and Needs Identified by Eastern Washington Forest Forum Work Group:

Remove disincentives (such as for Federal Fuels to Schools and consider a State-level version.)

Unburden the markets:

- Don't impose an excise tax on bio-fuels; instead provide a state tax break such as Oregon for transportation (\$10/Ton).
- Retain existing tax incentives set to expire (recognize avoidable future public costs).
- Establish a stronger right to practice forestry in statute.
- Support DNR Forest Health budget request at full funding in 2009.
- Support LiDAR mapping for stand inventory, health, composition, risk priorities and landscape-level management prescriptions.
- Forest health contracts must be able to use all receipts for management.
- Encourage expansion of the Federal Fuels for Schools program to include Washington (Oregon does this now.)
- Develop state priorities and funds for wood biomass as an important energy feedstock and understand the extent of forest residuals and Eastside infrastructure needs.

Puget Sound Counties Forests – Major Findings

1. Productive and Healthy Working Forests are critical
2. Developed “rural” forest lots need support if we are to retain them as working forests
3. Non-developed areas must be the focus and these are: “Core” Forests – centered on Designated Forest Lands, State-owned forest blocks, Family working forests and high-likelihood to convert forests (with a range of types and sizes)
4. Climate, Ecosystem Benefits, the Economy and Puget Sound water need productive forests
5. Realize the potential of the coalitions represented by the Forum

Proposals and Needs Identified by the Puget Sound Counties Forest Forum Work Group

(= group support):**

Taxes

- Tax incentives and reforms for working forests - Sustainable tax waiver **
- Tax incentives for bio-energy development **
- Biomass tax exemption from forest excise, along with Federal credit
- TDR tax exemption from real estate excise taxes

Ecosystem Services

- “Additionality” for carbon credits needs to be a clear benefit

- Purchasing preference should be given for Washington-grown wood products**

Planning and Assistance issues

- The Forest Land Parcel Data Base needs funding to continue its development **
- Strengthen the “right to practice forestry” **
- Rural Development concepts:
 - Advance a stakeholder discussion on rural development trends
 - A Forum on watershed characterizations & subarea plans
 - Rural conservation villages authorization
- Technical assistance and alternative plans for small family forest land owners
- Fully fund existing landowner programs
- Connect certification with the “social license” to practice forestry issue
- LEED standards need to be addressed such that building product comparisons are based on life cycle analysis with the Federal Energy Independence and Security Act of 2007 Carbon Mitigation Assessment methodology.

Forest Health

- Fund DNR forest health programs

State Lands

- Support DNR’s need for flexibility on management cost retainage that helps State Trust Lands, critical working forests and natural resource product producer**

Western Washington Counties’ Forests (outside Puget Sound) – Major Findings

Incentives result in reduced costs and/or increased revenues and increase values for forest landowners, providing a positive return to the bottom line and a range of goods and services. New market mechanisms may support these efforts. This also requires support for infrastructure.

Proposals and Needs Identified by the Western Washington Counties Forest Forum Work Group:

Propose that the Legislature:

- Fund the database and provide funding for a pilot Lidar project
- Support the Right to Practice Forestry
- Fully fund and make secure landowner incentive programs, including but not limited to the Forestry Riparian Easement Program (FREP) and the Family Forest Fish Passage Program (FFFPP)
- Appoint a task force on incentives and regulatory stability to examine and provide tangible next steps on:
 - a. Fundable TDR program statewide
 - b. Expanded biomass markets

- i. Exempt biomass from the forest excise tax
 - ii. Seek \$10/ton credit
- c. Regulatory stability and simplification, especially for small landowners. No reduction in resource protection should ensue.
- d. An ecosystem service payment scheme
- e. Legislative recognition of social values provided by forestland
- f. “Green” product labeling and forest products marketing strategies
- g. Density clustering credits

Recommendations for Legislative Action

ACTION 1: FOREST LAND PARCEL DATA BASE ENHANCEMENT AND FUNDING

This Fifth Environmental Forum focused on the Strategic Retention of Working Forests, as commissioned by the 2007 Legislature. The Retention Project is grounded in the Forest Land Parcel Data Base, funded by support obtained by the Family Forest Foundation and the Washington Farm Forestry Association and developed by the College of Forest Resources. The data base includes parcel-level information for all private land in Washington (e.g., land use, market and taxable values and ownership) for each county. The Retention Project focused on forestland parcels and characteristics within the database (e.g. ownership type, streams, roads, wetlands and geological features). The project assessed potential productivity of working forests and their underlying biodiversity values and evaluated the risk of forest land conversion by comparing current market values vs. working forest values. These evaluations allow development of a "risk of conversion and opportunities for conservation" map, which includes critical areas, forest economic values, environmental and wildlife values and potential impacts to forest products processing infrastructure.

This Forum was able to use the interpretive capabilities of this data base and appreciated its power while recognizing some of its limitations, with regard to inconsistent biodiversity values and county designations of forest land values. Other state agencies have reviewed the capacity of this data base and are interested in participating in continuing funding it, for analytical purposes as well as for trends tracking. The current data base is a “snapshot in time.” Continued funding will allow the system to provide information on the dynamics of land use and resource impacts into the future and also provide other valuable information to state and local agencies. Funding for CTED is needed to add critical areas, zoning and comprehensive plan boundaries to the data base; for DNR to add a transportation layer and for continuing to update the base.

FORUM REQUEST

In conjunction with other interested agencies (e.g., DSHS, State Patrol, Departments of Health and Ecology, Conservation Commission) the Forum recommends an appropriation of \$700,000 from the legislature to the Institute of Forest Resources, to fund continuing data maintenance and enhancement of the Land Parcel Database, to include the entire state and to allow acquisition of additional data layers. \$100,000 is needed for CTED to add critical areas, zoning and comprehensive plans. \$100,000 is needed for DNR to add the transportation layer.

Legislative language is also needed to direct County Assessors to assign values to Designated Forest Land (DFL) properties and for CTED to assemble and make available county comprehensive plan and zoning maps of rural and resource lands for inclusion in the Forest Land Parcel Data Base.

ACTION 2: RIGHT TO PRACTICE FORESTRY (RCW 7.48.305)

Under current law, pre-existing agricultural and forestry operations are protected from nuisance type suits brought by new neighbors who may not understand factors associated with this pre-existing land use activity. In 2005, the Washington Supreme Court interpreted this law for the first time in Alpental Community Club v. Seattle Gymnastics Society, No 75408-0. The case hinged on the court's opinion that "From all outside appearances, there would be no apparent notice...that this land was either part of an established logging practices area or that it was being held for logging proposes."

The Washington Forest Protection Association (WFPA) has proposed legislation to clarify forest land owners' rights to harvest timber, as well as to grow and cultivate timber. The proposed legislation would clarify that the act of owning land upon which trees are growing is also a forest practice that is protected from nuisance law suits. The proposed legislation deals with the nuisance aspects of forest land ownership and does not require revisions to the Forest Practices Act or its associated rules.

FORUM REQUEST

Support the WFPA request for right to practice forestry legislation.

ACTION 3: FULL FUNDING FOR LAND OWNER RIPARIAN MITIGATION PROGRAMS (FFFPP AND FREP), DNR LONG-TERM RMCA FLEXIBILITY and DNR BUDGET REQUESTS FOR FORESTRY ASSISTANCE AND LANDOWNER INCENTIVES FOR HABITAT PROTECTION

Forum participants identified two Washington state-initiated mitigation (as opposed to incentive) programs that pay landowners for property interests and specific management practices directed to riparian areas and/or fish habitat protection and enhancement. Both programs are fully or over-subscribed.

1. FFFPP (Family Forest Fish Passage Program) is administered by the Washington DNR Small Forest Landowner Office; Washington Department of Fish & Wildlife (WDFW); and Recreation & Conservation Office (RCO). This program was initiated in 2003 to help landowners meet fish barrier removal obligations by providing funds and technical assistance. It is open to small forest landowners in Washington State who have barriers on fish-bearing streams on their property. Landowners agree to participate in the program because it relieves them of barrier removal obligations.

500 landowners have enrolled in the program so far. The program has resulted in opening fish passages at 580 sites, affecting 350 miles of streams. The biennial budget has been rising since program inception. The 2007-09 budget was \$6 million (\$12 million total in funding since 2003).

There is still a backlog of applicants waiting for their projects to be funded.

www.dnr.wa.gov/BusinessPermits/Topics/SmallForestLandownerOffice/Pages/fp_sflo_fffpp.aspx

2. FREP (Forestry Riparian Easement Program), administered by the Washington DNR Small Forest Landowner Office. This statewide program purchases 50-year easements from small private forest landowners on timber in riparian areas. Landowners must have a river, stream, lake, pond, wetland or unstable slope on their property. In general, each parcel must exceed twenty acres to be eligible. Landowners must be planning to harvest timber on their property and must meet the state definition of a small forest landowner (i.e., cannot have harvested more than an average of two million board feet of timber per year from all their ownerships in Washington over the past three years). Participants are accepted into the program on a first come, first serve basis.

The current budget allows for \$10 million to purchase 70 easements over two years; up from \$8 million in 2005-2007. 177 landowners have enrolled in the program so far, resulting in the protection of 3,398 acres. The program continues to receive applicants.

http://www.dnr.wa.gov/BusinessPermits/Topics/SmallForestLandownerOffice/Pages/fp_sflo_frep.aspx

FORUM REQUESTS

Support Washington Farm Forestry Association and DNR's budget request to fully fund the FFFPP at \$19.6 million and the FREP program at \$21.4 million per biennium.

Support DNR budget requests for Expert Forestry Assistance (\$797, 800) to sustain technical assistance to small forest landowners for resource protection and maintaining healthy forests; and for Landowner Incentives (\$414, 200) for development of practical incentives for voluntary practices providing benefits to threatened and endangered species.

Support DNR Resource Management Cost Account flexibility for the Board of Natural Resources to set the percentage of gross trust revenue flowing into the account at up to 30%, to permit management of trust lands for habitat protection and forest health, in addition to keeping the lands productive of trust revenue.

ACTION 4: TRANSFERS OF DEVELOPMENT RIGHTS (TDRs)

Previous Forums have been presented with information, case studies and analyses of Transfer of Development rights programs. Much interest has been generated about the opportunity such mechanisms might provide for addressing the equity interests of forest land owners. A key goal of the Forum is to secure an unfragmented forest land base. Most counties zone forest land with an "embedded" right to build houses. It is critical that voluntary mechanisms be designed and implemented that remove or re-organize these building rights to minimize the impact of parcelization on the overall forest land base.

Forum participants support the concept of TDRs as a voluntary mechanism to remove development opportunities from highly productive forest land and to transfer those development opportunities to urban areas or to allow clustering of such transferred rights in appropriate areas. Of particular importance are strategies that create incentives for cities to accept development rights and create value for developers to buy development rights. There has been an active and productive discussion regarding this mechanism by Community Trade and Economic Development (CTED) TDR Policy Advisory Committee, the Land Use and Climate Change Work Group (SB6580) and the Central Puget Sound TDR Pilot Project. One idea being considered is to exempt transfer of development rights from forestland from the Real Estate Excise Tax (REET). Such an incentive might encourage forest land owners to consider offering development rights from their lands.

FORUM REQUEST

Support recommendations from Community Trade and Economic Development's TDR Policy Advisory Committee, the Climate Change Work Group and the Central Puget Sound TDR Pilot Project to utilize TDR transactions as an important strategy for resource land protection and to focus development in areas with existing infrastructure and services.

ACTION 5: BIOMASS AND FOREST HEALTH (with focus on Eastern Washington)

Dramatic changes in forest structure and composition, due to a century of fire suppression, past management practices and failure to reduce excessive fuel loads have been widely documented and contribute significantly to the spread and intensity of fire and insect outbreaks in dry forests of eastern Washington. High densities of dead and moisture-stressed understory trees become ladder fuels that carry ground fires into forest canopies and increase the incidence and severity of forest fires. Fire suppression costs are escalating and smoke from forest fires has become a major contributor of atmospheric pollutants. Conditions continue to worsen as precipitation lessens and temperatures elevate with climate change and fire seasons grow longer. The Forum recommends that an expanded program is needed to remove surplus and ladder fuel loads to reduce forest fire hazard in eastern Washington. Additional benefits include rural economic development, biomass for renewable energy, climate change mitigation and habitat enhancement.

In order to address these chronic forest health conditions, reduce fire danger and generate materials for bio-fuels and other industrial processes, Washington State must focus its efforts on enhancing the future of these forests and creating a viable economy for these materials. In response to the University of Washington "Future of Washington's Forests" report, the 2007 legislature funded a pilot Forest Health project initiated by the DNR. Forum participants agree that fully funding this program is essential to addressing forest health, reducing the costs and scale of wildfires and providing a new stream of sustainable, renewable materials.

The technology to assess the conditions of these forests and to develop inventory data and forest plans is through Light Detection and Ranging, the remote sensing mapping tool known as LiDAR. LiDAR is not only a source of accurate topographic models but also provides information about the structural characteristics of the landscape cover; as well as an estimation of biomass. It is an essential tool for addressing critical forest and landscape ecology issues.

Woody materials that must be removed are high volume and low value. Marginal costs can make a big difference in evaluating investment decisions about using such materials. Two specific incentives were considered. The Department of Revenue is considering imposing a 5% Forest Excise tax (FET) on currently untaxed forest biomass removals. Over-taxing will increase costs for these marginal materials and could significantly delay investments in forest biomass as a renewable energy source. No tax is currently in place. Forum participants support not imposing this tax as it would be a disincentive for biomass removals.

In addition, the “working circle” for efficient transport of these materials is about 50 miles. In order to “incentivize” a wider haul circle, our neighbors in Oregon last year passed a \$10/ton credit to encourage longer haul distances, which is a prerequisite for locating regional bio-energy conversion facilities. Forum participants also support this incentive to encourage new investment in biomass transportation.

FORUM REQUEST

Fully fund DNR request legislation for its Forest Health Initiative, including necessary funding for LiDAR mapping, by the Institute of Forest Resources, for stand inventory, health, composition, risk priorities and landscape-level management prescriptions.

Fund a \$60,000 extension of the University of Washington Future of Washington Forests Timber Supply study, by the Institute of Forest Resources, to provide information of accessible forest residuals, markets impacts and infrastructure.

Do not create disincentives for biomass removal by allowing the Department of Revenue to impose the proposed 5% Forest Excise tax on biomass removal.

Adopt the recently-established Oregon incentive strategy for biomass removals by providing a \$10/ton credit for transporting bio-fuels, linked to transparent accounting for conditions under which woody biomass is removed.

ACTION 6: LEGISLATIVE TASK FORCE ON STRATEGIC RETENTION OF WASHINGTON’S WORKING FORESTS AND FOREST INDUSTRY

Forum participants call for the creation of a special legislative Task Force to create a “Plan of Action” based on the issues and recommendations identified by the Findings and Recommendations of 2006 and 2007 Forest Forums, which form the basis for the findings of the 2008 Forum. The following elements are most urgent for the task force to address if we are to retain the state’s working forestlands.

1. Tax Reform

- a. An integrated forest-specific tax structure that will provide incentives to retain forest land, encourage long-term forest management, produce a range of ecosystem services and provide for the movement of forest products to processing sites.
 - b. Notwithstanding potential 2009 Legislative session actions, the Task Force should be charged with developing tangible next steps for:
 - i. Introducing incentives for green energy wood sources;
 - ii. A “sustainability” tax waiver for working forests;
 - iii. A biomass exemption from the forest excise tax and \$10/Ton credit for transportation;
 - iv. Consideration of a transfer of development rights (TDRs) exemption from the real estate excise tax (REET).
2. Resource Protection with Regulatory Stability and Simplicity
 - a. Clarification and simplification of the forest practices-related rules structure to protect the ability of small forest landowners to operate as working forest managers. “Clarification and simplification” is intended to expand choices to accomplish resource protection and not diminish overall protection, as for example, with riparian buffers standards that can be managed with lower risk and potential impacts, commensurate with their smaller harvests.
 - b. Incentives that enhance landowner ability to effect resource protection standards.
 - c. Density clustering credits that promote sustainable forest management.
 3. The applicability of other state incentive programs (see Appendix - Dilley, UW 2008) to Washington, and the cost-effectiveness of current Washington State incentive programs for most efficient application to priority landscapes and watersheds.
 4. Bio-fuels and Biomass incentives for optimizing forest health, energy alternatives, reduction of forest fire risk and job creation from new infrastructure.
 5. Ecosystem service payments that help achieve long term goals for water and biodiversity and are designed for participation by all levels of working forest landowners.

Other Task Force Issues should include the following:

1. Public acquisition strategies for high-value forest land with high conversion risk, where forest management incentives are insufficient to keep the land in forestry. Appraisal rules are also an issue.
2. Improved biodiversity information to coordinate biodiversity strategies with sustainable forest management practices, and leverage incentives with enhancement of key habitats and species.
3. Product labeling and market strategies, to raise consumer awareness and promote the uses for Washington-produced forest products.
4. State and local procurement requirements for Washington-produced wood products.

5. Other financial mechanisms for sustainable forest management, focused on areas where conversion would jeopardize the ability of adjacent forestland owners to continue active forest management.
6. Continually quantify the real costs of activities such as fire fighting or restoration, so that avoiding damages can be valued in the market place, future costs avoidance can be monetized and the value of providing ecosystem services incentives can be more apparent.

FORUM REQUEST

Create a Legislative Task Force on strategic retention of Washington's working forests and forest industry that addresses, at minimum, tax reform, resource protection with regulatory stability and simplicity, the effectiveness of existing state incentive programs and those of other states, bio-fuels and biomass incentives for optimizing forest health and ecosystem service payments.

What You Can Look Forward To

- The 2008 Environmental Forum Report and Executive Summary will be provided to the 2009 Legislature.
- We will provide maps and information to the 2009 Legislature and staff that summarize these findings and illustrate and illustrate the forest resources of Washington State and the threats and opportunities that are present.
- We will participate with Forum coalitions to present these findings and recommendations.
- The data base work will continue as long as funding is available and additions that Forum participants suggested will be added.
- We will consider all suggestions for future Forums, on Working Forests or other subjects.

Questions or Comments

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