

Chapter 222-10 WAC

STATE ENVIRONMENTAL POLICY ACT GUIDELINES

WAC

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Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-10-010 Policies and authorities. (1) **This chapter** is promulgated pursuant to the authority granted in RCW 76.09.010, 43.21C.120 and chapter 197-11 WAC.

(2) **The forest practices board**, according to RCW 76.09.040, possesses the authority to promulgate forest practices rules establishing minimum standards for forest practices and setting forth necessary administrative provisions.

(3) **The forest practices board** adopts by reference the policies of SEPA as set forth in RCW 43.21C.020.

(4) **A forest practices application or notification** which requires a threshold determination will be conditioned when necessary to mitigate specific adverse impacts which are identified in the environmental documents prepared under SEPA. An application or notification will be disapproved when the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under SEPA, and reasonable mitigation measures are insufficient to mitigate the identified impacts and denial is consistent with all provisions of the acts cited in subsection (1) of this section.

(5) **SEPA policies** and procedures shall be implemented by the department of natural resources.

[Statutory Authority: RCW 76.09.040, 08-24-011, § 222-10-010, filed 11/21/08, effective 12/22/08. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9), 01-12-042, § 222-10-010, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 43.21C.-120, 76.09.040 and 42.30.075, 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-010, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-010, filed 5/21/76.]

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

(1) In order to determine whether such forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the

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applicant must submit the following additional information, prepared by a qualified expert as defined in subsection (5) of this section. The qualified expert must describe the potentially unstable landforms in and around the application site and analyze:

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

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

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

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

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

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

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

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

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

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

(5) Qualified expert for the purposes of this section and for reanalysis of watershed analysis mass wasting prescriptions under WAC 222-22-030 means a person licensed under chapter 18.220 RCW as either an engineering geologist or as a hydrogeologist (if the site warrants hydrologist expertise), with at least three years of field experience in the evaluation of relevant problems in forested lands.

[Statutory Authority: RCW 76.09.040, 11-12-009, § 222-10-030, filed 5/20/11, effective 6/20/11; 05-12-119, § 222-10-030, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9), 01-12-042, § 222-10-030, filed 5/30/01, effective 7/1/01.]

WAC 222-10-035 *Watershed analysis SEPA policies. When the department considers a watershed analysis for approval under WAC 222-22-080 or 222-22-090, the department will perform a review under SEPA as a nonproject proposal. When making the SEPA threshold determination, the department shall only make a determination of significance

if, when compared to rules or prescriptions in place at the time of the analysis or the reanalysis, the prescriptions will cause a probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process.

[Statutory Authority: RCW 76.09.040, 11-12-009, § 222-10-035, filed 5/20/11, effective 6/20/11. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9), 01-12-042, § 222-10-035, filed 5/30/01, effective 7/1/01.]

WAC 222-10-040 Class IV-Special threatened and endangered species SEPA policies. In addition to the SEPA policies established elsewhere in this chapter, the following policies shall apply to Class IV-Special forest practices involving threatened or endangered species.

(1) The department shall consult with the department of fish and wildlife, other agencies with expertise, affected landowners, affected Indian tribes, and others with expertise when evaluating the impacts of forest practices. If the department does not follow the recommendations of the department of fish and wildlife, the department shall set forth in writing a concise explanation of the reasons for its action.

(2) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the department shall evaluate whether the forest practices reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of the survival or recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(3) Specific mitigation measures or conditions shall be designed to reduce any probable significant adverse impacts identified in subsection (2) of this section.

(4) The department shall consider the species-specific policies in WAC 222-10-041 and 222-10-042 when reviewing and evaluating SEPA documents and the impacts of forest practices.

(5) The SEPA policies in this section and the species specific SEPA policies for threatened and endangered species do not apply to forest practices that are consistent with a wildlife conservation agreement listed in WAC 222-16-080(6) for species covered by these agreements, that has received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW.

[Statutory Authority: RCW 76.09.040, 05-12-119, § 222-10-040, filed 5/31/05, effective 7/1/05. Statutory Authority: RCW 76.09.040, 43.21C.-060, and 43.21C.120, 02-11-075, § 222-10-040, filed 5/13/02, effective 6/13/02. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW, 97-24-091, § 222-10-040, filed 12/3/97, effective 1/3/98. Statutory Authority: Chapters 76.09 and 34.05 RCW, 96-12-038 and 96-14-081, § 222-10-040, filed 5/31/96 and 7/1/96, effective 7/1/96 and 8/1/96.]

WAC 222-10-041 Northern spotted owls. The following policies shall apply to forest practices subject to SEPA if the forest practices may cause adverse impacts to northern spotted owls.

(1) **In SOSEAs or areas of SOSEAs where the goal is demographic support,** suitable spotted owl habitat should be maintained either to protect the viability of the owl(s) associated with each northern spotted owl site center or to

provide demographic support for that particular SOSEA as described in the SOSEA goals.

(2) **In SOSEAs or areas of SOSEAs where the goal is dispersal support,** either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or dispersal habitat should be managed, over time, to provide the dispersal support for that particular SOSEA as described in the SOSEA goals. Dispersal support is provided by a landscape which includes dispersal habitat at the stand level interspersed with areas of higher quality habitat. Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.

(3) **In SOSEAs or areas of SOSEAs where the goal is a combination of dispersal support and demographic support,** either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or a variety of habitat conditions should be provided which in total are more than dispersal support and less than demographic support. This can be accomplished by providing:

(a) Dispersal support as described in subsection (2) of this section;

(b) Areas of suitable spotted owl habitat that contain some opportunities for nesting as well as roosting and foraging habitat; and

(c) Connectivity between areas of SOSEAs designated for demographic support or adjacent federal lands which are designated as late successional reserves, congressionally reserved areas, or administratively withdrawn areas.

(4) **Within SOSEAs,** the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively:

(a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center;

(b) Including the suitable spotted owl habitat identified in (a) of this subsection:

(i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7 mile radius).

(ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8 mile radius).

The department shall first identify the highest quality suitable spotted owl habitat for this purpose. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable habitat. Suitable spotted owl habitat identified outside 0.7 mile of a northern spotted owl site center may support more than one median home range circle.

(5) **Outside SOSEAs,** during the nesting season (between March 1 and August 31), seventy acres of the highest quality suitable spotted owl habitat surrounding a northern spotted owl site center should be maintained. The seventy acres for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

(6) The assumptions set forth in subsection (4) of this section are based on regional data. Applicants or others may submit information that is more current, accurate, or specific to a northern spotted owl site center, proposal, or SOSEA circumstances or goals. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for the particular circumstances than the assumptions established under subsection (4) of this section. If the department does not use the information, it shall explain its reasons in writing to the applicant.

(7) The department shall consider measures to mitigate identified adverse impacts of an applicant's proposal. Mitigation measures must contribute to the achievement of SOSEA goals or to supporting the viability of impacted northern spotted owl site centers.

[Statutory Authority: [RCW 76.09.040]. 06-17-128, § 222-10-041, filed 8/21/06, effective 9/21/06. Statutory Authority: RCW 76.09.040, 43.21C.-060, and 43.21C.120. 02-11-075, § 222-10-041, filed 5/13/02, effective 6/13/02. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). 01-12-042, § 222-10-041, filed 5/30/01, effective 7/1/01. Statutory Authority: Chapters 76.09 and 34.05 RCW. 96-12-038, § 222-10-041, filed 5/31/96, effective 7/1/96.]

WAC 222-10-042 Marbled murrelets. The following policies shall apply to forest practices subject to SEPA where the forest practices may cause adverse impacts to marbled murrelets.

(1) Within an occupied marbled murrelet site, forest practices that will adversely impact this habitat will likely have a probable significant adverse impact on the environment except where the department determines, in consultation with the department of fish and wildlife, that the applicant's proposal will actually have no significant adverse impact.

(2) Within marbled murrelet detection areas:

(a) Suitable marbled murrelet habitat with at least a 50% probability of occupancy is assumed to have a high likelihood of marbled murrelet occupancy. It is currently assumed that 5 platforms per acre meets the 50% probability of occupancy. Without survey information, forest practices that will adversely impact this habitat may have a probable significant adverse impact on the environment.

(b) Suitable marbled murrelet habitat with at least a 30%, but less than 50% probability of occupancy has a sufficiently high likelihood of marbled murrelet occupancy to warrant a survey. This additional information is necessary for the department to evaluate the environmental impact of the forest practice. It is currently assumed that 2 platforms per acre meets the 30% probability of occupancy.

A landowner may request the department of fish and wildlife to survey. The department of fish and wildlife should survey to the maximum extent practicable based on an appropriation to survey marbled murrelet suitable habitat within detection areas where the landowner provides access for surveys to the department of fish and wildlife, and sufficient time is allowed to complete the protocol surveys. The department shall provide a notice to the landowner within 60 days from the date of application of the department of fish and wildlife's intent to survey. If the department of fish and wild-

life cannot conduct marbled murrelet surveys the responsibility for surveys remains with the landowner.

(3) Outside a marbled murrelet detection area:

(a) Suitable marbled murrelet habitat with at least a 60% probability of occupancy is assumed to have a high likelihood of marbled murrelet occupancy. It is currently assumed that 7 platforms per acre meets the 60% probability of occupancy. Without survey information, forest practices that will adversely impact this habitat may have a probable significant adverse impact on the environment.

(b) Within a marbled murrelet special landscape suitable marbled murrelet habitat with at least a 50% probability of occupancy is assumed to have a high likelihood of marbled murrelet occupancy. Without survey information, forest practices that will adversely impact this habitat may have a probable significant adverse impact on the environment.

(4) When determining whether a forest practice will have a probable significant adverse impact on the environment, the department shall, in consultation with the department of fish and wildlife, evaluate the impacts on the statewide, regional (Southwest Washington, Olympic Peninsula, Hood Canal, North Puget Sound, South Puget Sound and South Cascades) and local (within the marbled murrelet detection area) marbled murrelet populations and associated habitats. The department should consider a variety of information including but not limited to survey data, habitat quality and patch size, the amount of edge in relation to the area of habitat, amount of interior habitat, distance from saltwater, detection rates, the amount and quality of habitat, the likelihood of predation and the recovery goals for the marbled murrelet.

(5) The platform assumptions set forth above are based on regional data. Applicants or others may submit information to the department which was gathered in conjunction with a marbled murrelet survey agreement with the department of fish and wildlife, and other reliable information that is more current, or specific to the platform numbers in the marbled murrelet suitable habitat definition. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for a particular WRIA or physiographic province. If the department does not use the information, it shall explain its reasons in writing to the applicant.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 97-15-105, § 222-10-042, filed 7/21/97, effective 8/21/97.]

WAC 222-10-050 Adoption by reference. Except to those rules that may not be applicable, the forest practices board hereby adopts by reference chapter 197-11 WAC, the "SEPA rules" adopted by the state of Washington department of ecology.

[Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-050, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-050, filed 5/21/76.]

WAC 222-10-070 Additional definitions. In addition to those definitions contained within WAC 197-11-700 through 197-11-799, the following terms shall have the following meanings:

(1) "**Board**" means the forest practices board, as defined by chapter 76.09 RCW.

(2) **"SEPA rules"** means chapter 197-11 WAC adopted by the state of Washington department of ecology.

[Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-070, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-070, filed 5/21/76.]

WAC 222-10-090 Designation of responsible official.

The board shall act as the responsible official for the purpose of complying with the SEPA rules, or the board may designate the chairperson of the forest practices board or his/her designee to serve as such responsible official.

[Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-090, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-090, filed 5/21/76.]

WAC 222-10-110 Board's SEPA public information

center. In accordance with chapter 42.56 RCW, the location of the board's SEPA public records is the Natural Resources Building, Forest Practices Division, Olympia, Washington.

[Statutory Authority: RCW 76.09.040. 08-24-011, § 222-10-110, filed 11/21/08, effective 12/22/08. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-10-110, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-110, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-110, filed 5/21/76.]

WAC 222-10-120 Exemption for emergency actions.

The board may promulgate rules which must be promulgated immediately, or within a time too short to allow full compliance with this chapter of the SEPA rules where such action is required to avoid an imminent threat to public health or safety, to prevent imminent danger to public or private property or prevent imminent threat of serious environmental degradation without complying with the procedural requirements of this chapter of the SEPA rules.

[Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-120, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-120, filed 5/21/76.]

WAC 222-10-125 Exemption from RCW 43.21C.030

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

[Statutory Authority: RCW 76.09.040. 11-12-009, § 222-10-125, filed 5/20/11, effective 6/20/11. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). 01-12-042, § 222-10-125, filed 5/30/01, effective 7/1/01.]

WAC 222-10-130 Lead agency, agency with jurisdiction, consulted agency. The board shall be considered the lead agency, consulted agency or an agency with jurisdiction only when the action considered is the action of promulgating rules under chapter 76.09 RCW.

[Order 258, § 222-10-130, filed 5/21/76.]