

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

(2) **Definitions.** The following definitions apply to this chapter:

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

(i) An "unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. A merchantable stand of timber may exist within the zone and is considered a part of the channel migration zone. The unconfined channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.

(ii) An "unconfined stream" is generally:

(A) A fifth order or larger water;

(B) Less than two percent gradient; and

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

(b) "Qualifying critical habitat lands" means those forest lands that qualify as one or more of the critical habitats (state) defined in WAC 222-16-080 including forest lands that have existing plans or evaluations described in WAC 222-16-080(6). Qualifying critical habitat lands are eligible for easement acquisition if they meet the standards in WAC 222-23-020(5).

(c) "Unacceptable liabilities" means exposure to undesirable responsibilities or problems as determined by the department. This includes, but is not limited to, the presence of hazardous substances on the lands or by other conditions that may create a liability to the department, or that may jeopardize the department's ability to maintain ecological protection, and fisheries and wildlife enhancement of the qualifying lands. Unacceptable liabilities may exist when the applicant is unwilling or unable to provide reasonable indemnification to the department.

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

(e) "Conservation easement" means a voluntary, legally enforceable land preservation agreement between the landowner and easement holder to permanently limit the type and amount of alteration of iden-

tified habitat or CMZ on the subject property while the landowner retains ownership.

[Statutory Authority: RCW 76.09.040. WSR 11-12-009, § 222-23-010, 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). WSR 01-12-042, § 222-23-010, filed 5/30/01, effective 7/1/01.]