

WASHINGTON FARM FORESTRY ASSOCIATION

Landowner News

MAR / APR 2010

THE VOICE OF THE SMALL FOREST LANDOWNERS IN WASHINGTON STATE

President Bob Brink's Final Message

As my second-year term expires, this is my last opportunity as WFFA President to take up valuable space in this newsletter. Gosh, I wish I had something really witty or profound to say. I don't. But I do have a few reflective thoughts. I've been a member of WFFA since 1985. I've seen a lot of changes over my 25 years. The first 15 were, frankly, the most fun. While I had grown up on a small fruit ranch in the Yakima Valley, I didn't know squat about forestry. When we moved to my wife's family farm in 1982, I suddenly had over 600 acres of timberland to manage. Thankfully, a couple members of the Clark County chapter took me under their wings. I attended every educational meeting and twilight tour. I visited sawmills. I watched scalers grade my logs. I learned about chemicals. I even learned a little about falling and bucking – enough to know that I should hire that done! All of it was great fun!

I got involved in the leadership of WFFA, first at the chapter level, and then on some statewide committees. I wrote the first approved small landowner alternate plan in the state. I even started on my own Habitat Conservation Plan. I met some really intelligent and talented people. All of that was fun too!

Then, in 1999, the Forest and Fish regulations came along. Managing the tree farm went from, "What do I want to do?" to, "What will the Agencies let me do?" The meetings I attended evolved from lively educational discussions on silviculture and timber management to confusing dialogues of environmental regulations. The fun part of tree farming was slipping away.

Over the last few years, WFFA has made significant changes. We have become a truly professional organization with a well-run, full-time office and staff. Thanks to our Executive Director Rick Dunning and other tireless volunteers, we now have the ear and respect of decision makers in Olympia.

After ten years of policy negotiations to resolve the disproportionate impacts on small forest landowners by the Forest and Fish legislation, we have gained little. This past year, our Executive Board decided to withdraw from the fruitless policy

discussions, and take the battle of broken and unfulfilled promises by the state, in a new direction. WFFA introduced legislation.

Although the legislation did not pass, we have been promised by the chairs of both the Senate and House Natural Resources Committees to discuss the disproportionate impact of Forest and Fish regulations on small forest landowners this summer. I am hopeful that we can help the legislators see that the state has not lived up to the Forest and Fish law which says, "Washington's non-industrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington State."

The last two years as your President have been intriguing. As an organization, I feel we've made some significant progress. With your help and support of our new membership goal of bringing in 200 new members each year for the next five years, WFFA can grow and be your voice across the state.

While I will continue to be involved, particularly as chair of next year's annual meeting in Clark County, I want all of us to be able to focus on growing and harvesting healthy trees. That's where the fun is!

Bob Brink

*Landowner News is the official newsletter of the
Washington Farm Forestry Association.*

State Officers

Bob Brink, President

Sam Comstock, 1st Vice President

Steve Stinson, 2nd Vice President

Bill Scheer, Jr., Treasurer

Michelle Blake, Secretary

Past Presidents

Don Theoe

Ken Miller

Bob Playfair

Sherry Fox

Chapter Presidents

Blue Mountain - Greg Kelly

Clark - Carl Ruestig

Cowlitz - Ron Pursley

Grays Harbor - Loren Hiner

Kittitas - Phil Hess
Lewis - Steve Stinson
North Central - John Malone
Northeast - Matt Hobbs
Olympic - Samuel Comstock
Pacific - Greg Pattillo
Pierce - Dave Townsend
Spokane - Andy Phillipson
South Sound - Howard Wilson
Upper Puget Sound - Jim Owens
Whatcom - Joan Kudsk

Staff

Rick Dunning, Executive Director
Erica Norquist, Information Officer
Designed & Edited By
Maureen O'Neill,
Moxie Web & Print
Olympia, WA

Upcoming Forest Owner Field Days

Eastern Washington/North Idaho: June 12, 2010 – Athol, Idaho

For more information, please contact Andy Perleberg, WSU Extension, ph: 509-667-6540, email: andyp@wsu.edu. Download a registration brochure at ext.wsu.edu/forestry

Western Washington: July 31, 2010 – Ravensdale, WA

For more information, please contact Kevin Zobrist, WSU Extension, ph: 425-357-6017, email: kzobrist@wsu.edu. Download a registration brochure at <http://snohomish.wsu.edu/forestry/>
(Coming soon!)

Tree Farm Management Plan & County Tax Plan

Workshops Scheduled

The Washington Tree Farm Program will sponsor Tree Farm

Management Plan workshops this spring with the purpose of developing management plans suitable for American Tree Farm System (ATFS) and County forest tax classification purposes.

Tree Farmers will have the opportunity to complete a basic management plan for their ownership that will enable them to become certified through the ATFS. The workshops will also add elements required by local counties to qualify for open space timberland or designated forestland for tax deferral purposes.

Workshop Dates and Locations Are: May 22 in Chehalis, June 19 in Battle Ground, and June 26 in Spokane.

The Management Plan Workshop fee is \$30 for Certified Tree Farmers and \$40 for general public, which includes snacks and lunch. Local area foresters who volunteer for the Washington Tree Farm Program will be at the workshop to help landowners write their plans and schedule follow-up inspections (provided at no cost to the landowner) for ATFS certification.

For information, contact Bob Falkner at 360-789-1265 or email: wtfp.bob@gmail.com Download a registration form at <http://watreefarm.org/MgtPlanMtg.pdf>

New Fixed Width Buffer Template– What It Means On The Ground

By Rick Kuykendall

As reported in the Jan/Feb issue of Landowner News, the Forest Practices Board approved a new alternate plan template for small forest landowners. The main purpose of these fixed widths is simplification. No longer is there a core, inner and outer zone, as you have in the standard rules. No longer is there a variation in these zones based on the size of the stream. No longer is there Desired Future Condition, or 20 trees per acre in the outer zone.

By “New” we are referring to the fixed width buffer rules (from Board Manual Section 21, page 16), which are as follows for each harvest site class:

Site	Buffer Width
I	145'
II	118'
III	101'

IV **82'**
V **75'**

On average, the number of trees required to be left under the fixed width rule will be about the same as the standard rules. You need to evaluate your stand and site and base your choice of rule depending on the site class, the size of the stream, the basal area, and stem count. A landowner may be able to harvest more trees under the fixed width rule vs. the standard rule, or vice-versa. It's site dependent, but in general, the difference won't be much other than a simpler process designed for the small forest landowner.

For specific questions about your site and use of the fixed width buffer template, contact your local DNR region office or rick.kuykendall@dnr.wa.gov or WADNRSFLO office at 360.902.1400

"Human Spirit is the ability to face uncertainty of the future with curiosity and optimism. It is the belief that problems can be solved, differences resolved. It is a type of confidence. And it is fragile. It can be blackened by fear, and superstition." – Bernard Beckett

Fixed Width Buffer Template For Small Forest Landowners

Testimony by Ken Miller, WFFA Past-President

The Alternate Plan Template portion of this FPA took about three minutes to complete. This template offers me the benefit of being able to draw a single buffer line perpendicular to my stream that is comparable to where the average professional foresters draw their harvest lines – but without having to go through all the calculations / technicalities of the rules.

In my particular case, I'm doing my own commercial thinning and root rot pocket treatments with a farm tractor, but I don't know when I'll get around to actually doing the work. In addition to having a simple buffer line that's comparable to average professionals, the "template" permits can be for five years instead of the standard two years which will give me a lot of flexibility on timing.

This template may not be the way to go for professional foresters but, for small family forest owners like myself that are intimidated by the very large rule book, this is a breath of fresh air addressing my desire for simplicity in a significant part of the rules.

Thanks to the Washington Farm Forestry Association for initiating this simplification effort, and thanks to all the Forest and Fish stakeholders for the statistical analysis and the will to move this template through the required Forest and Fish processes. Ultimately, I'd like to see this simplicity carried forward to viable options that allow me to do some low impact riparian management as promised in Forest and Fish.

Conflicting TIMBER TRESPASS Statutes Make Tree Farm Management Confusing

By Jay Goldstein, Carmen R. Rowe, & Jason Zittel, Attorneys At Law

Washington has two different so-called timber trespass statutes, and it's easy to confuse them. You may get burned if you don't know the difference.

Washington's legislature passed the original timber trespass statute in 1869—codified at RCW 64.12.030. As most of you know, the statute allows for treble damages—a situation that drastically increases your potential liability.

Over the decades, Washington courts have reviewed many cases and developed a significant body of case law specific to this statute. Most importantly, the courts have limited the types of damages that may be trebled. Courts only allow triple damages for logging activities. Although the courts may award other damages, they won't be trebled.

Despite this long history of well-established case law, confusion entered the picture when the legislature enacted another statute RCW 4.24.630 (damage to land statute) in 1994. Not only does the damage to land statute allow for treble damages, it also provides a wider array of possible damages than the original timber trespass statute.

These expanded damages include damage to the market value of the property and restoration costs, all of which can be trebled. In addition, the statute provides for an award of attorney and investigation fees if you prevail.

Because of the wider possibility of damages available under the damage to land statute, many parties have attempted to use this latter statute where instead the original timber trespass statute applies.

We recently litigated this precise issue of which statute applies in Division II of Washington's Court of Appeals. The Court ruled in our favor and held that the damage to land statute does not apply in any situation where the earlier timber trespass statute applies. *Structural Investments & Planning IV, LLC v. Schiller*, 147 Wash.App. 1040 (2008).

A word to the wise: before you consider paying for expensive restoration costs, or file an action over minor tree damages, take the time to consider discussing your situation with a qualified attorney. The availability of

damages, whether under the timber trespass statute or the damages to land statute, could greatly affect how you approach resolving the dispute.

RCW 64.12.030. Injury to or removing trees, etc.–Damages

Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, including a Christmas tree, as defined in RCW 76.48.020, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, in an action by the person, city, or town against the person committing the trespasses or any of them, any judgment for the plaintiff shall be for treble the amount of damages claimed or assessed.

RCW 4.24.630. Liability for damage to land and property–Damages–Costs–Attorneys' fee–

Exceptions

(1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts “wrongfully” if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 79.01.756, 79.01.760, 79.40.070, or where there is immunity from liability under RCW 64.12.035.

Hobby Loss Audits in the Woodland Industry

By John Alan Cohan, Attorney at Law

Tree farming constitutes a significant segment of the economy as timber is an essential product for houses and other buildings. Many tree growers are small businesses. Others are giant companies. For many, having their own woodland is a source of pleasure and joy. The sounds of nature, animal activity and interesting vegetation abound.

The IRS analyzes tree farming, along with other types of farming, under the Hobby Loss Rule, and there are many Tax Court cases on the subject.

Often, the IRS will say that the taxpayer's main motive for cultivating a tree farm is the pleasure derived from the beauty and serenity of the farm setting, rather than to engage in a profit-making venture. If the IRS decides that a venture is not operated in a businesslike manner, it could disallow any tax deductions.

If the taxpayer has a history of losses, it is important to be able to withstand IRS scrutiny. For example, in *Clark v. Commissioner*, T.C. Memo 1969-241, Harold Clark, of Annapolis, Maryland, was a bricklayer and mason by trade. While working in Northern California, he saw a specimen of Oregon myrtle, a tree native to the West and often used as an ornamental tree. Its leaves, California Bay Laurel leaves, are sold commercially as a spice. Mr. Clark became fascinated by the qualities of the tree and its possibilities.

After an injury, Clark was unable to work full-time. He decided to raise Oregon myrtles as a side business, and sell the seedlings and the leaves. He gathered a large quantity of seeds in Northern California, and took them back to Maryland. He sought advice from experts about cultivating these seeds.

Clark planted about 6,000 seeds on his land. Three hundred of them came up, and he transplanted those into cans, hoping to sell them to nurseries as ornamental trees. He left seeds at arboretums to stimulate interest in the trees.

However, his first crop soon withered, due to a drought. The next year, another crop of new trees died because he used too much fertilizer on them.

Clark bought 15,000 new seeds and planted a third crop, which also failed. He discovered that his land was contaminated by oil and gas from a nearby filling station.

The IRS denied his tax deductions because it said there was no established market for the seedlings, and there was a significant risk associated with growing these trees in Maryland.

The Tax Court reversed, saying this was a commercially feasible activity, "...albeit fraught with difficulties and limitations." The court said Clark was in the startup phase of the venture, and during that time Clark discovered the difficulties and limitations, and dealt with them. The court also noted

that, since Clark was able to work as a bricklayer only part-time, his main activity was the growing of Oregon myrtles.

The court said that Clark, "...assiduously investigated the botanical possibilities and problems involved in growing Oregon myrtle, but because his efforts at propagation were unsuccessful, made little effort to sell the production."

The court said that there is no requirement that an immediate profit be realized, "...nor does the expectation of profit need to be reasonable, although the prospect of an eventual profit has a bearing on the taxpayer's state of mind." The court described Clark as believable as a witness, and had an honest expectation of eventually making a profit.

A key point of this case is that individuals are engaged in a business, rather than a hobby, as long as they have an honest intention of carrying on the activity as a business. One may choose a highly speculative venture, as in the above case. It is not necessary that your expectation of profit be reasonable. A business is judged, not on the reasonableness of the activity, but on the sincere intentions of the taxpayer to make a profit.

Prior to starting a tree venture, it is important to investigate the commercial aspects of the particular species, whether there is a market for the trees, and how to grow them.

In the above case, the taxpayer won partly because he was in the early startup phase, and that, according to the court, it could be a significant period of time until a profit would be realized. Also, the taxpayer had researched the industry prior to starting the venture, and the court was concluded that he had an honest expectation that his tree farm would become profitable in the long run.

John Alan Cohan has served the various farming industries since 1981. He can be reached at: (310) 278-0203, by e-mail at johnalancohan@aol.com, or you can see more at his website: www.johnalancohan.com.

2009 PIERCE COUNTY CHAPTER TREE FARMER OF THE YEAR: Brian Wester & Sylvia Russell

The Wester/Russell tree farm is a 20-acre parcel on rolling terrain in Pierce County in the Nisqually watershed, near Tanwax Creek and Tule Lake. Purchased in July of 2004, the property is one of 200 20-acre parcels in a forest reserve community developed by Weyerhaeuser and

replanted with Douglas fir in 1990–91. There are no wetlands on the 20-acre parcel.

About half of the 20 acres is a mostly fully stocked Douglas fir stand. In a few areas, alder has crowded out the Douglas fir, and in these areas the alder is being managed. The dominant Douglas firs are now over 60 feet tall and 12 inches DBH. The alders are about as tall, but somewhat smaller in diameter.

The other half of the property is a stand of medium-to-sparse Douglas fir. There are some dead and dying trees and laminated root rot has been confirmed in there. From evidence of Douglas fir and cedar stumps, it is apparent that this was once a favorable tree-growing area. The area is now being reforested with mixed species, resistant to root rot. Some success has been achieved with new pine plantings.

Brian Wester and Sylvia Russell moved to Washington 20 years ago and are new to tree farming. Prior to buying the tree farm, they were avid hikers, campers and backpackers. Their outdoor background and the Forest Stewardship Coached Planning class provided a solid foundation for learning about the science and art of tree farming. Brian's interest in forestry goes back to the acreage where he grew up in New Jersey, and the 150 acres he has owned in upstate New York since the early 70's. Brian attended forestry school in New York, majoring in pulp and paper science engineering. Sylvia grew up in Oklahoma and is as interested in tree farming as Brian.

Objectives:

- Grow commercial quality Douglas fir and alder
 - Improve the vigor of the stand through pre-commercial thinning, pruning and vegetation management
 - Reforest areas thinly stocked, plant mixed stands with root rot resistant and native species
 - Utilize appropriate mechanical means of forest management and minimize use of chemicals
 - Maintain and enhance a healthy wildlife habitat.
-

Where We Stand On Forest & Fish

By Martin Flynn, Martin Flynn Public Affairs, Inc.

We are approaching the 11th anniversary of the passage of the landmark “Forests and Fish” law in Washington State. This law was designed to provide regulatory certainty for large, industrial landowners and flexibility for small forest landowners (SFLs) to meet the requirements of federal environmental laws.

Eleven years later, industrial timber has its regulatory certainty but SFLs are still waiting for their flexibility.

The Legislature recognized the disproportionate impact of “Forests and Fish” on small forest landowners when it said “increasing regulatory requirements continue to diminish the economic viability of small forest landowners.”

To offset the disproportionate impact, the Forests and Fish Law promised three remedies:

1. The Forestry Riparian Easement Program (FREP)
2. Small Forest Landowner Office (SFLO) Programs
3. Alternate Plans with less costly prescriptions that recognize our smaller harvest units.

Today, the FREP program is not funded, the small landowner office and programs have been virtually eliminated, and no real plan has been developed for less costly prescriptions.

There have been some significant accomplishments by the WFFA since the passage of Forests and Fish:

- Tens of millions of dollars HAVE been paid to SFLs through the FREP program
- SFLs were protected from the RMAPS process
- SFLs were exempted from the state’s re-imposed inheritance tax
- SFLs were exempted from B&O tax on the first \$100,000 worth of timber

- The automatic 6-year moratorium on development was eliminated

But these provisions are not enough to keep SFLs on the landscape in working forests. What is needed is REAL flexibility in the rules governing small forest timber harvesting – rules that recognize the “light touch” on the land of most small landowners.

Progress toward that goal has slowed, and actions by the current legislature have actually moved AWAY from more flexibility. Objections by environmentalists and state agencies has killed legislation that would have allowed an exemption from Forests and Fish for SFLs on harvests of 20 acres or less. Also, the legislature proposed only minimal funding for the FREP program while mandating a complicated “ranking” system that does not treat all SFLs the same.

Right now, with this governor, this legislature and this commissioner of public lands, the scales will always be tipped in favor of the environmentalist point of view.

The job of the individual Small Forest Landowner is to convince the decision makers that SFLs are the true environmentalists, the true stewards of the land. Make your voice heard by contacting your legislators and the governor and the commissioner of public lands. Tell them that we cannot wait any longer for the flexibility that was promised almost a dozen years ago.

Welcome To Our New WFFA Members!

CLARK

Marshall & Flora Adams
Douglas & Linda Bailes
Linda & Ken Edwards
Darrell & Penny Johnsrud
Patti Mason
Ralph & Shirley Wecks

COWLITZ

Louise Gilman & Ed Anderson
John & Darleen Keatley
Kelly Niemi
Richard Niemi
David & Lori Porter

KITTITAS

David Gerth, Kittitas Conservation Trust
Ron & Rhonda Knapp

LEWIS

Larry & Beccy Avalon
Bob Buker

NE WASHINGTON

Gerald & Nadine Beitey
Cal Cary
John & J. Diane Galley
John & Sharon Hammond
Jim & Lynn McHugh

SOUTH SOUND

Gary & Pam Hanson
David & Gayle Lindeblom
Thomas & Eleanor Nevers
William & Kathleen Truax

WHATCOM

David & Darlina New
Tom & Ginger Smith

From the Executive Director's Desk

Deleted: ¶

¶
¶

Recently my son shared an article with me out of a daily devotional that we both read, which spoke of things being “shaken down.” It explained that throughout time, mankind has gone through periods, sometimes intense, of being shaken down. It was also a message of hope, saying that those who stood on solid ground would be the ones left standing.

I compare that quote to tree farmers in Washington State. We are being shaken down. This has been caused by a perfect storm of failed forest policy, lack of recognition by a majority of legislators, tremendous and growing budget problems, and a shortsighted vision by some timber groups.

We have not played politics with a loud voice or deep pockets. And that is okay, because we have something of greater value. We can stand on our solid ground of planting, growing and harvesting our timber on our PRIVATE land. We produce well-managed timberlands, which in turn, produce personal income, needed jobs and taxes, and public benefits that cannot be measured, let alone paid for. We provide our communities with a unified voice and active involvement in schools, local government, churches, neighborhood groups and committees. So many of our members serve our society with so much value, and yet refuse to sing your own

praises. This is our solid ground.

This association will continue to support educational programs, both at the state and local level, with our streamlined and efficient association office.

We also continue to offer the highest level of support that we can afford against over regulation and taxation. We are a growing, but changing association, which will continue to represent you as “Stewards of the Land...for Generations to Come.”

Treefully,

**Rick Dunning,
Executive Director**

Contact Us | Phone: (360) 736-5750
Fax: (360) 736-2704
E-mail: info@wafarmforestry.com

Deleted: ¶

Deleted: ¶

¶
¶
¶
¶
¶
¶