

SSB 6141 - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT ADOPTED 04/06/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 76.06.140 and 2004 c 218 s 1 are each amended to read
4 as follows:

5 ~~((1))~~ The legislature finds ~~((that))~~ as follows:

6 (1) Washington faces serious forest health problems, primarily in
7 eastern Washington, where forests are overcrowded or trees ~~((are~~
8 ~~infested with or susceptible))~~ lack sufficient resilience to insects,
9 diseases, wind, ice storms, and fire. The causes of and contributions
10 to these ~~((susceptible))~~ conditions include fire suppression, past
11 timber harvesting and silvicultural practices, altered species
12 composition and stand structure, and the amplified risks that occur
13 when the urban interface penetrates forest land.

14 ~~((The legislature further finds that))~~ There is a private and
15 public interest in addressing uncharacteristic outbreaks of native,
16 naturalized, and nonnative insects and diseases, and reducing the risk
17 of significant loss due to ice storms, wind storms, and
18 uncharacteristic fire. The public interest is in protecting forest
19 productivity on forests managed for commodity production; restoring and
20 maintaining forest vitality and natural forest processes and functions;
21 reducing the cost of fire suppression and the resulting public
22 expenditures; protecting, restoring, and enhancing fish and wildlife
23 habitat, including the habitat of threatened or endangered species; and
24 protecting drinking water supplies and water quality.

25 (3) Well managed forests are the first line of defense in reducing
26 the likelihood of uncharacteristic fire, insect, and disease events,
27 and supporting conservation and restoration of desired plants and
28 animals. Active management of forests, consistent with landowner
29 objectives and the protection of public resources, is the most
30 economical and effective way to promote forest health and protect

1 communities. Fire, native insects, and diseases perform important
2 ecological functions when their occurrence does not present a material
3 threat to long-term forest productivity and increase the likelihood of
4 uncharacteristic fire.

5 (4) Forest health problems may exist on forest land regardless of
6 ownership, and the state should (~~explore all possible avenues for~~
7 ~~working in~~) pursue collaboration with the federal government to
8 address common health deficiencies.

9 (~~(3) The legislature further finds that healthy forests benefit~~
10 ~~not only the economic interests that rely on forest products but also~~
11 ~~provide environmental benefits, such as improved water quality and~~
12 ~~habitat for fish and wildlife.~~)

13 **Sec. 2.** RCW 76.06.020 and 2003 c 314 s 2 are each amended to read
14 as follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Agent" means the recognized legal representative,
18 representatives, agent, or agents for any owner.

19 (2) "Commissioner" means the commissioner of public lands.

20 (3) "Department" means the department of natural resources.

21 (~~(3) "Owner" means and includes persons or their agents.~~

22 (4) ~~"Timber land" means any land on which there is a sufficient~~
23 ~~number of trees, standing or down, to constitute, in the judgment of~~
24 ~~the department, a forest insect or forest disease breeding ground of a~~
25 ~~nature to constitute a menace, injurious and dangerous to permanent~~
26 ~~forest growth in the district under consideration.~~

27 (~~(5) "Commissioner" means the commissioner of public lands.~~

28 (6)) (4) "Disturbance agent" means those forces that damage or
29 kill significant numbers of forest trees, such as insects, diseases,
30 wind storms, ice storms, and fires.

31 (5) "Exotic" means not native to forest lands in Washington state.

32 (~~(7) "Forest land" means any land on which there are sufficient~~
33 ~~numbers and distribution of trees and associated species to, in the~~
34 ~~judgment of the department, contribute to the spread of forest insect~~
35 ~~or forest disease outbreaks that could be injurious to forest health.~~

36 (8)) (6) "Forest health" means, for the purposes of this chapter,
37 the condition of a forest being sound in ecological function,

1 sustainable, resilient, and resistant to insects, diseases, fire, and
2 other disturbance, and having the capacity to meet landowner
3 objectives.

4 ~~((+9))~~ (7) "Forest health emergency" means the introduction of, or
5 an outbreak of, an exotic forest insect or disease that poses an
6 imminent danger of damage to the environment by threatening the
7 survivability of native tree species.

8 ~~((+10))~~ (8) "Forest insect or disease" means a living stage of an
9 insect, other invertebrate animal, or disease-causing organism or agent
10 that can directly or indirectly injure or cause disease or damage in
11 trees, or parts of trees, or in processed or manufactured wood, or
12 other products of trees.

13 ~~((+11))~~ (9) "Forest land" means any land on which there are
14 sufficient numbers and distribution of trees and associated species to,
15 in the judgment of the department, contribute to the spread of forest
16 insect or forest disease outbreaks that could be detrimental to forest
17 health.

18 (10) "Integrated pest management" means a strategy that uses
19 various combinations of pest control methods, including biological,
20 cultural, and chemical methods, in a compatible manner to achieve
21 satisfactory control and ensure favorable economic and environmental
22 consequences.

23 ~~((+12))~~ (11) "Native" means having populated Washington's forested
24 lands prior to European settlement.

25 ~~((+13))~~ (12) "Outbreak" means a rapidly expanding population of
26 insects or diseases with potential to spread.

27 (13) "Owner" means and includes persons or their agents.

28 (14) "Person" means any individual, partnership, private, public,
29 or municipal corporation, county, federal, state, or local governmental
30 agency, tribes, or association of individuals of whatever nature.

31 (15) "Timber land" means any land on which there is a sufficient
32 number of trees, standing or down, to constitute, in the judgment of
33 the department, a forest insect or forest disease breeding ground of a
34 nature to constitute a menace, injurious and dangerous to permanent
35 forest growth in the district under consideration.

36 (16) "Uncharacteristic" means ecologically atypical for a forest or
37 vegetation type or plant association and refers to fire, insect, or
38 disease events that are not within a natural range of variability. The

1 term does not include fire, disease, or insect events that occur or are
2 present at levels of magnitude normally expected to occur within a
3 healthy, functioning forest.

4 **Sec. 3.** RCW 76.06.030 and 1988 c 128 s 16 are each amended to read
5 as follows:

6 (1) This chapter shall be administered by the department.

7 (2) The department has the lead role in developing a comprehensive
8 forest health program to achieve the goals of this act. Within
9 available funding, the department shall:

10 (a) Develop, gather, and disseminate information on forest health
11 conditions, monitor forest health conditions and changes over time, and
12 coordinate and enter agreements with interested and affected parties;

13 (b) Coordinate with universities, university extension services,
14 federal and state agencies, private, public, and tribal forest
15 landowners, consulting foresters, and forest managers to monitor forest
16 fuel buildup, forest insect and disease outbreaks, and wind and ice
17 storm events; and

18 (c) Coordinate with universities, university extension services,
19 and state and federal agencies to provide education and technical
20 assistance to private, public, and tribal forest landowners on
21 silvicultural and forest management science, techniques, and technology
22 to maintain forests in conditions that are resilient and resistant to
23 disturbance agents.

24 (3) The department may implement a technical committee to advise on
25 subjects and procedures for monitoring forest health conditions and
26 program activities.

27 (4) The department may coordinate, support, and assist in
28 establishing cooperative forest health projects to address outbreaks of
29 insects or diseases. Priority for assistance authorized under this
30 section shall be given to areas under forest health hazard warnings and
31 areas where forest health decline has resulted in increased risk to
32 public safety from fire.

33 (5) The state and its officers and employees are not liable for
34 damages to a person or their property to the extent that liability is
35 asserted to arise from providing or failing to provide assistance under
36 this act.

1 **Sec. 4.** RCW 76.06.040 and 1951 c 233 s 4 are each amended to read
2 as follows:

3 ~~((Every owner of timber lands, or his agent, shall make every~~
4 ~~reasonable effort to control, destroy and eradicate such forest insect~~
5 ~~pests and forest tree diseases which threaten the existence of any~~
6 ~~stand of timber or provide for the same to be done on timber lands~~
7 ~~owned by him or under his control. In the event he fails, neglects, or~~
8 ~~is unable to accomplish such control, the action may be performed as~~
9 ~~provided for in this chapter.)) Landowners and managers are encouraged
10 to maintain their forest lands in a healthy condition in order to meet
11 their individual ownership objectives, protect public resources as
12 defined in chapter 76.09 RCW, and avoid contributing to forest insect
13 or disease outbreaks or increasing the risk of uncharacteristic fire.~~

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.06 RCW
15 to read as follows:

16 Forest health issues shall be addressed by a tiered system.

17 (1) The first tier is intended to maintain forest health and
18 protect forests from disturbance agents through the voluntary efforts
19 of landowners. Tier 1 is the desired status. Consistent with
20 landowner objectives and the protection of public resources, forests
21 should be managed in ways that create, restore, or maintain healthy
22 forest ecosystems so that disturbance agents occur or exist at
23 nonepidemic levels. To the extent of available funding, information
24 and technical assistance will be made available to forest landowners so
25 they can plan for and implement necessary forest health maintenance and
26 restoration activities.

27 (2) The second tier is intended to manage the development of
28 threats to forest health, or address existing threats to forest health,
29 due to disturbance agents. Actions by landowners to address such
30 threats to forest health are voluntary except as required under chapter
31 76.04 RCW to reduce the danger of the spread of fire. Actions
32 suggested to reduce threats to forest health are specified in forest
33 health hazard warnings issued by the commissioner under section 7 of
34 this act. Within available funding, site-specific information,
35 technical assistance, and project coordination services shall be
36 offered as determined appropriate by the department.

1 (3) The third tier is intended to address significant threats to
2 forest health due to disturbance agents that have spread to multiple
3 forest ownerships or increased forest fuel that is likely to further
4 the spread of fire. Actions required to reduce significant threats to
5 forest health are specified in forest health hazard orders issued by
6 the commissioner under section 7 of this act. Within available
7 funding, site-specific information, technical assistance, and project
8 coordination services shall be offered as determined appropriate by the
9 department. Landowners who are provided notice of a forest health
10 hazard order under section 7 of this act and fail to take the action
11 required under such order may be subject to increased liability for the
12 spread of fire as described in RCW 76.04.495 and 76.04.660. However,
13 a private landowner need not take actions required under the third
14 tier, and may not be held liable for the failure to take such actions,
15 where the disturbance agents on the private landowner's land spread
16 from state or federal lands or where the presence of disturbance agents
17 on state or federal lands would limit the effectiveness of actions
18 required on the private landowner's land under the third tier.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.06 RCW
20 to read as follows:

21 (1) The commissioner may appoint a forest health technical advisory
22 committee when the commissioner determines that forest lands in any
23 area of the state appear to be threatened by a forest health condition
24 of such a nature, extent, or timing that action to reduce the threat
25 may be necessary.

26 (a) The committee shall consist of one scientist chosen for
27 expertise in forest ecology, one scientist chosen for expertise in
28 aquatic ecology, one scientist chosen for expertise in wildlife
29 biology, two scientists chosen for expertise relative to the attendant
30 risk, one specialist in wildfire protection, one specialist in fuels
31 management, one forester with extensive silvicultural experience in the
32 affected forest type, and a chairperson who shall represent the
33 commissioner. The departments of fish and wildlife, ecology, and
34 natural resources shall provide technical assistance to the committee
35 in the areas of fish and wildlife, water quality, and forest practices,
36 but shall not be members of the committee. The director of forest
37 health protection of region 6 of the United States department of

1 agriculture forest service or their named designee shall be invited to
2 be an ex officio member of the committee. In the event the area
3 affected contains substantial acreage of tribal or federally owned
4 lands, representatives of the affected agencies and tribes shall be
5 invited to participate in the proceedings of the committee.

6 (b) The commissioner may disband the committee when he or she deems
7 appropriate.

8 (2) The committee shall evaluate the threat to forest health and
9 make a timely report to the commissioner on its nature, extent, and
10 location.

11 (a) In its deliberations, the committee shall consider the need for
12 action to reduce the threat and alternative methods of achieving the
13 desired results, including the environmental risks associated with the
14 alternatives and the risks associated with taking no action.

15 (b) The committee shall also recommend potential approaches to
16 achieve the desired results for forest land ownerships of fewer than
17 ten acres and for forests owned for scientific, study, recreational, or
18 other uses not compatible with active management.

19 (c) The committee shall recommend to the commissioner whether a
20 forest health hazard warning or forest health hazard order is warranted
21 based on the factors in section 7(1) of this act or when otherwise
22 determined by the committee to be warranted.

23 (d) When the commissioner issues a forest health hazard warning or
24 forest health hazard order, the committee shall monitor the progress
25 and results of activities to address the hazard, and periodically
26 report its findings to the commissioner.

27 (3) The exercise by forest health technical advisory committee
28 members of their authority under this section shall not imply or create
29 any liability on their part. Advisory committee members shall be
30 compensated as provided in RCW 43.03.250 and shall receive
31 reimbursement for travel expenses as provided by RCW 43.03.050 and
32 43.03.060. Costs associated with the committee may be paid from the
33 general fund appropriation made available to the department of natural
34 resources for fire suppression.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 76.06 RCW
36 to read as follows:

37 (1) The commissioner may issue a forest health hazard warning when

1 he or she deems such action is necessary to manage the development of
2 a threat to forest health or address an existing threat to forest
3 health. A decision to issue a forest health hazard warning may be
4 based on existing forest stand conditions and:

5 (a) The presence of an uncharacteristic insect or disease outbreak
6 that has or is likely to (i) spread to multiple forest ownerships and
7 cause extensive damage to forests; or (ii) significantly increase
8 forest fuel that is likely to further the spread of uncharacteristic
9 fire;

10 (b) When, due to extensive physical damage from wind or ice storm
11 or other cause, there are (i) insect populations building up to large
12 scale levels; or (ii) significantly increased forest fuels that are
13 likely to further the spread of uncharacteristic fire; or

14 (c) When otherwise determined by the commissioner to be
15 appropriate.

16 (2) The commissioner may issue a forest health hazard order when he
17 or she deems such action is necessary to address a significant threat
18 to forest health. A decision to issue a forest health hazard order may
19 be based on existing forest stand conditions and:

20 (a) The presence of an uncharacteristic insect or disease outbreak
21 that has (i) spread to multiple forest ownerships and has caused and is
22 likely to continue to cause extensive damage to forests; or (ii)
23 significantly increased forest fuels that are likely to further the
24 spread of uncharacteristic fire;

25 (b) When, due to extensive physical damage from wind or ice storm
26 or other cause (i) insect populations are causing extensive damage to
27 forests; or (ii) significantly increased forest fuels are likely to
28 further the spread of uncharacteristic fire;

29 (c) Insufficient landowner action under a forest health hazard
30 warning; or

31 (d) When otherwise determined by the commissioner to be
32 appropriate.

33 (3) A forest health hazard warning or forest health hazard order
34 shall be issued by use of a commissioner's order. General notice of
35 the commissioner's order shall be published in a newspaper of general
36 circulation in each county within the area covered by the order and on
37 the department's web site. The order shall specify the boundaries of
38 the area affected, including federal and tribal lands, the forest stand

1 conditions that would make a parcel subject to the provisions of the
2 order, and the actions landowners or land managers should take to
3 reduce the hazard.

4 (4) Written notice of a forest health hazard warning or forest
5 health hazard order shall be provided to forest landowners of
6 specifically affected property.

7 (a) The notice shall set forth:

8 (i) The reasons for the action;

9 (ii) The boundaries of the area affected, including federal and
10 tribal lands;

11 (iii) Suggested actions that should be taken by the forest
12 landowner under a forest health hazard warning or the actions that must
13 be taken by a forest landowner under a forest health hazard order;

14 (iv) The time within which such actions should or must be taken;

15 (v) How to obtain information or technical assistance on forest
16 health conditions and treatment options;

17 (vi) The right to request mitigation under subsection (5) of this
18 section and appeal under subsection (6) of this section;

19 (vii) These requirements are advisory only for federal and tribal
20 lands.

21 (b) The notice shall be served by personal service or by mail to
22 the latest recorded real property owner, as shown by the records of the
23 county recording officer as defined in RCW 65.08.060. Service by mail
24 is effective on the date of mailing. Proof of service shall be by
25 affidavit or declaration under penalty of perjury.

26 (5) Forest landowners who have been issued a forest health hazard
27 order under subsection (4) of this section may apply to the department
28 for the remission or mitigation of such order. The application shall
29 be made to the department within fifteen days after notice of the order
30 has been served. Upon receipt of the application, the department may
31 remit or mitigate the order upon whatever terms the department in its
32 discretion deems proper, provided the department deems the remission or
33 mitigation to be in the best interests of carrying out the purposes of
34 this chapter. The department may ascertain the facts regarding all
35 such applications in such reasonable manner and under such rule as it
36 deems proper.

37 (6) Forest landowners who have been issued a forest health hazard

1 order under subsection (4) of this section may appeal the order to the
2 forest practices appeals board.

3 (a) The appeal shall be filed within thirty days after notice of
4 the order has been served, unless application for mitigation has been
5 made to the department. When such an application for mitigation is
6 made, such appeal shall be filed within thirty days after notice of the
7 disposition of the application for mitigation has been served.

8 (b) The appeal must set forth:

9 (i) The name and mailing address of the appellant;

10 (ii) The name and mailing address of the appellant's attorney, if
11 any;

12 (iii) A duplicate copy of the forest health hazard order;

13 (iv) A separate and concise statement of each error alleged to have
14 been committed;

15 (v) A concise statement of facts upon which the appellant relies to
16 sustain the statement of error; and

17 (vi) A statement of the relief requested.

18 (7) A forest health hazard order issued under subsection (4) of
19 this section is effective thirty days after date of service unless
20 application for remission or mitigation is made or an appeal is filed.
21 When an application for remission or mitigation is made, the order is
22 effective thirty days after notice setting forth the disposition of the
23 application is served unless an appeal is filed from such disposition.
24 Whenever an appeal of the order is filed, the order shall become
25 effective only upon completion of all administrative and judicial
26 review proceedings and the issuance of a final decision confirming the
27 order in whole or in part.

28 (8) Upon written request, the department may certify as adequate a
29 forest health management plan developed by a forest landowner, before
30 or in response to a forest health hazard warning or forest health
31 hazard order, if the plan is likely to achieve the desired result and
32 the terms of the plan are being diligently followed by the forest
33 landowner. The certification of adequacy shall be determined by the
34 department in its sole discretion, and be provided to the requestor in
35 writing.

36 (9) Prior to issuing a forest health hazard warning or forest
37 health hazard order under this section, the commissioner shall consider
38 the findings and recommendations of a forest health technical advisory

1 committee created under section 6 of this act and shall consult with
2 county government officials, forest landowners and forest land
3 managers, consulting foresters, and other interested parties to gather
4 information on the threat, opportunities, or constraints on treatment
5 options, and other information they may provide. The commissioner, or
6 a designee, shall also conduct a public hearing in a county within the
7 geographical area being considered.

8 **Sec. 8.** RCW 76.09.220 and 2003 c 393 s 20 are each amended to read
9 as follows:

10 (1) The appeals board shall operate on either a part-time or a
11 full-time basis, as determined by the governor. If it is determined
12 that the appeals board shall operate on a full-time basis, each member
13 shall receive an annual salary to be determined by the governor. If it
14 is determined that the appeals board shall operate on a part-time
15 basis, each member shall be compensated in accordance with RCW
16 43.03.250. The director of the environmental hearings office shall
17 make the determination, required under RCW 43.03.250, as to what
18 statutorily prescribed duties, in addition to attendance at a hearing
19 or meeting of the board, shall merit compensation. This compensation
20 shall not exceed ten thousand dollars in a fiscal year. Each member
21 shall receive reimbursement for travel expenses incurred in the
22 discharge of his or her duties in accordance with the provisions of RCW
23 43.03.050 and 43.03.060.

24 (2) The appeals board shall as soon as practicable after the
25 initial appointment of the members thereof, meet and elect from among
26 its members a chair, and shall at least biennially thereafter meet and
27 elect or reelect a chair.

28 (3) The principal office of the appeals board shall be at the state
29 capital, but it may sit or hold hearings at any other place in the
30 state. A majority of the appeals board shall constitute a quorum for
31 making orders or decisions, adopting rules necessary for the conduct of
32 its powers and duties, or transacting other official business, and may
33 act though one position on the board be vacant. One or more members
34 may hold hearings and take testimony to be reported for action by the
35 board when authorized by rule or order of the board. The appeals board
36 shall perform all the powers and duties granted to it in this chapter
37 or as otherwise provided by law.

1 (4) The appeals board shall make findings of fact and prepare a
2 written decision in each case decided by it, and such findings and
3 decision shall be effective upon being signed by two or more members
4 and upon being filed at the appeals board's principal office, and shall
5 be open to public inspection at all reasonable times.

6 (5) The appeals board shall either publish at its expense or make
7 arrangements with a publishing firm for the publication of those of its
8 findings and decisions which are of general public interest, in such
9 form as to assure reasonable distribution thereof.

10 (6) The appeals board shall maintain at its principal office a
11 journal which shall contain all official actions of the appeals board,
12 with the exception of findings and decisions, together with the vote of
13 each member on such actions. The journal shall be available for public
14 inspection at the principal office of the appeals board at all
15 reasonable times.

16 (7) The forest practices appeals board shall have exclusive
17 jurisdiction to hear appeals arising from an action or determination by
18 the department, and the department of fish and wildlife, and the
19 department of ecology with respect to management plans provided for
20 under RCW 76.09.350.

21 (8)(a) Any person aggrieved by the approval or disapproval of an
22 application to conduct a forest practice or the approval or disapproval
23 of any landscape plan or permit or watershed analysis may, except as
24 otherwise provided in chapter 43.21L RCW, seek review from the appeals
25 board by filing a request for the same within thirty days of the
26 approval or disapproval. Concurrently with the filing of any request
27 for review with the board as provided in this section, the requestor
28 shall file a copy of his or her request with the department and the
29 attorney general. The attorney general may intervene to protect the
30 public interest and ensure that the provisions of this chapter are
31 complied with.

32 (b) The review proceedings authorized in (a) of this subsection are
33 subject to the provisions of chapter 34.05 RCW pertaining to procedures
34 in adjudicative proceedings.

35 (9) The forest practices appeals board shall have exclusive
36 jurisdiction to hear appeals of forest health hazard orders issued by
37 the commissioner under section 7(4) of this act. Such proceedings are

1 subject to the provisions of chapter 34.05 RCW pertaining to procedures
2 in adjudicative proceedings.

3 NEW SECTION. Sec. 9. A new section is added to chapter 76.06 RCW
4 to read as follows:

5 Nothing in this act shall exempt actions specified under the
6 authority of this act from the application of the provisions of chapter
7 76.09 RCW and rules adopted thereunder which govern forest practices.

8 NEW SECTION. Sec. 10. A new section is added to chapter 76.06 RCW
9 to read as follows:

10 If any part of this chapter or requirements imposed upon landowners
11 pursuant to this chapter are found to conflict with requirements of
12 other statutes or rules, the conflicting part of this chapter or
13 requirements imposed pursuant to this chapter shall be inoperative
14 solely to the extent of the conflict. The finding or determination
15 shall not affect the operation of the remainder of this chapter or such
16 requirements.

17 **Sec. 11.** RCW 76.09.060 and 2005 c 274 s 357 are each amended to
18 read as follows:

19 ~~((The following shall apply to those forest practices administered
20 and enforced by the department and for which the board shall promulgate
21 regulations as provided in this chapter:))~~

22 (1) The department shall prescribe the form and contents of the
23 notification and application. The forest practices rules shall specify
24 by whom and under what conditions the notification and application
25 shall be signed or otherwise certified as acceptable. Activities
26 conducted by the department or a contractor under the direction of the
27 department under the provisions of RCW 76.04.660, shall be exempt from
28 the landowner signature requirement on any forest practice application
29 required to be filed. The application or notification shall be
30 delivered in person to the department, sent by first class mail to the
31 department or electronically filed in a form defined by the department.
32 The form for electronic filing shall be readily convertible to a paper
33 copy, which shall be available to the public pursuant to chapter 42.56
34 RCW. The information required may include, but is not limited to:

- 1 (a) Name and address of the forest landowner, timber owner, and
2 operator;
- 3 (b) Description of the proposed forest practice or practices to be
4 conducted;
- 5 (c) Legal description and tax parcel identification numbers of the
6 land on which the forest practices are to be conducted;
- 7 (d) Planimetric and topographic maps showing location and size of
8 all lakes and streams and other public waters in and immediately
9 adjacent to the operating area and showing all existing and proposed
10 roads and major tractor roads;
- 11 (e) Description of the silvicultural, harvesting, or other forest
12 practice methods to be used, including the type of equipment to be used
13 and materials to be applied;
- 14 (f) Proposed plan for reforestation and for any revegetation
15 necessary to reduce erosion potential from roadsides and yarding roads,
16 as required by the forest practices rules;
- 17 (g) Soil, geological, and hydrological data with respect to forest
18 practices;
- 19 (h) The expected dates of commencement and completion of all forest
20 practices specified in the application;
- 21 (i) Provisions for continuing maintenance of roads and other
22 construction or other measures necessary to afford protection to public
23 resources;
- 24 (j) An affirmation that the statements contained in the
25 notification or application are true; and
- 26 (k) All necessary application or notification fees.
- 27 (2) Long range plans may be submitted to the department for review
28 and consultation.
- 29 (3) The application for a forest practice or the notification of a
30 Class II forest practice is subject to the three-year reforestation
31 requirement.
- 32 (a) If the application states that any such land will be or is
33 intended to be so converted:
- 34 (i) The reforestation requirements of this chapter and of the
35 forest practices rules shall not apply if the land is in fact so
36 converted unless applicable alternatives or limitations are provided in
37 forest practices rules issued under RCW 76.09.070 as now or hereafter
38 amended;

1 (ii) Completion of such forest practice operations shall be deemed
2 conversion of the lands to another use for purposes of chapters 84.33
3 and 84.34 RCW unless the conversion is to a use permitted under a
4 current use tax agreement permitted under chapter 84.34 RCW;

5 (iii) The forest practices described in the application are subject
6 to applicable county, city, town, and regional governmental authority
7 permitted under RCW 76.09.240 as now or hereafter amended as well as
8 the forest practices rules.

9 (b) Except as provided elsewhere in this section, if the
10 application or notification does not state that any land covered by the
11 application or notification will be or is intended to be so converted:

12 (i) For six years after the date of the application the county,
13 city, town, and regional governmental entities shall deny any or all
14 applications for permits or approvals, including building permits and
15 subdivision approvals, relating to nonforestry uses of land subject to
16 the application;

17 (A) The department shall submit to the local governmental entity a
18 copy of the statement of a forest landowner's intention not to convert
19 which shall represent a recognition by the landowner that the six-year
20 moratorium shall be imposed and shall preclude the landowner's ability
21 to obtain development permits while the moratorium is in place. This
22 statement shall be filed by the local governmental entity with the
23 county recording officer, who shall record the documents as provided in
24 chapter 65.04 RCW, except that lands designated as forest lands of
25 long-term commercial significance under chapter 36.70A RCW shall not be
26 recorded due to the low likelihood of conversion. Not recording the
27 statement of a forest landowner's conversion intention shall not be
28 construed to mean the moratorium is not in effect.

29 (B) The department shall collect the recording fee and reimburse
30 the local governmental entity for the cost of recording the
31 application.

32 (C) When harvesting takes place without an application, the local
33 governmental entity shall impose the six-year moratorium provided in
34 (b)(i) of this subsection from the date the unpermitted harvesting was
35 discovered by the department or the local governmental entity.

36 (D) The local governmental entity shall develop a process for
37 lifting the six-year moratorium, which shall include public
38 notification, and procedures for appeals and public hearings.

1 (E) The local governmental entity may develop an administrative
2 process for lifting or waiving the six-year moratorium for the purposes
3 of constructing a single-family residence or outbuildings, or both, on
4 a legal lot and building site. Lifting or waiving of the six-year
5 moratorium is subject to compliance with all local ordinances.

6 (F) The six-year moratorium shall not be imposed on a forest
7 practices application that contains a conversion option harvest plan
8 approved by the local governmental entity unless the forest practice
9 was not in compliance with the approved forest practice permit. Where
10 not in compliance with the conversion option harvest plan, the six-year
11 moratorium shall be imposed from the date the application was approved
12 by the department or the local governmental entity;

13 (ii) Failure to comply with the reforestation requirements
14 contained in any final order or decision shall constitute a removal of
15 designation under the provisions of RCW 84.33.140, and a change of use
16 under the provisions of RCW 84.34.080, and, if applicable, shall
17 subject such lands to the payments and/or penalties resulting from such
18 removals or changes; and

19 (iii) Conversion to a use other than commercial forest product
20 operations within six years after approval of the forest practices
21 without the consent of the county, city, or town shall constitute a
22 violation of each of the county, municipal city, town, and regional
23 authorities to which the forest practice operations would have been
24 subject if the application had so stated.

25 (c) The application or notification shall be signed by the forest
26 landowner and accompanied by a statement signed by the forest landowner
27 indicating his or her intent with respect to conversion and
28 acknowledging that he or she is familiar with the effects of this
29 subsection.

30 (4) Whenever an approved application authorizes a forest practice
31 which, because of soil condition, proximity to a water course or other
32 unusual factor, has a potential for causing material damage to a public
33 resource, as determined by the department, the applicant shall, when
34 requested on the approved application, notify the department two days
35 before the commencement of actual operations.

36 (5) Before the operator commences any forest practice in a manner
37 or to an extent significantly different from that described in a

1 previously approved application or notification, there shall be
2 submitted to the department a new application or notification form in
3 the manner set forth in this section.

4 (6) Except as provided in RCW 76.09.350(4), the notification to or
5 the approval given by the department to an application to conduct a
6 forest practice shall be effective for a term of two years from the
7 date of approval or notification and shall not be renewed unless a new
8 application is filed and approved or a new notification has been filed.
9 At the option of the applicant, an application or notification may be
10 submitted to cover a single forest practice or a number of forest
11 practices within reasonable geographic or political boundaries as
12 specified by the department. An application or notification that
13 covers more than one forest practice may have an effective term of more
14 than two years. The board shall adopt rules that establish standards
15 and procedures for approving an application or notification that has an
16 effective term of more than two years. Such rules shall include
17 extended time periods for application or notification approval or
18 disapproval. On an approved application with a term of more than two
19 years, the applicant shall inform the department before commencing
20 operations.

21 (7) Notwithstanding any other provision of this section, no prior
22 application or notification shall be required for any emergency forest
23 practice necessitated by fire, flood, windstorm, earthquake, or other
24 emergency as defined by the board, but the operator shall submit an
25 application or notification, whichever is applicable, to the department
26 within forty-eight hours after commencement of such practice or as
27 required by local regulations.

28 (8) Forest practices applications or notifications are not required
29 for forest practices conducted to control exotic forest insect or
30 disease outbreaks, when conducted by or under the direction of the
31 department of agriculture in carrying out an order of the governor or
32 director of the department of agriculture to implement pest control
33 measures as authorized under chapter 17.24 RCW, and are not required
34 when conducted by or under the direction of the department in carrying
35 out emergency measures under a forest health emergency declaration by
36 the commissioner of public lands as provided in RCW 76.06.130.

37 (a) For the purposes of this subsection, exotic forest insect or
38 disease has the same meaning as defined in RCW 76.06.020.

1 (b) In order to minimize adverse impacts to public resources,
2 control measures must be based on integrated pest management, as
3 defined in RCW 17.15.010, and must follow forest practices rules
4 relating to road construction and maintenance, timber harvest, and
5 forest chemicals, to the extent possible without compromising control
6 objectives.

7 (c) Agencies conducting or directing control efforts must provide
8 advance notice to the appropriate regulatory staff of the department of
9 the operations that would be subject to exemption from forest practices
10 application or notification requirements.

11 (d) When the appropriate regulatory staff of the department are
12 notified under (c) of this subsection, they must consult with the
13 landowner, interested agencies, and affected tribes, and assist the
14 notifying agencies in the development of integrated pest management
15 plans that comply with forest practices rules as required under (b) of
16 this subsection.

17 (e) Nothing under this subsection relieves agencies conducting or
18 directing control efforts from requirements of the federal clean water
19 act as administered by the department of ecology under RCW 90.48.260.

20 (f) Forest lands where trees have been cut as part of an exotic
21 forest insect or disease control effort under this subsection are
22 subject to reforestation requirements under RCW 76.09.070.

23 (g) The exemption from obtaining approved forest practices
24 applications or notifications does not apply to forest practices
25 conducted after the governor, the director of the department of
26 agriculture, or the commissioner of public lands have declared that an
27 emergency no longer exists because control objectives have been met,
28 that there is no longer an imminent threat, or that there is no longer
29 a good likelihood of control.

30 **Sec. 12.** RCW 76.04.005 and 1992 c 52 s 24 are each amended to read
31 as follows:

32 As used in this chapter, the following terms have the meanings
33 indicated unless the context clearly requires otherwise.

34 (1) "Additional fire hazard" means a condition existing on any land
35 in the state:

36 (a) Covered wholly or in part by forest debris which is likely to
37 further the spread of fire and thereby endanger life or property; or

1 (b) When, due to the effects of disturbance agents, broken, down,
2 dead, or dying trees exist on forest land in sufficient quantity to be
3 likely to further the spread of fire within areas covered by a forest
4 health hazard warning or order issued by the commissioner of public
5 lands under section 7 of this act. The term "additional fire hazard"
6 does not include green trees or snags left standing in upland or
7 riparian areas under the provisions of RCW 76.04.465 or chapter 76.09
8 RCW.

9 (2) "Closed season" means the period between April 15 and October
10 15, unless the department designates different dates because of
11 prevailing fire weather conditions.

12 (3) "Department" means the department of natural resources, or its
13 authorized representatives, as defined in chapter 43.30 RCW.

14 (4) "Department protected lands" means all lands subject to the
15 forest protection assessment under RCW 76.04.610 or covered under
16 contract or agreement pursuant to RCW 76.04.135 by the department.

17 (5) "Disturbance agent" means those forces that damage or kill
18 significant numbers of forest trees, such as insects, diseases, wind
19 storms, ice storms, and fires.

20 (6) "Emergency fire costs" means those costs incurred or approved
21 by the department for emergency forest fire suppression, including the
22 employment of personnel, rental of equipment, and purchase of supplies
23 over and above costs regularly budgeted and provided for nonemergency
24 fire expenses for the biennium in which the costs occur.

25 (~~(6)~~) (7) "Forest debris" includes forest slash, chips, and any
26 other vegetative residue resulting from activities on forest land.

27 (~~(7)~~) (8) "Forest fire service" includes all wardens, rangers,
28 and other persons employed especially for preventing or fighting forest
29 fires.

30 (~~(8)~~) (9) "Forest land" means any unimproved lands which have
31 enough trees, standing or down, or flammable material, to constitute in
32 the judgment of the department, a fire menace to life or property.
33 Sagebrush and grass areas east of the summit of the Cascade mountains
34 may be considered forest lands when such areas are adjacent to or
35 intermingled with areas supporting tree growth. Forest land, for
36 protection purposes, does not include structures.

37 (~~(9)~~) (10) "Forest landowner," "owner of forest land,"

1 "landowner," or "owner" means the owner or the person in possession of
2 any public or private forest land.

3 ~~((+10))~~ (11) "Forest material" means forest slash, chips, timber,
4 standing or down, or other vegetation.

5 ~~((+11))~~ (12) "Landowner operation" means every activity, and
6 supporting activities, of a forest landowner and the landowner's
7 agents, employees, or independent contractors or permittees in the
8 management and use of forest land subject to the forest protection
9 assessment under RCW 76.04.610 for the primary benefit of the owner.
10 The term includes, but is not limited to, the growing and harvesting of
11 forest products, the development of transportation systems, the
12 utilization of minerals or other natural resources, and the clearing of
13 land. The term does not include recreational and/or residential
14 activities not associated with these enumerated activities.

15 ~~((+12))~~ (13) "Participating landowner" means an owner of forest
16 land whose land is subject to the forest protection assessment under
17 RCW 76.04.610.

18 ~~((+13))~~ (14) "Slash" means organic forest debris such as tree
19 tops, limbs, brush, and other dead flammable material remaining on
20 forest land as a result of a landowner operation.

21 ~~((+14))~~ (15) "Slash burning" means the planned and controlled
22 burning of forest debris on forest lands by broadcast burning,
23 underburning, pile burning, or other means, for the purposes of
24 silviculture, hazard abatement, or reduction and prevention or
25 elimination of a fire hazard.

26 ~~((+15))~~ (16) "Suppression" means all activities involved in the
27 containment and control of forest fires, including the patrolling
28 thereof until such fires are extinguished or considered by the
29 department to pose no further threat to life or property.

30 ~~((+16))~~ (17) "Unimproved lands" means those lands that will
31 support grass, brush and tree growth, or other flammable material when
32 such lands are not cleared or cultivated and, in the opinion of the
33 department, are a fire menace to life and property.

34 **Sec. 13.** RCW 76.04.660 and 1986 c 100 s 39 are each amended to
35 read as follows:

36 (1) The owner of land on which there is an additional fire hazard
37 ~~((and the person responsible for the existence of an additional fire~~

1 hazard)), when the hazard is the result of a landowner operation or the
2 land is within an area covered by a forest health hazard warning issued
3 under section 7 of this act, shall take reasonable measures to reduce
4 the danger of fire spreading from the area and may abate the hazard by
5 burning or other satisfactory means.

6 (2) An extreme fire hazard shall exist within areas covered by a
7 forest health hazard order issued by the commissioner of public lands
8 under section 7 of this act in which there is an additional fire hazard
9 caused by disturbance agents and the landowner has failed to take such
10 action as required by the forest health hazard order. The duties and
11 liability of such landowner under this chapter are as described in
12 subsections (5), (6), and (7) of this section.

13 (3) The department shall adopt rules defining areas of extreme fire
14 hazard that the owner and person responsible shall abate. The areas
15 shall include but are not limited to high risk areas such as where life
16 or buildings may be endangered, areas adjacent to public highways, and
17 areas of frequent public use.

18 ((+3)) (4) The department may adopt rules, after consultation with
19 the forest fire advisory board, defining other conditions of extreme
20 fire hazard with a high potential for fire spreading to lands in other
21 ownerships. The department may prescribe additional measures that
22 shall be taken by the owner and person responsible to isolate or reduce
23 the extreme fire hazard.

24 ((+4)) (5) The owner or person responsible for the existence of
25 the extreme fire hazard is required to abate, isolate, or reduce the
26 hazard. The duty to abate, isolate, or reduce, and liability under
27 this chapter, arise upon creation of the extreme fire hazard.
28 Liability shall include but not be limited to all fire suppression
29 expenses incurred by the department, regardless of fire cause.

30 ((+5)) (6) If the owner or person responsible for the existence of
31 the extreme fire hazard or forest debris subject to RCW 76.04.650
32 refuses, neglects, or unsuccessfully attempts to abate, isolate, or
33 reduce the same, the department may summarily abate, isolate, or reduce
34 the hazard as required by this chapter and recover twice the actual
35 cost thereof from the owner or person responsible. Landowner
36 contingency forest fire suppression account moneys may be used by the
37 department, when available, for this purpose. Moneys recovered by the

1 department pursuant to this section shall be returned to the landowner
2 contingency forest fire suppression account.

3 ~~((+6))~~ (7) Such costs shall include all salaries and expenses of
4 people and equipment incurred therein, including those of the
5 department. All such costs shall also be a lien upon the land
6 enforceable in the same manner with the same effect as a mechanic's
7 lien.

8 ~~((+7))~~ (8) The summary action may be taken only after ten days'
9 notice in writing has been given to the owner or reputed owner of the
10 land on which the extreme fire hazard or forest debris subject to RCW
11 76.04.650 exists. The notice shall include a suggested method of
12 abatement and estimated cost thereof. The notice shall be by personal
13 service or by registered or certified mail addressed to the owner or
14 reputed owner at the owner's last known place of residence.

15 (9) A landowner or manager may make a written request to the
16 department to inspect their property and provide a written notice that
17 they have complied with a forest health hazard warning or forest health
18 hazard order, or otherwise adequately abated, isolated, or reduced an
19 additional or extreme fire hazard. An additional or extreme fire
20 hazard shall be considered to continue to exist unless and until the
21 department, in its sole discretion, issues such notice.

22 NEW SECTION. Sec. 14. The following acts or parts of acts are
23 each repealed:

24 (1) RCW 76.06.050 (Infestation control district--Creation--Notice
25 to owners) and 1988 c 128 s 17, 1961 c 72 s 1, & 1951 c 233 s 5;

26 (2) RCW 76.06.060 (Department to control pests and diseases if
27 owner fails) and 1988 c 128 s 18 & 1951 c 233 s 6;

28 (3) RCW 76.06.070 (Lien for costs of control--Collection) and 1988
29 c 128 s 19 & 1951 c 233 s 7;

30 (4) RCW 76.06.080 (Owner complying with notice is exempt) and 1988
31 c 128 s 20 & 1951 c 233 s 11;

32 (5) RCW 76.06.090 (Dissolution of infestation control district) and
33 1988 c 128 s 21 & 1951 c 233 s 12; and

34 (6) RCW 76.06.110 (Deposit of moneys in general fund--Allotment as
35 unanticipated receipts) and 1979 ex.s. c 67 s 12 & 1951 c 233 s 9."

NOT ADOPTED 04/06/2007

1 On page 1, line 1 of the title, after "health;" strike the
2 remainder of the title and insert "amending RCW 76.06.140, 76.06.020,
3 76.06.030, 76.06.040, 76.09.220, 76.09.060, 76.04.005, and 76.04.660;
4 adding new sections to chapter 76.06 RCW; and repealing RCW 76.06.050,
5 76.06.060, 76.06.070, 76.06.080, 76.06.090, and 76.06.110."

EFFECT: Removes the term "ecosystem" from the scope of the forest vitality intended to be maintained, specifies that "uncharacteristic" forest health events do not include normal and expected levels of fire, disease, or pests, and makes technical changes and a subsection renumbering.

--- END ---