
SUBSTITUTE SENATE BILL 5401

State of Washington

61st Legislature

2009 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senators Morton, Jacobsen, Stevens, Ranker, Hatfield, Roach, and Kline)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to habitat open space; and amending RCW 76.09.040,
2 84.33.140, 84.34.108, and 76.09.020.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 76.09.040 and 2000 c 11 s 3 are each amended to read
5 as follows:

6 (1) Where necessary to accomplish the purposes and policies stated
7 in RCW 76.09.010, and to implement the provisions of this chapter, the
8 board shall adopt forest practices rules pursuant to chapter 34.05 RCW
9 and in accordance with the procedures enumerated in this section that:

10 (a) Establish minimum standards for forest practices;

11 (b) Provide procedures for the voluntary development of resource
12 management plans which may be adopted as an alternative to the minimum
13 standards in (a) of this subsection if the plan is consistent with the
14 purposes and policies stated in RCW 76.09.010 and the plan meets or
15 exceeds the objectives of the minimum standards;

16 (c) Set forth necessary administrative provisions;

17 (d) Establish procedures for the collection and administration of
18 forest practice fees as set forth by this chapter; and

19 (e) Allow for the development of watershed analyses.

1 Forest practices rules pertaining to water quality protection shall
2 be adopted by the board after reaching agreement with the director of
3 the department of ecology or the director's designee on the board with
4 respect thereto. All other forest practices rules shall be adopted by
5 the board.

6 Forest practices rules shall be administered and enforced by either
7 the department or the local governmental entity as provided in this
8 chapter. Such rules shall be adopted and administered so as to give
9 consideration to all purposes and policies set forth in RCW 76.09.010.

10 (2) The board shall prepare proposed forest practices rules. In
11 addition to any forest practices rules relating to water quality
12 protection proposed by the board, the department of ecology may submit
13 to the board proposed forest practices rules relating to water quality
14 protection.

15 Prior to initiating the rule-making process, the proposed rules
16 shall be submitted for review and comments to the department of fish
17 and wildlife and to the counties of the state. After receipt of the
18 proposed forest practices rules, the department of fish and wildlife
19 and the counties of the state shall have thirty days in which to review
20 and submit comments to the board, and to the department of ecology with
21 respect to its proposed rules relating to water quality protection.
22 After the expiration of such thirty day period the board and the
23 department of ecology shall jointly hold one or more hearings on the
24 proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any
25 county may propose specific forest practices rules relating to problems
26 existing within such county. The board may adopt and the department of
27 ecology may approve such proposals if they find the proposals are
28 consistent with the purposes and policies of this chapter.

29 (3) The board shall establish by rule a program for the acquisition
30 of riparian open space (~~((program that includes acquisition of a fee~~
31 ~~interest in, or at the landowner's option, a conservation easement on))~~)
32 and critical habitat for threatened or endangered species as designated
33 by the board. Acquisition must be a conservation easement. Lands
34 eligible for acquisition are forest lands within unconfined
35 ((avulsing)) channel migration zones or forest lands containing
36 critical habitat for threatened or endangered species as designated by
37 the board. Once acquired, these lands may be held and managed by the
38 department, transferred to another state agency, transferred to an

1 appropriate local government agency, or transferred to a private
2 nonprofit nature conservancy corporation, as defined in RCW 64.04.130,
3 in fee or transfer of management obligation. The board shall adopt
4 rules governing the acquisition by the state or donation to the state
5 of such interest in lands including the right of refusal if the lands
6 are subject to unacceptable liabilities. The rules shall include
7 definitions of qualifying lands, priorities for acquisition, and
8 provide for the opportunity to transfer such lands with limited
9 warranties and with a description of boundaries that does not require
10 full surveys where the cost of securing the surveys would be
11 unreasonable in relation to the value of the lands conveyed. The rules
12 shall provide for the management of the lands for ecological protection
13 or fisheries enhancement. Because there are few, if any, comparable
14 sales of forest land within unconfined (~~(avulsing)~~) channel migration
15 zones, separate from the other lands or assets or within critical
16 habitat for threatened or endangered species as designated by the
17 board, these lands are likely to be extraordinarily difficult to
18 appraise and the cost of a conventional appraisal often would be
19 unreasonable in relation to the value of the land involved. Therefore,
20 for the purposes of voluntary sales under this section, the legislature
21 declares that these lands are presumed to have a value equal to: (a)
22 The acreage in the sale multiplied by the average value of commercial
23 forest land in the region under the land value tables used for property
24 tax purposes under RCW (~~(84.33.120)~~) 84.33.140; plus (b) the cruised
25 volume of any timber located within the channel migration zone or
26 critical habitat for threatened or endangered species as designated by
27 the board multiplied by the appropriate quality code stumpage value for
28 timber of the same species shown on the appropriate table used for
29 timber harvest excise tax purposes under RCW 84.33.091. For purposes
30 of this section, there shall be an eastside region and a westside
31 region as defined in the forests and fish report as defined in RCW
32 76.09.020.

33 (4) Subject to appropriations sufficient to cover the cost of such
34 an acquisition program and the related costs of administering the
35 program, the department (~~(is directed to purchase a fee interest or, at~~
36 ~~the owner's option,)~~) must establish a conservation easement in land
37 that an owner tenders for purchase; provided that such lands have been
38 taxed as forest lands and are located within an unconfined (~~(avulsing)~~)

1 channel migration zone or contain critical habitat for threatened or
2 endangered species as designated by the board. Lands acquired under
3 this section shall become riparian or habitat open space. These
4 acquisitions shall not be deemed to trigger the compensating tax of
5 chapters 84.33 and 84.34 RCW.

6 (5) Instead of offering to sell interests in qualifying lands,
7 owners may elect to donate the interests to the state.

8 (6) Any acquired interest in qualifying lands by the state under
9 this section shall be managed as riparian open space or critical
10 habitat.

11 **Sec. 2.** RCW 84.33.140 and 2007 c 54 s 24 are each amended to read
12 as follows:

13 (1) When land has been designated as forest land under RCW
14 84.33.130, a notation of the designation shall be made each year upon
15 the assessment and tax rolls. A copy of the notice of approval
16 together with the legal description or assessor's parcel numbers for
17 the land shall, at the expense of the applicant, be filed by the
18 assessor in the same manner as deeds are recorded.

19 (2) In preparing the assessment roll as of January 1, 2002, for
20 taxes payable in 2003 and each January 1st thereafter, the assessor
21 shall list each parcel of designated forest land at a value with
22 respect to the grade and class provided in this subsection and adjusted
23 as provided in subsection (3) of this section. The assessor shall
24 compute the assessed value of the land using the same assessment ratio
25 applied generally in computing the assessed value of other property in
26 the county. Values for the several grades of bare forest land shall be
27 as follows:

	LAND	OPERABILITY	VALUES
	GRADE	CLASS	PER ACRE
30		1	\$234
31	1	2	229
32		3	217
33		4	157
34		1	198
35	2	2	190

1		3	183
2		4	132
3		1	154
4	3	2	149
5		3	148
6		4	113
7		1	117
8	4	2	114
9		3	113
10		4	86
11		1	85
12	5	2	78
13		3	77
14		4	52
15		1	43
16	6	2	39
17		3	39
18		4	37
19		1	21
20	7	2	21
21		3	20
22		4	20
23	8		1

24 (3) On or before December 31, 2001, the department shall adjust by
25 rule under chapter 34.05 RCW, the forest land values contained in
26 subsection (2) of this section in accordance with this subsection, and
27 shall certify the adjusted values to the assessor who will use these
28 values in preparing the assessment roll as of January 1, 2002. For the
29 adjustment to be made on or before December 31, 2001, for use in the
30 2002 assessment year, the department shall:

31 (a) Divide the aggregate value of all timber harvested within the
32 state between July 1, 1996, and June 30, 2001, by the aggregate harvest
33 volume for the same period, as determined from the harvester excise tax
34 returns filed with the department under RCW 84.33.074; and

35 (b) Divide the aggregate value of all timber harvested within the
36 state between July 1, 1995, and June 30, 2000, by the aggregate harvest

1 volume for the same period, as determined from the harvester excise tax
2 returns filed with the department under RCW 84.33.074; and

3 (c) Adjust the forest land values contained in subsection (2) of
4 this section by a percentage equal to one-half of the percentage change
5 in the average values of harvested timber reflected by comparing the
6 resultant values calculated under (a) and (b) of this subsection.

7 (4) For the adjustments to be made on or before December 31, 2002,
8 and each succeeding year thereafter, the same procedure described in
9 subsection (3) of this section shall be followed using harvester excise
10 tax returns filed under RCW 84.33.074. However, this adjustment shall
11 be made to the prior year's adjusted value, and the five-year periods
12 for calculating average harvested timber values shall be successively
13 one year more recent.

14 (5) Land graded, assessed, and valued as forest land shall continue
15 to be so graded, assessed, and valued until removal of designation by
16 the assessor upon the occurrence of any of the following:

17 (a) Receipt of notice from the owner to remove the designation;

18 (b) Sale or transfer to an ownership making the land exempt from ad
19 valorem taxation;

20 (c) Sale or transfer of all or a portion of the land to a new
21 owner, unless the new owner has signed a notice of forest land
22 designation continuance, except transfer to an owner who is an heir or
23 devisee of a deceased owner, shall not, by itself, result in removal of
24 designation. The signed notice of continuance shall be attached to the
25 real estate excise tax affidavit provided for in RCW 82.45.150. The
26 notice of continuance shall be on a form prepared by the department.
27 If the notice of continuance is not signed by the new owner and
28 attached to the real estate excise tax affidavit, all compensating
29 taxes calculated under subsection (11) of this section shall become due
30 and payable by the seller or transferor at time of sale. The auditor
31 shall not accept an instrument of conveyance regarding designated
32 forest land for filing or recording unless the new owner has signed the
33 notice of continuance or the compensating tax has been paid, as
34 evidenced by the real estate excise tax stamp affixed thereto by the
35 treasurer. The seller, transferor, or new owner may appeal the new
36 assessed valuation calculated under subsection (11) of this section to
37 the county board of equalization in accordance with the provisions of

1 RCW 84.40.038. Jurisdiction is hereby conferred on the county board of
2 equalization to hear these appeals;

3 (d) Determination by the assessor, after giving the owner written
4 notice and an opportunity to be heard, that:

5 (i) The land is no longer primarily devoted to and used for growing
6 and harvesting timber. However, land shall not be removed from
7 designation if a governmental agency, organization, or other recipient
8 identified in subsection (13) or (14) of this section as exempt from
9 the payment of compensating tax has manifested its intent in writing or
10 by other official action to acquire a property interest in the
11 designated forest land by means of a transaction that qualifies for an
12 exemption under subsection (13) or (14) of this section. The
13 governmental agency, organization, or recipient shall annually provide
14 the assessor of the county in which the land is located reasonable
15 evidence in writing of the intent to acquire the designated land as
16 long as the intent continues or within sixty days of a request by the
17 assessor. The assessor may not request this evidence more than once in
18 a calendar year;

19 (ii) The owner has failed to comply with a final administrative or
20 judicial order with respect to a violation of the restocking, forest
21 management, fire protection, insect and disease control, and forest
22 debris provisions of Title 76 RCW or any applicable rules under Title
23 76 RCW; or

24 (iii) Restocking has not occurred to the extent or within the time
25 specified in the application for designation of such land.

26 (6) Land shall not be removed from designation if there is a
27 governmental restriction that prohibits, in whole or in part, the owner
28 from harvesting timber from the owner's designated forest land. If
29 only a portion of the parcel is impacted by governmental restrictions
30 of this nature, the restrictions cannot be used as a basis to remove
31 the remainder of the forest land from designation under this chapter.
32 For the purposes of this section, "governmental restrictions" includes:
33 (a) Any law, regulation, rule, ordinance, program, or other action
34 adopted or taken by a federal, state, county, city, or other
35 governmental entity; or (b) the land's zoning or its presence within an
36 urban growth area designated under RCW 36.70A.110.

37 (7) The assessor shall have the option of requiring an owner of

1 forest land to file a timber management plan with the assessor upon the
2 occurrence of one of the following:

3 (a) An application for designation as forest land is submitted; or

4 (b) Designated forest land is sold or transferred and a notice of
5 continuance, described in subsection (5)(c) of this section, is signed.

6 (8) If land is removed from designation because of any of the
7 circumstances listed in subsection (5)(a) through (c) of this section,
8 the removal shall apply only to the land affected. If land is removed
9 from designation because of subsection (5)(d) of this section, the
10 removal shall apply only to the actual area of land that is no longer
11 primarily devoted to the growing and harvesting of timber, without
12 regard to any other land that may have been included in the application
13 and approved for designation, as long as the remaining designated
14 forest land meets the definition of forest land contained in RCW
15 84.33.035.

16 (9) Within thirty days after the removal of designation as forest
17 land, the assessor shall notify the owner in writing, setting forth the
18 reasons for the removal. The seller, transferor, or owner may appeal
19 the removal to the county board of equalization in accordance with the
20 provisions of RCW 84.40.038.

21 (10) Unless the removal is reversed on appeal a copy of the notice
22 of removal with a notation of the action, if any, upon appeal, together
23 with the legal description or assessor's parcel numbers for the land
24 removed from designation shall, at the expense of the applicant, be
25 filed by the assessor in the same manner as deeds are recorded and a
26 notation of removal from designation shall immediately be made upon the
27 assessment and tax rolls. The assessor shall revalue the land to be
28 removed with reference to its true and fair value as of January 1st of
29 the year of removal from designation. Both the assessed value before
30 and after the removal of designation shall be listed. Taxes based on
31 the value of the land as forest land shall be assessed and payable up
32 until the date of removal and taxes based on the true and fair value of
33 the land shall be assessed and payable from the date of removal from
34 designation.

35 (11) Except as provided in subsection (5)(c), (13), or (14) of this
36 section, a compensating tax shall be imposed on land removed from
37 designation as forest land. The compensating tax shall be due and
38 payable to the treasurer thirty days after the owner is notified of the

1 amount of this tax. As soon as possible after the land is removed from
2 designation, the assessor shall compute the amount of compensating tax
3 and mail a notice to the owner of the amount of compensating tax owed
4 and the date on which payment of this tax is due. The amount of
5 compensating tax shall be equal to the difference between the amount of
6 tax last levied on the land as designated forest land and an amount
7 equal to the new assessed value of the land multiplied by the dollar
8 rate of the last levy extended against the land, multiplied by a
9 number, in no event greater than nine, equal to the number of years for
10 which the land was designated as forest land, plus compensating taxes
11 on the land at forest land values up until the date of removal and the
12 prorated taxes on the land at true and fair value from the date of
13 removal to the end of the current tax year.

14 (12) Compensating tax, together with applicable interest thereon,
15 shall become a lien on the land which shall attach at the time the land
16 is removed from designation as forest land and shall have priority to
17 and shall be fully paid and satisfied before any recognizance,
18 mortgage, judgment, debt, obligation, or responsibility to or with
19 which the land may become charged or liable. The lien may be
20 foreclosed upon expiration of the same period after delinquency and in
21 the same manner provided by law for foreclosure of liens for delinquent
22 real property taxes as provided in RCW 84.64.050. Any compensating tax
23 unpaid on its due date shall thereupon become delinquent. From the
24 date of delinquency until paid, interest shall be charged at the same
25 rate applied by law to delinquent ad valorem property taxes.

26 (13) The compensating tax specified in subsection (11) of this
27 section shall not be imposed if the removal of designation under
28 subsection (5) of this section resulted solely from:

29 (a) Transfer to a government entity in exchange for other forest
30 land located within the state of Washington;

31 (b) A taking through the exercise of the power of eminent domain,
32 or sale or transfer to an entity having the power of eminent domain in
33 anticipation of the exercise of such power;

34 (c) A donation of fee title, development rights, or the right to
35 harvest timber, to a government agency or organization qualified under
36 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
37 sections, or the sale or transfer of fee title to a governmental entity
38 or a nonprofit nature conservancy corporation, as defined in RCW

1 64.04.130, exclusively for the protection and conservation of lands
2 recommended for state natural area preserve purposes by the natural
3 heritage council and natural heritage plan as defined in chapter 79.70
4 RCW or approved for state natural resources conservation area purposes
5 as defined in chapter 79.71 RCW. At such time as the land is not used
6 for the purposes enumerated, the compensating tax specified in
7 subsection (11) of this section shall be imposed upon the current
8 owner;

9 (d) The sale or transfer of fee title to the parks and recreation
10 commission for park and recreation purposes;

11 (e) Official action by an agency of the state of Washington or by
12 the county or city within which the land is located that disallows the
13 present use of the land;

14 (f) The creation, sale, or transfer of forestry riparian easements
15 under RCW 76.13.120;

16 (g) The creation, sale, or transfer of a ~~((fee interest or a))~~
17 ~~conservation easement ((for the riparian open space program))~~ of
18 private forest lands within unconfined channel migration zones or
19 containing critical habitat for threatened or endangered species under
20 RCW 76.09.040; or

21 (h) The sale or transfer of land within two years after the death
22 of the owner of at least a fifty percent interest in the land if the
23 land has been assessed and valued as classified forest land, designated
24 as forest land under this chapter, or classified under chapter 84.34
25 RCW continuously since 1993. The date of death shown on a death
26 certificate is the date used for the purposes of this subsection
27 (13)(h).

28 (14) In a county with a population of more than one million
29 inhabitants, the compensating tax specified in subsection (11) of this
30 section shall not be imposed if the removal of designation as forest
31 land under subsection (5) of this section resulted solely from:

32 (a) An action described in subsection (13) of this section; or

33 (b) A transfer of a property interest to a government entity, or to
34 a nonprofit historic preservation corporation or nonprofit nature
35 conservancy corporation, as defined in RCW 64.04.130, to protect or
36 enhance public resources, or to preserve, maintain, improve, restore,
37 limit the future use of, or otherwise to conserve for public use or

1 enjoyment, the property interest being transferred. At such time as
2 the property interest is not used for the purposes enumerated, the
3 compensating tax shall be imposed upon the current owner.

4 **Sec. 3.** RCW 84.34.108 and 2007 c 54 s 25 are each amended to read
5 as follows:

6 (1) When land has once been classified under this chapter, a
7 notation of the classification shall be made each year upon the
8 assessment and tax rolls and the land shall be valued pursuant to RCW
9 84.34.060 or 84.34.065 until removal of all or a portion of the
10 classification by the assessor upon occurrence of any of the following:

11 (a) Receipt of notice from the owner to remove all or a portion of
12 the classification;

13 (b) Sale or transfer to an ownership, except a transfer that
14 resulted from a default in loan payments made to or secured by a
15 governmental agency that intends to or is required by law or regulation
16 to resell the property for the same use as before, making all or a
17 portion of the land exempt from ad valorem taxation;

18 (c) Sale or transfer of all or a portion of the land to a new
19 owner, unless the new owner has signed a notice of classification
20 continuance, except transfer to an owner who is an heir or devisee of
21 a deceased owner shall not, by itself, result in removal of
22 classification. The notice of continuance shall be on a form prepared
23 by the department. If the notice of continuance is not signed by the
24 new owner and attached to the real estate excise tax affidavit, all
25 additional taxes calculated pursuant to subsection (4) of this section
26 shall become due and payable by the seller or transferor at time of
27 sale. The auditor shall not accept an instrument of conveyance
28 regarding classified land for filing or recording unless the new owner
29 has signed the notice of continuance or the additional tax has been
30 paid, as evidenced by the real estate excise tax stamp affixed thereto
31 by the treasurer. The seller, transferor, or new owner may appeal the
32 new assessed valuation calculated under subsection (4) of this section
33 to the county board of equalization in accordance with the provisions
34 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board
35 of equalization to hear these appeals;

36 (d) Determination by the assessor, after giving the owner written
37 notice and an opportunity to be heard, that all or a portion of the

1 land no longer meets the criteria for classification under this
2 chapter. The criteria for classification pursuant to this chapter
3 continue to apply after classification has been granted.

4 The granting authority, upon request of an assessor, shall provide
5 reasonable assistance to the assessor in making a determination whether
6 the land continues to meet the qualifications of RCW 84.34.020 (1) or
7 (3). The assistance shall be provided within thirty days of receipt of
8 the request.

9 (2) Land may not be removed from classification because of:

10 (a) The creation, sale, or transfer of forestry riparian easements
11 under RCW 76.13.120; or

12 (b) The creation, sale, or transfer of a fee interest or a
13 conservation easement for the riparian open space program under RCW
14 76.09.040.

15 (3) Within thirty days after such removal of all or a portion of
16 the land from current use classification, the assessor shall notify the
17 owner in writing, setting forth the reasons for the removal. The
18 seller, transferor, or owner may appeal the removal to the county board
19 of equalization in accordance with the provisions of RCW 84.40.038.

20 (4) Unless the removal is reversed on appeal, the assessor shall
21 revalue the affected land with reference to its true and fair value on
22 January 1st of the year of removal from classification. Both the
23 assessed valuation before and after the removal of classification shall
24 be listed and taxes shall be allocated according to that part of the
25 year to which each assessed valuation applies. Except as provided in
26 subsection (6) of this section, an additional tax, applicable interest,
27 and penalty shall be imposed which shall be due and payable to the
28 treasurer thirty days after the owner is notified of the amount of the
29 additional tax. As soon as possible, the assessor shall compute the
30 amount of additional tax, applicable interest, and penalty and the
31 treasurer shall mail notice to the owner of the amount thereof and the
32 date on which payment is due. The amount of the additional tax,
33 applicable interest, and penalty shall be determined as follows:

34 (a) The amount of additional tax shall be equal to the difference
35 between the property tax paid as "open space land," "farm and
36 agricultural land," or "timber land" and the amount of property tax
37 otherwise due and payable for the seven years last past had the land
38 not been so classified;

1 (b) The amount of applicable interest shall be equal to the
2 interest upon the amounts of the additional tax paid at the same
3 statutory rate charged on delinquent property taxes from the dates on
4 which the additional tax could have been paid without penalty if the
5 land had been assessed at a value without regard to this chapter;

6 (c) The amount of the penalty shall be as provided in RCW
7 84.34.080. The penalty shall not be imposed if the removal satisfies
8 the conditions of RCW 84.34.070.

9 (5) Additional tax, applicable interest, and penalty, shall become
10 a lien on the land which shall attach at the time the land is removed
11 from classification under this chapter and shall have priority to and
12 shall be fully paid and satisfied before any recognizance, mortgage,
13 judgment, debt, obligation or responsibility to or with which the land
14 may become charged or liable. This lien may be foreclosed upon
15 expiration of the same period after delinquency and in the same manner
16 provided by law for foreclosure of liens for delinquent real property
17 taxes as provided in RCW 84.64.050. Any additional tax unpaid on its
18 due date shall thereupon become delinquent. From the date of
19 delinquency until paid, interest shall be charged at the same rate
20 applied by law to delinquent ad valorem property taxes.

21 (6) The additional tax, applicable interest, and penalty specified
22 in subsection (4) of this section shall not be imposed if the removal
23 of classification pursuant to subsection (1) of this section resulted
24 solely from:

25 (a) Transfer to a government entity in exchange for other land
26 located within the state of Washington;

27 (b)(i) A taking through the exercise of the power of eminent
28 domain, or (ii) sale or transfer to an entity having the power of
29 eminent domain in anticipation of the exercise of such power, said
30 entity having manifested its intent in writing or by other official
31 action;

32 (c) A natural disaster such as a flood, windstorm, earthquake, or
33 other such calamity rather than by virtue of the act of the landowner
34 changing the use of the property;

35 (d) Official action by an agency of the state of Washington or by
36 the county or city within which the land is located which disallows the
37 present use of the land;

1 (e) Transfer of land to a church when the land would qualify for
2 exemption pursuant to RCW 84.36.020;

3 (f) Acquisition of property interests by state agencies or agencies
4 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
5 purposes enumerated in those sections. At such time as these property
6 interests are not used for the purposes enumerated in RCW 84.34.210 and
7 64.04.130 the additional tax specified in subsection (4) of this
8 section shall be imposed;

9 (g) Removal of land classified as farm and agricultural land under
10 RCW 84.34.020(2)(e);

11 (h) Removal of land from classification after enactment of a
12 statutory exemption that qualifies the land for exemption and receipt
13 of notice from the owner to remove the land from classification;

14 (i) The creation, sale, or transfer of forestry riparian easements
15 under RCW 76.13.120;

16 (j) The creation, sale, or transfer of a ~~((fee interest or a))~~
17 conservation easement ~~((for the riparian open space program))~~ of
18 private forest lands within unconfined channel migration zones or
19 containing critical habitat for threatened or endangered species under
20 RCW 76.09.040; or

21 (k) The sale or transfer of land within two years after the death
22 of the owner of at least a fifty percent interest in the land if the
23 land has been assessed and valued as classified forest land, designated
24 as forest land under chapter 84.33 RCW, or classified under this
25 chapter continuously since 1993. The date of death shown on a death
26 certificate is the date used for the purposes of this subsection
27 (6)(k).

28 **Sec. 4.** RCW 76.09.020 and 2003 c 311 s 3 are each amended to read
29 as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Adaptive management" means reliance on scientific methods to
33 test the results of actions taken so that the management and related
34 policy can be changed promptly and appropriately.

35 (2) "Appeals board" means the forest practices appeals board
36 created by RCW 76.09.210.

1 (3) "Aquatic resources" includes water quality, salmon, other
2 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
3 identified in the forests and fish report, the Columbia torrent
4 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
5 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
6 *olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's
7 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
8 their respective habitats.

9 (4) "Commissioner" means the commissioner of public lands.

10 (5) "Contiguous" means land adjoining or touching by common corner
11 or otherwise. Land having common ownership divided by a road or other
12 right-of-way shall be considered contiguous.

13 (6) "Conversion to a use other than commercial timber operation"
14 means a bona fide conversion to an active use which is incompatible
15 with timber growing and as may be defined by forest practices rules.

16 (7) "Department" means the department of natural resources.

17 (8) "Fish passage barrier" means any artificial instream structure
18 that impedes the free passage of fish.

19 (9) "Forest land" means all land which is capable of supporting a
20 merchantable stand of timber and is not being actively used for a use
21 which is incompatible with timber growing. Forest land does not
22 include agricultural land that is or was enrolled in the conservation
23 reserve enhancement program by contract if such agricultural land was
24 historically used for agricultural purposes and the landowner intends
25 to continue to use the land for agricultural purposes in the future.
26 As it applies to the operation of the road maintenance and abandonment
27 plan element of the forest practices rules on small forest landowners,
28 the term "forest land" excludes:

29 (a) Residential home sites, which may include up to five acres; and

30 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
31 and the land on which appurtenances necessary to the production,
32 preparation, or sale of crops, fruit, dairy products, fish, and
33 livestock exist.

34 (10) "Forest landowner" means any person in actual control of
35 forest land, whether such control is based either on legal or equitable
36 title, or on any other interest entitling the holder to sell or
37 otherwise dispose of any or all of the timber on such land in any
38 manner. However, any lessee or other person in possession of forest

1 land without legal or equitable title to such land shall be excluded
2 from the definition of "forest landowner" unless such lessee or other
3 person has the right to sell or otherwise dispose of any or all of the
4 timber located on such forest land.

5 (11) "Forest practice" means any activity conducted on or directly
6 pertaining to forest land and relating to growing, harvesting, or
7 processing timber, including but not limited to:

- 8 (a) Road and trail construction;
- 9 (b) Harvesting, final and intermediate;
- 10 (c) Precommercial thinning;
- 11 (d) Reforestation;
- 12 (e) Fertilization;
- 13 (f) Prevention and suppression of diseases and insects;
- 14 (g) Salvage of trees; and
- 15 (h) Brush control.

16 "Forest practice" shall not include preparatory work such as tree
17 marking, surveying and road flagging, and removal or harvesting of
18 incidental vegetation from forest lands such as berries, ferns,
19 greenery, mistletoe, herbs, mushrooms, and other products which cannot
20 normally be expected to result in damage to forest soils, timber, or
21 public resources.

22 (12) "Forest practices rules" means any rules adopted pursuant to
23 RCW 76.09.040.

24 (13) "Forest road," as it applies to the operation of the road
25 maintenance and abandonment plan element of the forest practices rules
26 on small forest landowners, means a road or road segment that crosses
27 land that meets the definition of forest land, but excludes residential
28 access roads.

29 (14) "Forest trees" does not include hardwood trees cultivated by
30 agricultural methods in growing cycles shorter than fifteen years if
31 the trees were planted on land that was not in forest use immediately
32 before the trees were planted and before the land was prepared for
33 planting the trees. "Forest trees" includes Christmas trees, but does
34 not include Christmas trees that are cultivated by agricultural
35 methods, as that term is defined in RCW 84.33.035.

36 (15) "Forests and fish report" means the forests and fish report to
37 the board dated April 29, 1999.

1 (16) "Application" means the application required pursuant to RCW
2 76.09.050.

3 (17) "Operator" means any person engaging in forest practices
4 except an employee with wages as his or her sole compensation.

5 (18) "Person" means any individual, partnership, private, public,
6 or municipal corporation, county, the department or other state or
7 local governmental entity, or association of individuals of whatever
8 nature.

9 (19) "Public resources" means water, fish and wildlife, and in
10 addition shall mean capital improvements of the state or its political
11 subdivisions.

12 (20) "Small forest landowner" has the same meaning as defined in
13 RCW 76.09.450.

14 (21) "Timber" means forest trees, standing or down, of a commercial
15 species, including Christmas trees. However, "timber" does not include
16 Christmas trees that are cultivated by agricultural methods, as that
17 term is defined in RCW 84.33.035.

18 (22) "Timber owner" means any person having all or any part of the
19 legal interest in timber. Where such timber is subject to a contract
20 of sale, "timber owner" shall mean the contract purchaser.

21 (23) "Board" means the forest practices board created in RCW
22 76.09.030.

23 (24) "Unconfined (~~avulsing~~) channel migration zone" means the
24 area within which the active channel of an unconfined (~~avulsing~~)
25 stream is prone to move and where the movement would result in a
26 potential near-term loss of riparian forest adjacent to the stream.
27 Sizeable islands with productive timber may exist within the zone.

28 (25) "Unconfined (~~avulsing~~) stream" means generally fifth order
29 or larger waters that experience abrupt shifts in channel location,
30 creating a complex floodplain characterized by extensive gravel bars,
31 disturbance species of vegetation of variable age, numerous side
32 channels, wall-based channels, oxbow lakes, and wetland complexes.
33 Many of these streams have dikes and levees that may temporarily or
34 permanently restrict channel movement.

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