

2ESSB 6406 - H AMD 1436

By Representative Blake

ADOPTED AS AMENDED 04/10/2012

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that significant
4 opportunities exist to modify programs that provide for management and
5 protection of the state's natural resources, including the state's
6 forests, fish, and wildlife, in order to streamline regulatory
7 processes and achieve program efficiencies while at the same time
8 increasing the sustainability of program funding and maintaining
9 current levels of natural resource protection. The legislature intends
10 to update provisions relating to natural resource management and
11 regulatory programs including the hydraulic project approval program,
12 forest practices act, and state environmental policy act, in order to
13 achieve these opportunities.

14 **PART ONE**

15 **Hydraulic Project Approvals**

16 **Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and
17 amended to read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1) "Bed" means the land below the ordinary high water lines of
21 state waters. This definition does not include irrigation ditches,
22 canals, storm water runoff devices, or other artificial watercourses
23 except where they exist in a natural watercourse that has been altered
24 artificially.

25 (2) "Board" means the pollution control hearings board created in
26 chapter 43.21B RCW.

27 (3) "Commission" means the state fish and wildlife commission.

1 (4) "Date of receipt" has the same meaning as defined in RCW
2 43.21B.001.

3 (5) "Department" means the department of fish and wildlife.

4 (6) "Director" means the director of the department of fish and
5 wildlife.

6 (7) "Emergency" means an immediate threat to life, the public,
7 property, or of environmental degradation.

8 (8) "Hydraulic project" means the construction or performance of
9 work that will use, divert, obstruct, or change the natural flow or bed
10 of any of the salt or freshwaters of the state.

11 (9) "Imminent danger" means a threat by weather, water flow, or
12 other natural conditions that is likely to occur within sixty days of
13 a request for a permit application.

14 (10) "Marina" means a public or private facility providing boat
15 moorage space, fuel, or commercial services. Commercial services
16 include but are not limited to overnight or live-aboard boating
17 accommodations.

18 (11) "Marine terminal" means a public or private commercial wharf
19 located in the navigable water of the state and used, or intended to be
20 used, as a port or facility for the storing, handling, transferring, or
21 transporting of goods to and from vessels.

22 (12) "Ordinary high water line" means the mark on the shores of all
23 water that will be found by examining the bed and banks and
24 ascertaining where the presence and action of waters are so common and
25 usual, and so long continued in ordinary years as to mark upon the soil
26 or vegetation a character distinct from the abutting upland. Provided,
27 that in any area where the ordinary high water line cannot be found,
28 the ordinary high water line adjoining saltwater is the line of mean
29 higher high water and the ordinary high water line adjoining freshwater
30 is the elevation of the mean annual flood.

31 (13) "Permit" means a hydraulic project approval permit issued
32 under this chapter.

33 (14) "Sandbars" includes, but is not limited to, sand, gravel,
34 rock, silt, and sediments.

35 (15) "Small scale prospecting and mining" means the use of only the
36 following methods: Pans; nonmotorized sluice boxes; concentrators; and
37 minirocker boxes for the discovery and recovery of minerals.

1 (16) "Spartina," "purple loosestrife," and "aquatic noxious weeds"
2 have the same meanings as defined in RCW 17.26.020.

3 (17) "Streambank stabilization" means those projects that prevent
4 or limit erosion, slippage, and mass wasting. These projects include,
5 but are not limited to, bank resloping, log and debris relocation or
6 removal, planting of woody vegetation, bank protection using rock or
7 woody material or placement of jetties or groins, gravel removal, or
8 erosion control.

9 (18) "Tide gate" means a one-way check valve that prevents the
10 backflow of tidal water.

11 (19) "Waters of the state" and "state waters" means all salt and
12 freshwaters waterward of the ordinary high water line and within the
13 territorial boundary of the state.

14 (20) "Emergency permit" means a verbal hydraulic project approval
15 or the written follow-up to the verbal approval issued to a person
16 under RCW 77.55.021(12).

17 (21) "Expedited permit" means a hydraulic project approval issued
18 to a person under RCW 77.55.021 (14) and (16).

19 (22) "Forest practices hydraulic project" means a hydraulic project
20 that requires a forest practices application or notification under
21 chapter 76.09 RCW.

22 (23) "Multiple site permit" means a hydraulic project approval
23 issued to a person under RCW 77.55.021 for hydraulic projects occurring
24 at more than one specific location and which includes site-specific
25 requirements.

26 (24) "Pamphlet hydraulic project" means a hydraulic project for the
27 removal or control of aquatic noxious weeds conducted under the aquatic
28 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
29 prospecting and mining conducted under the gold and fish pamphlet
30 authorized by RCW 77.55.091.

31 (25) "Permit modification" means a hydraulic project approval
32 issued to a person under RCW 77.55.021 that extends, renews, or changes
33 the conditions of a previously issued hydraulic project approval.

34 **Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to
35 read as follows:

36 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
37 77.55.041, and section 201 of this act, in the event that any person or

1 government agency desires to undertake a hydraulic project, the person
2 or government agency shall, before commencing work thereon, secure the
3 approval of the department in the form of a permit as to the adequacy
4 of the means proposed for the protection of fish life.

5 (2) A complete written application for a permit may be submitted in
6 person or by registered mail and must contain the following:

7 (a) General plans for the overall project;

8 (b) Complete plans and specifications of the proposed construction
9 or work within the mean higher high water line in saltwater or within
10 the ordinary high water line in freshwater;

11 (c) Complete plans and specifications for the proper protection of
12 fish life; (~~and~~)

13 (d) Notice of compliance with any applicable requirements of the
14 state environmental policy act, unless otherwise provided for in this
15 chapter; and

16 (e) Payment of all applicable application fees charged by the
17 department under section 103 of this act.

18 (3) The department may establish direct billing accounts or other
19 funds transfer methods with permit applicants to satisfy the fee
20 payment requirements of section 103 of this act.

21 (4) The department may accept complete, written applications as
22 provided in this section for multiple site permits and may issue these
23 permits. For multiple site permits, each specific location must be
24 identified.

25 (5) With the exception of emergency permits as provided in
26 subsection (12) of this section, applications for permits must be
27 submitted to the department's headquarters office in Olympia. Requests
28 for emergency permits as provided in subsection (12) of this section
29 may be made to the permitting biologist assigned to the location in
30 which the emergency occurs, to the department's regional office in
31 which the emergency occurs, or to the department's headquarters office.

32 (6) Except as provided for emergency permits in subsection (12) of
33 this section, the department may not proceed with permit review until
34 all fees are paid in full as required in section 103 of this act.

35 (7)(a) Protection of fish life is the only ground upon which
36 approval of a permit may be denied or conditioned. Approval of a
37 permit may not be unreasonably withheld or unreasonably conditioned.

1 ~~(b)~~ Except as provided in this subsection and subsections ~~((+8),~~
2 ~~(+10), and)~~ (12) through (14) and (16) of this section, the department
3 has forty-five calendar days upon receipt of a complete application to
4 grant or deny approval of a permit. The forty-five day requirement is
5 suspended if:

6 (i) After ten working days of receipt of the application, the
7 applicant remains unavailable or unable to arrange for a timely field
8 evaluation of the proposed project;

9 (ii) The site is physically inaccessible for inspection;

10 (iii) The applicant requests a delay; or

11 (iv) The department is issuing a permit for a storm water discharge
12 and is complying with the requirements of RCW 77.55.161(3)(b).

13 ~~((+b))~~ (c) Immediately upon determination that the forty-five day
14 period is suspended under (b) of this subsection, the department shall
15 notify the applicant in writing of the reasons for the delay.

16 ~~((+e))~~ (d) The period of forty-five calendar days may be extended
17 if the permit is part of a multiagency permit streamlining effort and
18 all participating permitting agencies and the permit applicant agree to
19 an extended timeline longer than forty-five calendar days.

20 ~~((+4))~~ (8) If the department denies approval of a permit, the
21 department shall provide the applicant a written statement of the
22 specific reasons why and how the proposed project would adversely
23 affect fish life.

24 (a) Except as provided in (b) of this subsection, issuance, denial,
25 conditioning, or modification of a permit shall be appealable to the
26 board within thirty days from the date of receipt of the decision as
27 provided in RCW 43.21B.230.

28 (b) Issuance, denial, conditioning, or modification of a permit may
29 be informally appealed to the department within thirty days from the
30 date of receipt of the decision. Requests for informal appeals must be
31 filed in the form and manner prescribed by the department by rule. A
32 permit decision that has been informally appealed to the department is
33 appealable to the board within thirty days from the date of receipt of
34 the department's decision on the informal appeal.

35 ~~((+5))~~ (9)(a) The permittee must demonstrate substantial progress
36 on construction of that portion of the project relating to the permit
37 within two years of the date of issuance.

1 (b) Approval of a permit is valid for (~~a period of~~) up to five
2 years from the date of issuance, except as provided in (c) of this
3 subsection and in RCW 77.55.151.

4 (c) A permit remains in effect without need for periodic renewal
5 for hydraulic projects that divert water for agricultural irrigation or
6 stock watering purposes and that involve seasonal construction or other
7 work. A permit for streambank stabilization projects to protect farm
8 and agricultural land as defined in RCW 84.34.020 remains in effect
9 without need for periodic renewal if the problem causing the need for
10 the streambank stabilization occurs on an annual or more frequent
11 basis. The permittee must notify the appropriate agency before
12 commencing the construction or other work within the area covered by
13 the permit.

14 (~~(6)~~) (10) The department may, after consultation with the
15 permittee, modify a permit due to changed conditions. A modification
16 under this subsection is not subject to the fees provided under section
17 103 of this act. The modification is appealable as provided in
18 subsection (~~(4)~~) (8) of this section. For a hydraulic project(~~(s)~~)
19 that diverts water for agricultural irrigation or stock watering
20 purposes, (~~(e)~~) when the hydraulic project or other work is associated
21 with streambank stabilization to protect farm and agricultural land as
22 defined in RCW 84.34.020, the burden is on the department to show that
23 changed conditions warrant the modification in order to protect fish
24 life.

25 (~~(7)~~) (11) A permittee may request modification of a permit due
26 to changed conditions. The request must be processed within forty-five
27 calendar days of receipt of the written request and payment of
28 applicable fees under section 103 of this act. A decision by the
29 department is appealable as provided in subsection (~~(4)~~) (8) of this
30 section. For a hydraulic project(~~(s)~~) that diverts water for
31 agricultural irrigation or stock watering purposes, (~~(e)~~) when the
32 hydraulic project or other work is associated with streambank
33 stabilization to protect farm and agricultural land as defined in RCW
34 84.34.020, the burden is on the permittee to show that changed
35 conditions warrant the requested modification and that such a
36 modification will not impair fish life.

37 (~~(8)~~) (12)(a) The department, the county legislative authority,
38 or the governor may declare and continue an emergency. If the county

1 legislative authority declares an emergency under this subsection, it
2 shall immediately notify the department. A declared state of emergency
3 by the governor under RCW 43.06.010 shall constitute a declaration
4 under this subsection.

5 (b) The department, through its authorized representatives, shall
6 issue immediately, upon request, ~~((oral))~~ verbal approval for a stream
7 crossing, or work to remove any obstructions, repair existing
8 structures, restore streambanks, protect fish life, or protect property
9 threatened by the stream or a change in the stream flow without the
10 necessity of obtaining a written permit prior to commencing work.
11 Conditions of the emergency ~~((oral))~~ verbal permit must be
12 ~~((established by the department and))~~ reduced to writing within thirty
13 days and complied with as provided for in this chapter.

14 (c) The department may not require the provisions of the state
15 environmental policy act, chapter 43.21C RCW, to be met as a condition
16 of issuing a permit under this subsection.

17 ~~((+9))~~ (d) The department may not charge a person requesting an
18 emergency permit any of the fees authorized by section 103 of this act
19 until after the emergency permit is issued and reduced to writing.

20 (13) All state and local agencies with authority under this chapter
21 to issue permits or other authorizations in connection with emergency
22 water withdrawals and facilities authorized under RCW 43.83B.410 shall
23 expedite the processing of such permits or authorizations in keeping
24 with the emergency nature of such requests and shall provide a decision
25 to the applicant within fifteen calendar days of the date of
26 application.

27 ~~((+10))~~ (14) The department or the county legislative authority
28 may determine an imminent danger exists. The county legislative
29 authority shall notify the department, in writing, if it determines
30 that an imminent danger exists. In cases of imminent danger, the
31 department shall issue an expedited written permit, upon request, for
32 work to remove any obstructions, repair existing structures, restore
33 banks, protect fish resources, or protect property. Expedited permit
34 requests require a complete written application as provided in
35 subsection (2) of this section and must be issued within fifteen
36 calendar days of the receipt of a complete written application.
37 Approval of an expedited permit is valid for up to sixty days from the

1 date of issuance. The department may not require the provisions of the
2 state environmental policy act, chapter 43.21C RCW, to be met as a
3 condition of issuing a permit under this subsection.

4 ~~((+11+))~~ (15)(a) For any property, except for property located on
5 a marine shoreline, that has experienced at least two consecutive years
6 of flooding or erosion that has damaged or has threatened to damage a
7 major structure, water supply system, septic system, or access to any
8 road or highway, the county legislative authority may determine that a
9 chronic danger exists. The county legislative authority shall notify
10 the department, in writing, when it determines that a chronic danger
11 exists. In cases of chronic danger, the department shall issue a
12 permit, upon request, for work necessary to abate the chronic danger by
13 removing any obstructions, repairing existing structures, restoring
14 banks, restoring road or highway access, protecting fish resources, or
15 protecting property. Permit requests must be made and processed in
16 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

17 (b) Any projects proposed to address a chronic danger identified
18 under (a) of this subsection that satisfies the project description
19 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
20 of the state environmental policy act, chapter 43.21C RCW. However,
21 the project is subject to the review process established in RCW
22 77.55.181(3) as if it were a fish habitat improvement project.

23 ~~((+12+))~~ (16) The department may issue an expedited written permit
24 in those instances where normal permit processing would result in
25 significant hardship for the applicant or unacceptable damage to the
26 environment. Expedited permit requests require a complete written
27 application as provided in subsection (2) of this section and must be
28 issued within fifteen calendar days of the receipt of a complete
29 written application. Approval of an expedited permit is valid for up
30 to sixty days from the date of issuance. The department may not
31 require the provisions of the state environmental policy act, chapter
32 43.21C RCW, to be met as a condition of issuing a permit under this
33 subsection.

34 NEW SECTION. **Sec. 103.** A new section is added to chapter 77.55
35 RCW to read as follows:

36 (1) The department shall charge an application fee of one hundred
37 fifty dollars for a hydraulic project permit or permit modification

1 issued under RCW 77.55.021 where the project is located at or below the
2 ordinary high water line. The application fee established under this
3 subsection may not be charged after June 30, 2017.

4 (2) The following hydraulic projects are exempt from all fees
5 listed under this section:

6 (a) Hydraulic projects approved under applicant-funded contracts
7 with the department that pay for the costs of processing those
8 projects;

9 (b) If sections 201 through 203 of this act are enacted into law by
10 June 30, 2012, forest practices hydraulic projects;

11 (c) Pamphlet hydraulic projects;

12 (d) Mineral prospecting and mining activities; and

13 (e) Hydraulic projects occurring on farm and agricultural land, as
14 that term is defined in RCW 84.34.020.

15 (3) All fees collected under this section must be deposited in the
16 hydraulic project approval account created in section 104 of this act.

17 (4) The fee provisions contained in this section are prospective
18 only. The department of fish and wildlife may not charge fees for
19 hydraulic project permits issued under this title prior to the
20 effective date of this section.

21 (5) This section expires June 30, 2017.

22 NEW SECTION. **Sec. 104.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 (1) The hydraulic project approval account is created in the state
25 treasury. All receipts from application fees for hydraulic project
26 approval applications collected under section 103 of this act must be
27 deposited into the account.

28 (2) Except for unanticipated receipts under RCW 43.79.260 through
29 43.79.282, moneys in the hydraulic project approval account may be
30 spent only after appropriation.

31 (3) Expenditures from the hydraulic project approval account may be
32 used only to fund department activities relating to implementing and
33 operating the hydraulic project approval program.

34 **Sec. 105.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to
35 read as follows:

36 (1) (~~For a marina or marine terminal in existence on June 6, 1996,~~

1 ~~or a marina or marine terminal that has received a permit for its~~
2 ~~initial construction, a renewable, five-year permit shall be issued,~~
3 ~~upon request, for regular maintenance activities of the marina or~~
4 ~~marine terminal.~~

5 ~~(2) Upon construction of a new marina or marine terminal that has~~
6 ~~received a permit, a renewable, five-year permit shall be issued, upon~~
7 ~~request, for regular maintenance activities of the marina or marine~~
8 ~~terminal.~~

9 ~~(3) For the purposes of this section, regular maintenance~~
10 ~~activities are only those activities necessary to restore the marina or~~
11 ~~marine terminal to the conditions approved in the initial permit.~~
12 ~~These activities may include, but are not limited to, dredging, piling~~
13 ~~replacement, and float replacement.~~

14 ~~(4))~~ Upon application under RCW 77.55.021, the department shall
15 issue a renewable, five-year permit to a marina or marine terminal for
16 its regular maintenance activities identified in the application.

17 (2) For the purposes of this section, regular maintenance
18 activities may include, but are not limited to:

19 (a) Maintenance or repair of a boat ramp, launch, or float within
20 the existing footprint;

21 (b) Maintenance or repair of an existing overwater structure within
22 the existing footprint;

23 (c) Maintenance or repair of boat lifts or railway launches;

24 (d) Maintenance or repair of pilings, including the replacement of
25 bumper pilings;

26 (e) Dredging of less than fifty cubic yards;

27 (f) Maintenance or repair of shoreline armoring or bank protection;

28 (g) Maintenance or repair of wetland, riparian, or estuarine
29 habitat; and

30 (h) Maintenance or repair of an existing outfall.

31 (3) The five-year permit must include a requirement that a
32 fourteen-day notice be given to the department before regular
33 maintenance activities begin.

34 (4) A permit under this section is subject to the application fee
35 provided in section 103 of this act.

36 **Sec. 106.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
37 read as follows:

1 (1) Conditions imposed upon a permit must be reasonably related to
2 the project. The permit conditions must ensure that the project
3 provides proper protection for fish life, but the department may not
4 impose conditions that attempt to optimize conditions for fish life
5 that are out of proportion to the impact of the proposed project.

6 (2) The permit must contain provisions allowing for minor
7 modifications to the plans and specifications without requiring
8 reissuance of the permit.

9 (3) The permit must contain provisions that allow for minor
10 modifications to the required work timing without requiring the
11 reissuance of the permit. "Minor modifications to the required work
12 timing" means a minor deviation from the timing window set forth in the
13 permit when there are no spawning or incubating fish present within the
14 vicinity of the project.

15 NEW SECTION. Sec. 107. A new section is added to chapter 77.55
16 RCW to read as follows:

17 The department shall prepare and distribute technical and
18 educational information to the general public to assist the public in
19 complying with the requirements of this chapter, including the changes
20 resulting from this act.

21 NEW SECTION. Sec. 108. A new section is added to chapter 77.55
22 RCW to read as follows:

23 The department shall develop a system to provide local governments,
24 affected tribes, and other interested parties with access to hydraulic
25 project approval applications.

26 NEW SECTION. Sec. 109. The director of fish and wildlife shall
27 adopt any rules required or deemed necessary to implement RCW
28 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103, 104, 107,
29 and 108 of this act.

30 **PART TWO**

31 **Hydraulic Project**

32 **Approval and Forest Practices Integration**

1 NEW SECTION. **Sec. 201.** A new section is added to chapter 77.55
2 RCW to read as follows:

3 (1) The requirements of this chapter do not apply to any forest
4 practices hydraulic project, or to any activities that are associated
5 with such a project, upon incorporation of fish protection standards
6 adopted under this chapter into the forest practices rules and approval
7 of technical guidance as required under RCW 76.09.040, at which time
8 these projects are regulated under chapter 76.09 RCW.

9 (2) The department must continue to conduct regulatory and
10 enforcement activities under this chapter for forest practices
11 hydraulic projects until the forest practices board incorporates fish
12 protection standards adopted under this chapter into the forest
13 practices rules and approves technical guidance as required under RCW
14 76.09.040.

15 (3) By December 31, 2013, the department shall adopt rules
16 establishing the procedures for the concurrence review process
17 consistent with section 202 of this act. The concurrence review
18 process must allow the department up to thirty days to review forest
19 practices hydraulic projects meeting the criteria under section 202(2)
20 (a) and (b) of this act for consistency with fish protection standards.

21 (4) The department shall notify the department of natural resources
22 prior to beginning a rule-making process that may affect activities
23 regulated under chapter 76.09 RCW.

24 (5) The department shall act consistent with appendix M of the
25 forest and fish report, as the term "forests and fish report" is
26 defined in RCW 76.09.020, when modifying fish protection rules that may
27 affect activities regulated under chapter 76.09 RCW.

28 (6) The department may review and provide comments on any forest
29 practices application. The department shall review, and either verify
30 that the review has occurred or comment on, forest practices
31 applications that include a forest practices hydraulic project
32 involving fish bearing waters or shorelines of the state, as that term
33 is defined in RCW 90.58.030. Prior to commenting and whenever
34 reasonably practicable, the department shall communicate with the
35 applicant regarding the substance of the project.

36 (7) The department shall participate in effectiveness monitoring
37 for forest practices hydraulic projects through its role in the review

1 processes provided under WAC 222-08-160 as it existed on the effective
2 date of this section.

3 NEW SECTION. **Sec. 202.** A new section is added to chapter 76.09
4 RCW to read as follows:

5 (1) The department may request information and technical assistance
6 from the department of fish and wildlife regarding any forest practices
7 hydraulic project regulated under this chapter.

8 (2) A concurrence review process is established for certain forest
9 practices hydraulic projects, as follow:

10 (a) After receiving an application under RCW 76.09.050 that
11 includes a forest practices hydraulic project involving one or more
12 water crossing structures meeting the criteria of (b) of this
13 subsection, the department shall provide all necessary information
14 provided by the applicant to the department of fish and wildlife for
15 concurrence review consistent with section 201(3) of this act. The
16 required information must be transmitted by the department to the
17 department of fish and wildlife as soon as practicable following the
18 receipt of a complete application.

19 (b) The concurrence review process applies only to:

20 (i) Culvert installation or replacement, and repair at or below the
21 bankfull width, as that term is defined in WAC 222-16-010 on the
22 effective date of this section, in fish bearing rivers and streams that
23 exceed five percent gradient;

24 (ii) Bridge construction or replacement, and repair at or below the
25 bankfull width, of fish bearing unconfined streams; or

26 (iii) Fill within the flood level - 100 year, as that term is
27 defined in WAC 222-16-010, as it existed on the effective date of this
28 section, of fish bearing unconfined streams.

29 **Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to
30 read as follows:

31 (1)(a) Where necessary to accomplish the purposes and policies
32 stated in RCW 76.09.010, and to implement the provisions of this
33 chapter, the board shall adopt forest practices rules pursuant to
34 chapter 34.05 RCW and in accordance with the procedures enumerated in
35 this section that:

36 (i) Establish minimum standards for forest practices;

1 (ii) Provide procedures for the voluntary development of resource
2 management plans which may be adopted as an alternative to the minimum
3 standards in (a)(i) of this subsection if the plan is consistent with
4 the purposes and policies stated in RCW 76.09.010 and the plan meets or
5 exceeds the objectives of the minimum standards;

6 (iii) Set forth necessary administrative provisions;

7 (iv) Establish procedures for the collection and administration of
8 forest practice fees as set forth by this chapter; and

9 (v) Allow for the development of watershed analyses.

10 (b) Forest practices rules pertaining to water quality protection
11 shall be adopted by the board after reaching agreement with the
12 director of the department of ecology or the director's designee on the
13 board with respect ~~((thereto))~~ to these rules. All other forest
14 practices rules shall be adopted by the board.

15 (c) Forest practices rules shall be administered and enforced by
16 either the department or the local governmental entity as provided in
17 this chapter. Such rules shall be adopted and administered so as to
18 give consideration to all purposes and policies set forth in RCW
19 76.09.010.

20 (2)(a) The board shall prepare proposed forest practices rules
21 consistent with this section and chapter 34.05 RCW. In addition to any
22 forest practices rules relating to water quality protection proposed by
23 the board, the department of ecology may submit to the board proposed
24 forest practices rules relating to water quality protection.

25 ~~(b)(i) ((Prior to initiating the rule-making process, the proposed
26 rules shall be submitted for review and comments to the department of
27 fish and wildlife and to the counties of the state. After receipt of
28 the proposed forest practices rules, the department of fish and
29 wildlife and the counties of the state shall have thirty days in which
30 to review and submit comments to the board, and to the department of
31 ecology with respect to its proposed rules relating to water quality
32 protection.~~

33 ~~(ii) After the expiration of the thirty day period,))~~ The board
34 ~~((and the department of ecology))~~ shall ~~((jointly))~~ hold one or more
35 hearings on the proposed rules pursuant to chapter 34.05 RCW. Any
36 county representative may propose specific forest practices rules
37 relating to problems existing within the county at the hearings.

1 (~~(iii)~~) (ii) The board may adopt and the department of ecology
2 may approve such proposals if they find the proposals are consistent
3 with the purposes and policies of this chapter.

4 (3)(a) The board shall incorporate into the forest practices rules
5 those fish protection standards in the rules adopted under chapter
6 77.55 RCW, as the rules existed on the effective date of this section,
7 that are applicable to activities regulated under the forest practices
8 rules. If fish protection standards are incorporated by reference, the
9 board shall minimize administrative processes by utilizing the
10 exception from the administrative procedures controlling significant
11 legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation
12 of rules adopted by other state agencies.

13 (b) Thereafter, the board shall incorporate into the forest
14 practices rules any changes to those fish protection standards in the
15 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent
16 with section 201 of this act; and (ii) applicable to activities
17 regulated under the forest practices rules. If fish protection
18 standards are incorporated by reference, the board shall minimize
19 administrative processes by utilizing the exception from the
20 administrative procedures controlling significant legislative rules
21 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted
22 by other state agencies.

23 (c) The board shall establish and maintain technical guidance in
24 the forest practices board manual, as provided under WAC 222-12-090 as
25 it existed on the effective date of this section, to assist with
26 implementation of the standards incorporated into the forest practices
27 rules under this section. The guidance must include best management
28 practices and standard techniques to ensure fish protection.

29 (d) The board must complete the requirements of (a) of this
30 subsection and establish initial technical guidance under (c) of this
31 subsection by December 31, 2013.

32 (4)(a) The board shall establish by rule a program for the
33 acquisition of riparian open space and critical habitat for threatened
34 or endangered species as designated by the board. Acquisition must be
35 a conservation easement. Lands eligible for acquisition are forest
36 lands within unconfined channel migration zones or forest lands
37 containing critical habitat for threatened or endangered species as
38 designated by the board. Once acquired, these lands may be held and

1 managed by the department, transferred to another state agency,
2 transferred to an appropriate local government agency, or transferred
3 to a private nonprofit nature conservancy corporation, as defined in
4 RCW 64.04.130, in fee or transfer of management obligation. The board
5 shall adopt rules governing the acquisition by the state or donation to
6 the state of such interest in lands including the right of refusal if
7 the lands are subject to unacceptable liabilities. The rules shall
8 include definitions of qualifying lands, priorities for acquisition,
9 and provide for the opportunity to transfer such lands with limited
10 warranties and with a description of boundaries that does not require
11 full surveys where the cost of securing the surveys would be
12 unreasonable in relation to the value of the lands conveyed. The rules
13 shall provide for the management of the lands for ecological protection
14 or fisheries enhancement. For the purposes of conservation easements
15 entered into under this section, the following apply:

16 (i) For conveyances of a conservation easement in which the
17 landowner conveys an interest in the trees only, the compensation must
18 include the timber value component, as determined by the cruised volume
19 of any timber located within the channel migration zone or critical
20 habitat for threatened or endangered species as designated by the
21 board, multiplied by the appropriate quality code stumpage value for
22 timber of the same species shown on the appropriate table used for
23 timber harvest excise tax purposes under RCW 84.33.091;

24 (ii) For conveyances of a conservation easement in which the
25 landowner conveys interests in both land and trees, the compensation
26 must include the timber value component in (a)(i) of this subsection
27 plus such portion of the land value component as determined just and
28 equitable by the department. The land value component must be the
29 acreage of qualifying channel migration zone or critical habitat for
30 threatened or endangered species as determined by the board, to be
31 conveyed, multiplied by the average per acre value of all commercial
32 forest land in western Washington or the average for eastern
33 Washington, whichever average is applicable to the qualifying lands.
34 The department must determine the western and eastern Washington
35 averages based on the land value tables established by RCW 84.33.140
36 and revised annually by the department of revenue.

37 (b) Subject to appropriations sufficient to cover the cost of such
38 an acquisition program and the related costs of administering the

1 program, the department must establish a conservation easement in land
2 that an owner tenders for purchase; provided that such lands have been
3 taxed as forest lands and are located within an unconfined channel
4 migration zone or contain critical habitat for threatened or endangered
5 species as designated by the board. Lands acquired under this section
6 shall become riparian or habitat open space. These acquisitions shall
7 not be deemed to trigger the compensating tax of chapters 84.33 and
8 84.34 RCW.

9 (c) Instead of offering to sell interests in qualifying lands,
10 owners may elect to donate the interests to the state.

11 (d) Any acquired interest in qualifying lands by the state under
12 this section shall be managed as riparian open space or critical
13 habitat.

14 NEW SECTION. **Sec. 204.** A new section is added to chapter 77.55
15 RCW to read as follows:

16 (1) The department and the department of natural resources shall
17 enter into and maintain a memorandum of agreement between the two
18 agencies that describes how to implement integration of hydraulic
19 project approvals into forest practices applications consistent with
20 this act.

21 (2) The initial memorandum of agreement required under subsection
22 (1) of this section between the two departments must be executed by
23 December 31, 2012. The memorandum of agreement may be amended as
24 agreed to by the two departments.

25 (3) The department and the department of natural resources shall
26 enter into and maintain an interagency contract to ensure
27 implementation of this act and the memorandum of agreement between the
28 two agencies required under subsection (1) of this section. The
29 contract must include funding provisions for the department's review of
30 forest practices hydraulic projects.

31 **Sec. 205.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to
32 read as follows:

33 (1) The board shall establish by rule which forest practices shall
34 be included within each of the following classes:

35 Class I: Minimal or specific forest practices that have no direct
36 potential for damaging a public resource and that may be conducted

1 without submitting an application or a notification except that when
2 the regulating authority is transferred to a local governmental entity,
3 those Class I forest practices that involve timber harvesting or road
4 construction within "urban growth areas," designated pursuant to
5 chapter 36.70A RCW, are processed as Class IV forest practices, but are
6 not subject to environmental review under chapter 43.21C RCW;

7 Class II: Forest practices which have a less than ordinary
8 potential for damaging a public resource that may be conducted without
9 submitting an application and may begin five calendar days, or such
10 lesser time as the department may determine, after written notification
11 by the operator, in the manner, content, and form as prescribed by the
12 department, is received by the department. However, the work may not
13 begin until all forest practice fees required under RCW 76.09.065 have
14 been received by the department. Class II shall not include forest
15 practices:

16 (a) On forest lands that are being converted to another use;

17 (b) ~~((Which require approvals under the provisions of the
18 hydraulics act, RCW 77.55.021;~~

19 ~~(e))~~ Within "shorelines of the state" as defined in RCW 90.58.030;

20 ~~((d))~~ (c) Excluded from Class II by the board; or

21 ~~((e))~~ (d) Including timber harvesting or road construction within
22 "urban growth areas," designated pursuant to chapter 36.70A RCW, which
23 are Class IV;

24 Class III: Forest practices other than those contained in Class I,
25 II, or IV. A Class III application must be approved or disapproved by
26 the department according to the following timelines; however, the
27 applicant may not begin work on the forest practice until all forest
28 practice fees required under RCW 76.09.065 have been received by the
29 department:

30 (a) Within thirty calendar days from the date the department
31 receives the application(~~(. However, the applicant may not begin work~~
32 on that forest practice until all forest practice fees required under
33 RCW 76.09.065 have been received by the department)) if the application
34 is not subject to concurrence review by the department of fish and
35 wildlife under section 202 of this act; and

36 (b) Within thirty days of the completion of the concurrence review
37 by the department of fish and wildlife if the application is subject to

1 concurrency review by the department of fish and wildlife under section
2 202 of this act;

3 Class IV: Forest practices other than those contained in Class I
4 or II:

5 (a) On forest lands that are being converted to another use;

6 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
7 amended, are not to be reforested because of the likelihood of future
8 conversion to urban development;

9 (c) That involve timber harvesting or road construction on forest
10 lands that are contained within "urban growth areas," designated
11 pursuant to chapter 36.70A RCW, except where the forest landowner
12 provides:

13 (i) A written statement of intent signed by the forest landowner
14 not to convert to a use other than commercial forest product operations
15 for ten years, accompanied by either a written forest management plan
16 acceptable to the department or documentation that the land is enrolled
17 under the provisions of chapter 84.33 or 84.34 RCW; or

18 (ii) A conversion option harvest plan approved by the local
19 governmental entity and submitted to the department as part of the
20 application; and/or

21 (d) Which have a potential for a substantial impact on the
22 environment and therefore require an evaluation by the department as to
23 whether or not a detailed statement must be prepared pursuant to the
24 state environmental policy act, chapter 43.21C RCW. Such evaluation
25 shall be made within (~~ten days from the date the department receives~~
26 ~~the application: PROVIDED, That~~) the timelines established in RCW
27 43.21C.037; however, nothing herein shall be construed to prevent any
28 local or regional governmental entity from determining that a detailed
29 statement must be prepared for an action pursuant to a Class IV forest
30 practice taken by that governmental entity concerning the land on which
31 forest practices will be conducted. Unless the application is subject
32 to concurrency review by the department of fish and wildlife under
33 section 202 of this act, a Class IV application must be approved or
34 disapproved by the department within thirty calendar days from the date
35 the department receives the application(~~, unless the department~~
36 ~~determines that a detailed statement must be made, in which case the~~
37 ~~application must be approved or disapproved by the department within~~
38 ~~sixty calendar days from the date the department receives the~~

1 ~~application, unless the commissioner of public lands, through the~~
2 ~~promulgation of a formal order, determines that the process cannot be~~
3 ~~completed within such period)).~~ If a Class IV application is subject
4 to concurrence review by the department of fish and wildlife under
5 section 202 of this act, then the application must be approved or
6 disapproved by the department within thirty calendar days from the
7 completion of the concurrence review by the department of fish and
8 wildlife. However, the department may extend the timelines applicable
9 to the approval or disapproval of the application an additional thirty
10 calendar days if the department determines that a detailed statement
11 must be made, unless the commissioner of public lands, through the
12 promulgation of a formal order, determines that the process cannot be
13 completed within such a period. However, the applicant may not begin
14 work on that forest practice until all forest practice fees required
15 under RCW 76.09.065 have been received by the department.

16 Forest practices under Classes I, II, and III are exempt from the
17 requirements for preparation of a detailed statement under the state
18 environmental policy act.

19 (2) Except for those forest practices being regulated by local
20 governmental entities as provided elsewhere in this chapter, no Class
21 II, Class III, or Class IV forest practice shall be commenced or
22 continued after January 1, 1975, unless the department has received a
23 notification with regard to a Class II forest practice or approved an
24 application with regard to a Class III or Class IV forest practice
25 containing all information required by RCW 76.09.060 as now or
26 hereafter amended. However, in the event forest practices regulations
27 necessary for the scheduled implementation of this chapter and RCW
28 90.48.420 have not been adopted in time to meet such schedules, the
29 department shall have the authority to regulate forest practices and
30 approve applications on such terms and conditions consistent with this
31 chapter and RCW 90.48.420 and the purposes and policies of RCW
32 76.09.010 until applicable forest practices regulations are in effect.

33 (3) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, if a
35 notification or application is delivered in person to the department by
36 the operator or the operator's agent, the department shall immediately
37 provide a dated receipt thereof. In all other cases, the department
38 shall immediately mail a dated receipt to the operator.

1 (4) Except for those forest practices being regulated by local
2 governmental entities as provided elsewhere in this chapter, forest
3 practices shall be conducted in accordance with the forest practices
4 regulations, orders and directives as authorized by this chapter or the
5 forest practices regulations, and the terms and conditions of any
6 approved applications.

7 (5) Except for those forest practices being regulated by local
8 governmental entities as provided elsewhere in this chapter, the
9 department of natural resources shall notify the applicant in writing
10 of either its approval of the application or its disapproval of the
11 application and the specific manner in which the application fails to
12 comply with the provisions of this section or with the forest practices
13 regulations. Except as provided otherwise in this section, if the
14 department fails to either approve or disapprove an application or any
15 portion thereof within the applicable time limit, the application shall
16 be deemed approved and the operation may be commenced: PROVIDED, That
17 this provision shall not apply to applications which are neither
18 approved nor disapproved pursuant to the provisions of subsection (7)
19 of this section: PROVIDED, FURTHER, That if seasonal field conditions
20 prevent the department from being able to properly evaluate the
21 application, the department may issue an approval conditional upon
22 further review within sixty days(~~(:—PROVIDED, FURTHER, That the~~
23 ~~department shall have until April 1, 1975, to approve or disapprove an~~
24 ~~application involving forest practices allowed to continue to April 1,~~
25 ~~1975, under the provisions of subsection (2) of this section)). Upon~~
26 receipt of any notification or any satisfactorily completed application
27 the department shall in any event no later than two business days after
28 such receipt transmit a copy to the departments of ecology and fish and
29 wildlife, and to the county, city, or town in whose jurisdiction the
30 forest practice is to be commenced. Any comments by such agencies
31 shall be directed to the department of natural resources.

32 (6) For those forest practices regulated by the board and the
33 department, if the county, city, or town believes that an application
34 is inconsistent with this chapter, the forest practices regulations, or
35 any local authority consistent with RCW 76.09.240 as now or hereafter
36 amended, it may so notify the department and the applicant, specifying
37 its objections.

1 (7) For those forest practices regulated by the board and the
2 department, the department shall not approve portions of applications
3 to which a county, city, or town objects if:

4 (a) The department receives written notice from the county, city,
5 or town of such objections within fourteen business days from the time
6 of transmittal of the application to the county, city, or town, or one
7 day before the department acts on the application, whichever is later;
8 and

9 (b) The objections relate to forest lands that are being converted
10 to another use.

11 The department shall either disapprove those portions of such
12 application or appeal the county, city, or town objections to the
13 appeals board. If the objections related to (b) of this subsection are
14 based on local authority consistent with RCW 76.09.240 as now or
15 hereafter amended, the department shall disapprove the application
16 until such time as the county, city, or town consents to its approval
17 or such disapproval is reversed on appeal. The applicant shall be a
18 party to all department appeals of county, city, or town objections.
19 Unless the county, city, or town either consents or has waived its
20 rights under this subsection, the department shall not approve portions
21 of an application affecting such lands until the minimum time for
22 county, city, or town objections has expired.

23 (8) For those forest practices regulated by the board and the
24 department, in addition to any rights under the above paragraph, the
25 county, city, or town may appeal any department approval of an
26 application with respect to any lands within its jurisdiction. The
27 appeals board may suspend the department's approval in whole or in part
28 pending such appeal where there exists potential for immediate and
29 material damage to a public resource.

30 (9) For those forest practices regulated by the board and the
31 department, appeals under this section shall be made to the appeals
32 board in the manner and time provided in RCW 76.09.205. In such
33 appeals there shall be no presumption of correctness of either the
34 county, city, or town or the department position.

35 (10) For those forest practices regulated by the board and the
36 department, the department shall, within four business days notify the
37 county, city, or town of all notifications, approvals, and disapprovals

1 of an application affecting lands within the county, city, or town,
2 except to the extent the county, city, or town has waived its right to
3 such notice.

4 (11) For those forest practices regulated by the board and the
5 department, a county, city, or town may waive in whole or in part its
6 rights under this section, and may withdraw or modify any such waiver,
7 at any time by written notice to the department.

8 (12) Notwithstanding subsections (2) through (5) of this section,
9 forest practices applications or notifications are not required for
10 exotic insect and disease control operations conducted in accordance
11 with RCW 76.09.060(8) where eradication can reasonably be expected.

12 **Sec. 206.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
13 each reenacted and amended to read as follows:

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

27 (a) Name and address of the forest landowner, timber owner, and
28 operator;

29 (b) Description of the proposed forest practice or practices to be
30 conducted;

31 (c) Legal description and tax parcel identification numbers of the
32 land on which the forest practices are to be conducted;

33 (d) Planimetric and topographic maps showing location and size of
34 all lakes and streams and other public waters in and immediately
35 adjacent to the operating area and showing all existing and proposed
36 roads and major tractor roads;

1 (e) Description of the silvicultural, harvesting, or other forest
2 practice methods to be used, including the type of equipment to be used
3 and materials to be applied;

4 (f) For an application or notification submitted on or after the
5 effective date of section 202 of this act that includes a forest
6 practices hydraulic project, plans and specifications for the forest
7 practices hydraulic project to ensure the proper protection of fish
8 life;

9 (g) Proposed plan for reforestation and for any revegetation
10 necessary to reduce erosion potential from roadsides and yarding roads,
11 as required by the forest practices rules;

12 (~~(g)~~) (h) Soil, geological, and hydrological data with respect to
13 forest practices;

14 (~~(h)~~) (i) The expected dates of commencement and completion of
15 all forest practices specified in the application;

16 (~~(i)~~) (j) Provisions for continuing maintenance of roads and
17 other construction or other measures necessary to afford protection to
18 public resources;

19 (~~(j)~~) (k) An affirmation that the statements contained in the
20 notification or application are true; and

21 (~~(k)~~) (l) All necessary application or notification fees.

22 (2) Long range plans may be submitted to the department for review
23 and consultation.

24 (3) The application for a forest practice or the notification of a
25 forest practice is subject to the reforestation requirement of RCW
26 76.09.070.

27 (a) If the application states that any land will be or is intended
28 to be converted:

29 (i) The reforestation requirements of this chapter and of the
30 forest practices rules shall not apply if the land is in fact converted
31 unless applicable alternatives or limitations are provided in forest
32 practices rules issued under RCW 76.09.070;

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

37 (iii) The forest practices described in the application are subject

1 to applicable county, city, town, and regional governmental authority
2 permitted under RCW 76.09.240 as well as the forest practices rules.

3 (b) Except as provided elsewhere in this section, if the landowner
4 harvests without an approved application or notification or the
5 landowner does not state that any land covered by the application or
6 notification will be or is intended to be converted, and the department
7 or the county, city, town, or regional governmental entity becomes
8 aware of conversion activities to a use other than commercial timber
9 operations, as that term is defined in RCW 76.09.020, then the
10 department shall send to the department of ecology and the appropriate
11 county, city, town, and regional governmental entities the following
12 documents:

13 (i) A notice of a conversion to nonforestry use;

14 (ii) A copy of the applicable forest practices application or
15 notification, if any; and

16 (iii) Copies of any applicable outstanding final orders or
17 decisions issued by the department related to the forest practices
18 application or notification.

19 (c) Failure to comply with the reforestation requirements contained
20 in any final order or decision shall constitute a removal of
21 designation under the provisions of RCW 84.33.140, and a change of use
22 under the provisions of RCW 84.34.080, and, if applicable, shall
23 subject such lands to the payments and/or penalties resulting from such
24 removals or changes.

25 (d) Conversion to a use other than commercial forest product
26 operations within six years after approval of the forest practices
27 application or notification without the consent of the county, city, or
28 town shall constitute a violation of each of the county, municipal
29 city, town, and regional authorities to which the forest practice
30 operations would have been subject if the application had stated an
31 intent to convert.

32 (e) Land that is the subject of a notice of conversion to a
33 nonforestry use produced by the department and sent to the department
34 of ecology and a local government under this subsection is subject to
35 the development prohibition and conditions provided in RCW 76.09.460.

36 (f) Landowners who have not stated an intent to convert the land
37 covered by an application or notification and who decide to convert the

1 land to a nonforestry use within six years of receiving an approved
2 application or notification must do so in a manner consistent with RCW
3 76.09.470.

4 (g) The application or notification must include a statement
5 requiring an acknowledgment by the forest landowner of his or her
6 intent with respect to conversion and acknowledging that he or she is
7 familiar with the effects of this subsection.

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

14 (5) Before the operator commences any forest practice in a manner
15 or to an extent significantly different from that described in a
16 previously approved application or notification, there shall be
17 submitted to the department a new application or notification form in
18 the manner set forth in this section.

19 (6)(a) Except as provided in RCW 76.09.350(4), the notification to
20 or the approval given by the department to an application to conduct a
21 forest practice shall be effective for a term of ~~((two))~~ three years
22 from the date of approval or notification ~~((and shall not be renewed
23 unless a new application is filed and approved or a new notification
24 has been filed))~~.

25 (b) A notification or application may be renewed for an additional
26 three-year term by the filing and approval of a notification or
27 application, as applicable, prior to the expiration of the original
28 application or notification. A renewal application or notification is
29 subject to the forest practices rules in effect at the time the renewal
30 application or notification is filed. Nothing in this section
31 precludes the applicant from applying for a new application or
32 notification after the renewal period has lapsed.

33 (c) At the option of the applicant, an application or notification
34 may be submitted to cover a single forest practice or a number of
35 forest practices within reasonable geographic or political boundaries
36 as specified by the department. An application or notification that
37 covers more than one forest practice may have an effective term of more
38 than ~~((two))~~ three years.

1 (d) The board shall adopt rules that establish standards and
2 procedures for approving an application or notification that has an
3 effective term of more than ~~((two))~~ three years. Such rules shall
4 include extended time periods for application or notification approval
5 or disapproval. ~~((On an approved application with a term of more than
6 two years, the applicant shall inform the department before commencing
7 operations))~~ The department may require the applicant to provide
8 advance notice before commencing operations on an approved application
9 or notification.

10 (7) Notwithstanding any other provision of this section, no prior
11 application or notification shall be required for any emergency forest
12 practice necessitated by fire, flood, windstorm, earthquake, or other
13 emergency as defined by the board, but the operator shall submit an
14 application or notification, whichever is applicable, to the department
15 within forty-eight hours after commencement of such practice or as
16 required by local regulations.

17 (8) Forest practices applications or notifications are not required
18 for forest practices conducted to control exotic forest insect or
19 disease outbreaks, when conducted by or under the direction of the
20 department of agriculture in carrying out an order of the governor or
21 director of the department of agriculture to implement pest control
22 measures as authorized under chapter 17.24 RCW, and are not required
23 when conducted by or under the direction of the department in carrying
24 out emergency measures under a forest health emergency declaration by
25 the commissioner of public lands as provided in RCW 76.06.130.

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

28 (b) In order to minimize adverse impacts to public resources,
29 control measures must be based on integrated pest management, as
30 defined in RCW 17.15.010, and must follow forest practices rules
31 relating to road construction and maintenance, timber harvest, and
32 forest chemicals, to the extent possible without compromising control
33 objectives.

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

1 (d) When the appropriate regulatory staff of the department are
2 notified under (c) of this subsection, they must consult with the
3 landowner, interested agencies, and affected tribes, and assist the
4 notifying agencies in the development of integrated pest management
5 plans that comply with forest practices rules as required under (b) of
6 this subsection.

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

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

13 (g) The exemption from obtaining approved forest practices
14 applications or notifications does not apply to forest practices
15 conducted after the governor, the director of the department of
16 agriculture, or the commissioner of public lands have declared that an
17 emergency no longer exists because control objectives have been met,
18 that there is no longer an imminent threat, or that there is no longer
19 a good likelihood of control.

20 **Sec. 207.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
21 as follows:

22 (1) The department shall make inspections of forest lands, before,
23 during, and after the conducting of forest practices as necessary for
24 the purpose of ensuring compliance with this chapter (~~and~~), the
25 forest practices rules, including forest practices rules incorporated
26 under RCW 76.09.040(3), and to ensure that no material damage occurs to
27 the natural resources of this state as a result of (~~such~~) forest
28 practices.

29 (2) Any duly authorized representative of the department shall have
30 the right to enter upon forest land at any reasonable time to enforce
31 the provisions of this chapter and the forest practices rules.

32 (3) The department or the department of ecology may apply for an
33 administrative inspection warrant to either Thurston county superior
34 court, or the superior court in the county in which the property is
35 located. An administrative inspection warrant may be issued where:

36 (a) The department has attempted an inspection of forest lands
37 under this chapter to ensure compliance with this chapter and the

1 forest practices rules or to ensure that no potential or actual
2 material damage occurs to the natural resources of this state, and
3 access to all or part of the forest lands has been actually or
4 constructively denied; or

5 (b) The department has reasonable cause to believe that a violation
6 of this chapter or of rules adopted under this chapter is occurring or
7 has occurred.

8 (4) In connection with any watershed analysis, any review of a
9 pending application by an identification team appointed by the
10 department, any compliance studies, any effectiveness monitoring, or
11 other research that has been agreed to by a landowner, the department
12 may invite representatives of other agencies, tribes, and interest
13 groups to accompany a department representative and, at the landowner's
14 election, the landowner, on any such inspections. Reasonable efforts
15 shall be made by the department to notify the landowner of the persons
16 being invited onto the property and the purposes for which they are
17 being invited.

18 NEW SECTION. **Sec. 208.** A new section is added to chapter 43.30
19 RCW to read as follows:

20 (1) By December 31, 2013, the department must make examples of
21 complete, high quality forest practices applications and the resulting
22 approvals readily available to the public on its internet site, as well
23 as the internet site of the office of regulatory assistance established
24 in RCW 43.42.010. The department must maximize assistance to the
25 public and interested parties by seeking to make readily available
26 examples from forest practices that generate significant permitting
27 activity or frequent questions.

28 (2) The department must regularly review and update the examples
29 required to be made available on the internet under subsection (1) of
30 this section.

31 (3) The department must obtain the written permission of an
32 applicant before making publicly available that applicant's application
33 or approval under this section and must work cooperatively with the
34 applicant to ensure that no personal or proprietary information is made
35 available.

1 **Sec. 209.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read
2 as follows:

3 (1) (~~Effective July 1, 1997,~~) An applicant shall pay an
4 application fee (~~and a recording fee~~), if applicable, at the time an
5 application or notification is submitted to the department or to the
6 local governmental entity as provided in this chapter.

7 (2) (~~For applications and notifications submitted to the~~
8 ~~department, the application fee~~) (a) If sections 201 through 203 and
9 206 of this act are not enacted into law by June 30, 2012, then the fee
10 for applications and notifications submitted to the department shall be
11 fifty dollars for class II, III, and IV forest practices applications
12 or notifications relating to the commercial harvest of timber.
13 However, the fee shall be five hundred dollars for class IV forest
14 practices applications on lands being converted to other uses or on
15 lands which are not to be reforested because of the likelihood of
16 future conversion to urban development or on lands that are contained
17 within "urban growth areas," designated pursuant to chapter 36.70A RCW,
18 except the fee shall be fifty dollars on those lands where the forest
19 landowner provides:

20 (~~(a)~~) (i) A written statement of intent signed by the forest
21 landowner not to convert to a use other than commercial forest product
22 operations for ten years, accompanied by either a written forest
23 management plan acceptable to the department or documentation that the
24 land is enrolled under the provisions of chapter 84.33 RCW; or

25 (~~(b)~~) (ii) A conversion option harvest plan approved by the local
26 governmental entity and submitted to the department as part of the
27 forest practices application.

28 (b)(i) If sections 201 through 203 and 206 of this act are enacted
29 into law by June 30, 2012, then:

30 (A) The fee for applications and notifications relating to the
31 commercial harvest of timber submitted to the department shall be one
32 hundred dollars for class II applications and notifications, class III
33 applications, and class IV forest practices that have a potential for
34 a substantial impact on the environment and therefore require an
35 evaluation by the department as to whether or not a detailed statement
36 must be prepared pursuant to the state environmental policy act,
37 chapter 43.21C RCW, when the application or notification is submitted

1 by a landowner who satisfies the definition of small forest landowner
2 provided in RCW 76.09.450 and the application or notification applies
3 to a single contiguous ownership consisting of one or more parcels;

4 (B) The fee for applications and notifications relating to the
5 commercial harvest of timber submitted to the department shall be one
6 hundred fifty dollars for class II applications and notifications,
7 class III applications, and class IV forest practices that have a
8 potential for a substantial impact on the environment and therefore
9 require an evaluation by the department as to whether or not a detailed
10 statement must be prepared pursuant to the state environmental policy
11 act, chapter 43.21C RCW, when the application or notification is
12 submitted by a landowner who does not satisfy the criteria for a
13 reduced application fee as provided in (b)(i)(A) of this subsection
14 (2); and

15 (C) The fee shall be one thousand five hundred dollars for class IV
16 forest practices applications on lands being converted to other uses or
17 on lands that are not to be reforested because of the likelihood of
18 future conversion to urban development or on lands that are contained
19 within urban growth areas, designated pursuant to chapter 36.70A RCW,
20 except the fee shall be the same as for a class III forest practices
21 application where the forest landowner provides:

22 (I) A written statement of intent signed by the forest landowner
23 not to convert to a use other than commercial forest product operations
24 for ten years, accompanied by either a written forest management plan
25 acceptable to the department or documentation that the land is enrolled
26 under the provisions of chapter 84.33 RCW; or

27 (II) A conversion option harvest plan approved by the local
28 governmental entity and submitted to the department as part of the
29 forest practices application.

30 (ii) If the board has not incorporated fish protection standards
31 adopted under chapter 77.55 RCW into the forest practices rules and
32 approved technical guidance as required under RCW 76.09.040 by December
33 31, 2013, the fee for applications and notifications submitted to the
34 department shall be as provided under (a) of this subsection until the
35 rules are adopted and technical guidance approved.

36 (3) The forest practices application account is created in the
37 state treasury. Moneys in the account may be spent only after
38 appropriation. All money collected from fees under ((this)) subsection

1 (2) of this section shall be deposited in the ((state general fund))
2 forest practices application account for the purposes of implementing
3 this chapter, chapter 76.13 RCW, and Title 222 WAC.

4 ~~((3))~~ (4) For applications submitted to ~~((the))~~ a local
5 governmental entity as provided in this chapter, the fee shall be
6 ~~((five hundred dollars for class IV forest practices on lands being~~
7 ~~converted to other uses or lands that are contained within "urban~~
8 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~
9 ~~otherwise provided in this section, unless a different fee is otherwise~~
10 ~~provided))~~ determined, collected, and retained by the local
11 governmental entity.

12 ~~((4) Recording fees shall be as provided in chapter 36.18 RCW.~~

13 ~~(5) An application fee under subsection (2) of this section shall~~
14 ~~be refunded or credited to the applicant if either the application or~~
15 ~~notification is disapproved by the department or the application or~~
16 ~~notification is withdrawn by the applicant due to restrictions imposed~~
17 ~~by the department.))~~

18 **Sec. 210.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to
19 read as follows:

20 (1) If a landowner who did not state an intent to convert his or
21 her land to a nonforestry use decides to convert his or her land to a
22 nonforestry use within six years of receiving an approved forest
23 practices application or notification under this chapter, the landowner
24 must:

25 (a) Stop all forest practices activities on the parcels subject to
26 the proposed land use conversion to a nonforestry use;

27 (b) Contact the department of ecology and the applicable county,
28 city, town, or regional governmental entity to begin the permitting
29 process; and

30 (c) Notify the department ~~((and))~~, withdraw any applicable
31 applications or notifications ((or request)), and submit a new
32 application for the conversion. The fee for a new application for
33 conversion under this subsection (1)(c) is the difference between the
34 applicable fee for the new application under RCW 76.09.065 and the fee
35 previously paid for the original application or notification, which
36 must be deposited in the forest practices application account created
37 in RCW 76.09.065.

1 (2) Upon being contacted by a landowner under this section, the
2 county, city, town, or regional governmental entity must:

3 (a) Notify the department and request from the department the
4 status of any applicable forest practices applications, notifications,
5 or final orders or decisions; and

6 (b) Complete the following activities:

7 (i) Require that the landowner be in full compliance with chapter
8 43.21C RCW, if applicable;

9 (ii) Receive notification from the department that the landowner
10 has resolved any outstanding final orders or decisions issued by the
11 department; and

12 (iii) Make a determination as to whether or not the condition of
13 the land in question is in full compliance with local ordinances and
14 regulations. If full compliance is not found, a mitigation plan to
15 address violations of local ordinances or regulations must be required
16 for the parcel in question by the county, city, town, or regional
17 governmental entity. Required mitigation plans must be prepared by the
18 landowner and approved by the county, city, town, or regional
19 governmental entity. Once approved, the mitigation plan must be
20 implemented by the landowner. Mitigation measures that may be required
21 include, but are not limited to, revegetation requirements to plant and
22 maintain trees of sufficient maturity and appropriate species
23 composition to restore critical area and buffer function or to be in
24 compliance with applicable local government regulations.

25 **Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read
26 as follows:

27 (1) There is hereby created the forest practices board of the state
28 of Washington as an agency of state government consisting of members as
29 follows:

30 (a) The commissioner of public lands or the commissioner's
31 designee;

32 (b) The director of the department of (~~community, trade, and~~
33 ~~economic development~~) commerce or the director's designee;

34 (c) The director of the department of agriculture or the director's
35 designee;

36 (d) The director of the department of ecology or the director's
37 designee;

1 (e) The director of the department of fish and wildlife or the
2 director's designee;

3 (f) An elected member of a county legislative authority appointed
4 by the governor(~~(:—PROVIDED, That such)~~). However, the county
5 member's service on the board shall be conditioned on the member's
6 continued service as an elected county official;

7 (g) One member representing a timber products union, appointed by
8 the governor from a list of three names submitted by a timber labor
9 coalition affiliated with a statewide labor organization that
10 represents a majority of the timber product unions in the state; and

11 (h) Six members of the general public appointed by the governor,
12 one of whom shall be a small forest landowner who actively manages his
13 or her land, and one of whom shall be an independent logging
14 contractor.

15 ~~(2) ((The director of the department of fish and wildlife's service~~
16 ~~on the board may be terminated two years after August 18, 1999, if the~~
17 ~~legislature finds that after two years the department has not made~~
18 ~~substantial progress toward integrating the laws, rules, and programs~~
19 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~
20 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~
21 ~~finding shall be based solely on whether the department of fish and~~
22 ~~wildlife makes substantial progress as defined in this subsection, and~~
23 ~~will not be based on other actions taken as a member of the board.~~
24 ~~Substantial progress shall include recommendations to the legislature~~
25 ~~for closer integration of the existing rule-making authorities of the~~
26 ~~board and the department of fish and wildlife, and closer integration~~
27 ~~of the forest practices and hydraulics permitting processes, including~~
28 ~~exploring the potential for a consolidated permitting process. These~~
29 ~~recommendations shall be designed to resolve problems currently~~
30 ~~associated with the existing dual regulatory and permitting processes.~~

31 ~~(3))~~ The members of the initial board appointed by the governor
32 shall be appointed so that the term of one member shall expire December
33 31, 1975, the term of one member shall expire December 31, 1976, the
34 term of one member shall expire December 31, 1977, the terms of two
35 members shall expire December 31, 1978, and the terms of two members
36 shall expire December 31, 1979. Thereafter, each member shall be
37 appointed for a term of four years. Vacancies on the board shall be
38 filled in the same manner as the original appointments. Each member of

1 the board shall continue in office until his or her successor is
2 appointed and qualified. The commissioner of public lands or the
3 commissioner's designee shall be the chair of the board.

4 ~~((+4))~~ (3) The board shall meet at such times and places as shall
5 be designated by the chair or upon the written request of the majority
6 of the board. The principal office of the board shall be at the state
7 capital.

8 ~~((+5))~~ (4) Members of the board, except public employees and
9 elected officials, shall be compensated in accordance with RCW
10 43.03.250. Each member shall be entitled to reimbursement for travel
11 expenses incurred in the performance of their duties as provided in RCW
12 43.03.050 and 43.03.060.

13 ~~((+6))~~ (5) The board may employ such clerical help and staff
14 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

15 **Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are
16 each reenacted and amended to read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

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

22 (2) "Appeals board" means the pollution control hearings board
23 created by RCW 43.21B.010.

24 (3) "Application" means the application required pursuant to RCW
25 76.09.050.

26 (4) "Aquatic resources" includes water quality, salmon, other
27 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
28 identified in the forests and fish report, the Columbia torrent
29 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
30 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
31 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
32 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
33 their respective habitats.

34 (5) "Board" means the forest practices board created in RCW
35 76.09.030.

36 (6) "Commissioner" means the commissioner of public lands.

1 (7) "Contiguous" means land adjoining or touching by common corner
2 or otherwise. Land having common ownership divided by a road or other
3 right-of-way shall be considered contiguous.

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

7 (9) "Date of receipt" has the same meaning as defined in RCW
8 43.21B.001.

9 (10) "Department" means the department of natural resources.

10 (11) "Ecosystem services" means the benefits that the public enjoys
11 as a result of natural processes and biological diversity.

12 (12) "Ecosystem services market" means a system in which providers
13 of ecosystem services can access financing or market capital to
14 protect, restore, and maintain ecological values, including the full
15 spectrum of regulatory, quasiregulatory, and voluntary markets.

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

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

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

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

33 (15) "Forest landowner" means any person in actual control of
34 forest land, whether such control is based either on legal or equitable
35 title, or on any other interest entitling the holder to sell or
36 otherwise dispose of any or all of the timber on such land in any
37 manner. However, any lessee or other person in possession of forest
38 land without legal or equitable title to such land shall be excluded

1 from the definition of "forest landowner" unless such lessee or other
2 person has the right to sell or otherwise dispose of any or all of the
3 timber located on such forest land.

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

7 (a) Road and trail construction, including forest practices
8 hydraulic projects that include water crossing structures, and
9 associated activities and maintenance;

10 (b) Harvesting, final and intermediate;

11 (c) Precommercial thinning;

12 (d) Reforestation;

13 (e) Fertilization;

14 (f) Prevention and suppression of diseases and insects;

15 (g) Salvage of trees; and

16 (h) Brush control.

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

23 (17) "Forest practices rules" means any rules adopted pursuant to
24 RCW 76.09.040.

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

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

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

1 (21) "Operator" means any person engaging in forest practices
2 except an employee with wages as his or her sole compensation.

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

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

10 (24) "Small forest landowner" has the same meaning as defined in
11 RCW 76.09.450.

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

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

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

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

31 (29) "Forest practices hydraulic project" means a hydraulic
32 project, as defined under RCW 77.55.011, that requires a forest
33 practices application or notification under this chapter.

34 (30) "Fill" means the placement of earth material or aggregate for
35 road or landing construction or other similar activities.

36 NEW SECTION. Sec. 213. A new section is added to chapter 43.21C
37 RCW to read as follows:

1 The incorporation of fish protection standards adopted under
2 chapter 77.55 RCW into the forest practices rules as required under RCW
3 76.09.040(3) is exempt from compliance with this chapter.

4 NEW SECTION. **Sec. 214.** (1) The departments of natural resources
5 and fish and wildlife must jointly provide a report to the appropriate
6 committees of the legislature containing findings and any
7 recommendations relating to the regulatory integration of hydraulic
8 projects and forest practices as provided in this act, including:

9 (a) Progress made in implementing the integration required under
10 this act, including rule incorporation and development of forest
11 practices board manual guidance;

12 (b) An update on and potential for permitting efficiencies in
13 addition to the integration required under this act;

14 (c) The process for and outcomes from review of forest practices
15 applications that include forest practices hydraulic projects by the
16 department of fish and wildlife; and

17 (d) Compliance monitoring for forest practices hydraulic projects
18 through the review processes provided under WAC 222-08-160 as it
19 existed on the effective date of this section.

20 (2) The departments of natural resources and fish and wildlife must
21 provide an initial report by September 1, 2014, and a second report by
22 September 1, 2016.

23 (3) This section expires December 31, 2016.

24 NEW SECTION. **Sec. 215.** Sections 202 and 205 of this act take
25 effect on the date the forest practices board incorporates fish
26 protection standards adopted under chapter 77.55 RCW into the forest
27 practices rules and approves technical guidance as required under RCW
28 76.09.040. The department of natural resources must provide written
29 notice of the effective date of these sections to affected parties, the
30 chief clerk of the house of representatives, the secretary of the
31 senate, the office of the code reviser, and others as deemed
32 appropriate by the department of natural resources.

33 NEW SECTION. **Sec. 216.** Nothing in this act affects any rules,
34 processes, or procedures of the department of fish and wildlife and the

1 department of natural resources existing on the effective date of this
2 section that provide for regulatory integration of hydraulic projects
3 and forest practices for projects in nonfish-bearing waters.

4 NEW SECTION. **Sec. 217.** Nothing in this act authorizes the
5 department of fish and wildlife to assume authority over approval,
6 disapproval, conditioning, or enforcement of applications or
7 notifications submitted under chapter 76.09 RCW.

8 NEW SECTION. **Sec. 218.** Nothing in this act affects the
9 jurisdiction or other authority of a federally recognized Indian tribe
10 within the boundary of its reservation or on other tribally owned
11 lands.

12 NEW SECTION. **Sec. 219.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 **PART THREE**

17 **State Environmental Policy Act and Local Development Regulations**

18 NEW SECTION. **Sec. 301.** (1) The legislature recognizes that the
19 rule-based categorical exemption thresholds to chapter 43.21C RCW,
20 found in WAC 197-11-800, have not been updated in recent years, and
21 should be reviewed in light of the increased environmental protections
22 in place under chapters 36.70A and 90.58 RCW, and other laws. It is
23 the intent of the legislature to direct the department of ecology to
24 conduct two phases of rule making over the next two years to increase
25 the thresholds for these categorical exemptions.

26 (2) By December 31, 2012, the department of ecology shall increase
27 the rule-based categorical exemptions to chapter 43.21C RCW found in
28 WAC 197-11-800 and update the environmental checklist found in WAC 197-
29 11-960. In updating the categorical exemptions, the department of
30 ecology must:

31 (a) At a minimum, increase the existing maximum threshold levels
32 for the following project types:

1 (i) The construction or location of single-family residential
2 developments;

3 (ii) The construction or location of multifamily residential
4 developments;

5 (iii) The construction of an agricultural structure, other than a
6 feed lot, that is similar to the following: A barn, a loafing shed, a
7 farm equipment storage building, or a produce storing or packing
8 structure;

9 (iv) The construction of the following, including any associated
10 parking areas or facilities: An office, a school, a commercial
11 building, a recreational building, a service building, or a storage
12 building;

13 (v) Landfilling or excavation activities; and

14 (vi) The installation of an electric facility, lines, equipment, or
15 appurtenances, other than substations.

16 (b) Establish maximum exemption levels for action types that differ
17 based on whether the project is proposed to occur in:

18 (i) An incorporated city;

19 (ii) An unincorporated area within an urban growth area;

20 (iii) An unincorporated area outside of an urban growth area but
21 within a county planning under chapter 36.70A RCW; or

22 (iv) An unincorporated area within a county not planning under
23 chapter 36.70A RCW.

24 (c) In updating the environmental checklist found in WAC 197-11-
25 960, the department of ecology shall:

26 (i) Improve efficiency of the environmental checklist; and

27 (ii) Not include any new subjects into the scope of the checklist,
28 including climate change and greenhouse gases.

29 (d) Until the completion of the rule making required under this
30 section, a city or county may apply the highest categorical exemption
31 levels authorized under WAC 197-11-800 to any action, regardless if the
32 city or county with jurisdiction has exercised its authority to raise
33 the exemption levels above the established minimums, unless the city or
34 county with jurisdiction passes an ordinance or resolution that lowers
35 the exemption levels to a level below the allowed maximum but not less
36 than the default minimum levels detailed in WAC 197-11-800.

37 (3)(a) By December 31, 2013, the department of ecology shall:

1 (i) Update, but not decrease, the thresholds for all other project
2 actions not specified in subsection (2) of this section;

3 (ii) Propose methods for integrating the state environmental policy
4 act process with provisions of the growth management act, chapter
5 36.70A RCW, including consideration of ways to revise WAC 197-11-210
6 through 197-11-232 to further the goals of RCW 43.21C.240; and

7 (iii) Create categorical exemptions for minor code amendments for
8 which review under chapter 43.21C RCW would not be required because
9 they do not lessen environmental protection.

10 (b) During this process, the department of ecology may also review
11 and update the thresholds resulting from the 2012 rule-making process
12 outlined in subsection (2) of this section.

13 (4)(a) The department of ecology shall convene an advisory
14 committee consisting of members representing, at minimum, cities,
15 counties, business interests, environmental interests, agricultural
16 interests, cultural resources interests, state agencies, and tribal
17 governments to:

18 (i) Assist in updating the environmental checklist and updating the
19 thresholds for other project actions for both rule-making processes
20 under subsections (2) and (3) of this section;

21 (ii) Ensure that state agencies and other interested parties can
22 receive notice about projects of interest through notice under chapter
23 43.21C RCW and means other than chapter 43.21C RCW; and

24 (iii) Ensure that federally recognized tribes receive notice about
25 projects that impact tribal interests through notice under chapter
26 43.21C RCW and means other than chapter 43.21C RCW.

27 (b) Advisory committee members must have direct experience with the
28 implementation or application of the state environmental policy act.

29 (5) This section expires July 31, 2014.

30 **Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to
31 read as follows:

32 (1) An environmental impact statement (the detailed statement
33 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
34 legislation and other major actions having a probable significant,
35 adverse environmental impact. The environmental impact statement may
36 be combined with the recommendation or report on the proposal or issued
37 as a separate document. The substantive decisions or recommendations

1 shall be clearly identifiable in the combined document. Actions
2 categorically exempt under RCW 43.21C.110(1)(a) and section 308 of this
3 act do not require environmental review or the preparation of an
4 environmental impact statement under this chapter. (~~In a county,~~
5 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~
6 ~~provided for in subsection (2) of this section, does not require a~~
7 ~~threshold determination or the preparation of an environmental impact~~
8 ~~statement under this chapter, but is subject to environmental review~~
9 ~~and mitigation as provided in this chapter.))~~

10 (2) An environmental impact statement is required to analyze only
11 those probable adverse environmental impacts which are significant.
12 Beneficial environmental impacts may be discussed. The responsible
13 official shall consult with agencies and the public to identify such
14 impacts and limit the scope of an environmental impact statement. The
15 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate
16 sections of an environmental impact statement. Discussions of
17 significant short-term and long-term environmental impacts, significant
18 irrevocable commitments of natural resources, significant alternatives
19 including mitigation measures, and significant environmental impacts
20 which cannot be mitigated should be consolidated or included, as
21 applicable, in those sections of an environmental impact statement
22 where the responsible official decides they logically belong.

23 (~~(2)(a) For purposes of this section, a planned action means one~~
24 ~~or more types of project action that:~~

25 ~~(i) Are designated planned actions by an ordinance or resolution~~
26 ~~adopted by a county, city, or town planning under RCW 36.70A.040;~~

27 ~~(ii) Have had the significant impacts adequately addressed in an~~
28 ~~environmental impact statement prepared in conjunction with (A) a~~
29 ~~comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or~~
30 ~~(B) a fully contained community, a master planned resort, a master~~
31 ~~planned development, or a phased project;~~

32 ~~(iii) Are subsequent or implementing projects for the proposals~~
33 ~~listed in (a)(ii) of this subsection;~~

34 ~~(iv) Are located within an urban growth area, as defined in RCW~~
35 ~~36.70A.030;~~

36 ~~(v) Are not essential public facilities, as defined in RCW~~
37 ~~36.70A.200; and~~

1 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~
2 ~~36.70A RCW.~~

3 ~~(b) A county, city, or town shall limit planned actions to certain~~
4 ~~types of development or to specific geographical areas that are less~~
5 ~~extensive than the jurisdictional boundaries of the county, city, or~~
6 ~~town and may limit a planned action to a time period identified in the~~
7 ~~environmental impact statement or the ordinance or resolution adopted~~
8 ~~under this subsection.))~~

9 NEW SECTION. **Sec. 303.** A new section is added to chapter 43.21C
10 RCW to read as follows:

11 (1) For purposes of this chapter, a planned action means one or
12 more types of development or redevelopment that meet the following
13 criteria:

14 (a) Are designated as planned actions by an ordinance or resolution
15 adopted by a county, city, or town planning under RCW 36.70A.040;

16 (b) Have had the significant impacts adequately addressed in an
17 environmental impact statement under the requirements of this chapter
18 in conjunction with, or to implement, a comprehensive plan or subarea
19 plan adopted under chapter 36.70A RCW, or a fully contained community,
20 a master planned resort, a master planned development, or a phased
21 project;

22 (c) Have had project level significant impacts adequately addressed
23 in an environmental impact statement unless the impacts are
24 specifically deferred for consideration at the project level pursuant
25 to subsection (3)(b) of this section;

26 (d) Are subsequent or implementing projects for the proposals
27 listed in (b) of this subsection;

28 (e) Are located within an urban growth area designated pursuant to
29 RCW 36.70A.110;

30 (f) Are not essential public facilities, as defined in RCW
31 36.70A.200, unless an essential public facility is accessory to or part
32 of a residential, office, school, commercial, recreational, service, or
33 industrial development that is designated a planned action under this
34 subsection; and

35 (g) Are consistent with a comprehensive plan or subarea plan
36 adopted under chapter 36.70A RCW.

1 (2) A county, city, or town shall define the types of development
2 included in the planned action and may limit a planned action to:

3 (a) A specific geographic area that is less extensive than the
4 jurisdictional boundaries of the county, city, or town; or

5 (b) A time period identified in the ordinance or resolution adopted
6 under this subsection.

7 (3)(a) A county, city, or town shall determine during permit review
8 whether a proposed project is consistent with a planned action
9 ordinance adopted by the jurisdiction. To determine project
10 consistency with a planned action ordinance, a county, city, or town
11 may utilize a modified checklist pursuant to the rules adopted to
12 implement RCW 43.21C.110, a form that is designated within the planned
13 action ordinance, or a form contained in agency rules adopted pursuant
14 to RCW 43.21C.120.

15 (b) A county, city, or town is not required to make a threshold
16 determination and may not require additional environmental review, for
17 a proposal that is determined to be consistent with the development or
18 redevelopment described in the planned action ordinance, except for
19 impacts that are specifically deferred to the project level at the time
20 of the planned action ordinance's adoption. At least one community
21 meeting must be held before the notice is issued for the planned action
22 ordinance. Notice for the planned action and notice of the community
23 meeting required by this subsection (3)(b) must be mailed or otherwise
24 verifiably provided to: (i) All affected federally recognized tribal
25 governments; and (ii) agencies with jurisdiction over the future
26 development anticipated for the planned action. The determination of
27 consistency, and the adequacy of any environmental review that was
28 specifically deferred, are subject to the type of administrative appeal
29 that the county, city, or town provides for the proposal itself
30 consistent with RCW 36.70B.060.

31 (4) For a planned action ordinance that encompasses the entire
32 jurisdictional boundary of a county, city, or town, at least one
33 community meeting must be held before the notice is issued for the
34 planned action ordinance. Notice for the planned action ordinance and
35 notice of the community meeting required by this subsection must be
36 mailed or otherwise verifiably provided to:

37 (a) All property owners of record within the county, city, or town;

38 (b) All affected federally recognized tribal governments; and

1 (c) All agencies with jurisdiction over the future development
2 anticipated for the planned action.

3 **Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to
4 read as follows:

5 (1) In order to accommodate infill development and thereby realize
6 the goals and policies of comprehensive plans adopted according to
7 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is
8 authorized by this section to establish categorical exemptions from the
9 requirements of this chapter. An exemption adopted under this section
10 applies even if it differs from the categorical exemptions adopted by
11 rule of the department under RCW 43.21C.110(1)(a). An exemption may be
12 adopted by a city or county under this section if it meets the
13 following criteria:

14 (a) It categorically exempts government action related to
15 development (~~((that is new residential or mixed use development))~~)
16 proposed to fill in an urban growth area, designated according to RCW
17 36.70A.110, where current density and intensity of use in the area is
18 lower than called for in the goals and policies of the applicable
19 comprehensive plan and the development is either:

20 (i) Residential development;

21 (ii) Mixed-use development; or

22 (iii) Commercial development up to sixty-five thousand square feet,
23 excluding retail development;

24 (b) It does not exempt government action related to development
25 that is inconsistent with the applicable comprehensive plan or would
26 exceed the density or intensity of use called for in the goals and
27 policies of the applicable comprehensive plan; (~~and~~)

28 (c) The local government considers the specific probable adverse
29 environmental impacts of the proposed action and determines that these
30 specific impacts are adequately addressed by the development
31 regulations or other applicable requirements of the comprehensive plan,
32 subarea plan element of the comprehensive plan, planned action
33 ordinance, or other local, state, or federal rules or laws; and

34 (d)(i) The city or county's applicable comprehensive plan was
35 previously subjected to environmental analysis through an environmental
36 impact statement under the requirements of this chapter prior to
37 adoption; or

1 (ii) The city or county has prepared an environmental impact
2 statement that considers the proposed use or density and intensity of
3 use in the area proposed for an exemption under this section.

4 (2) Any categorical exemption adopted by a city or county under
5 this section shall be subject to the rules of the department adopted
6 according to RCW 43.21C.110(1)(a) that provide exceptions to the use of
7 categorical exemptions adopted by the department.

8 NEW SECTION. Sec. 305. A new section is added to chapter 43.21C
9 RCW to read as follows:

10 (1) A county, city, or town may recover its reasonable expenses of
11 preparation of a nonproject environmental impact statement prepared
12 under RCW 43.21C.229 and section 303 of this act:

13 (a) Through access to financial assistance under RCW 36.70A.490;

14 (b) With funding from private sources; and

15 (c) By the assessment of fees consistent with the requirements and
16 limitations of this section.

17 (2)(a) A county, city, or town is authorized to assess a fee upon
18 subsequent development that will make use of and benefit from: (i) The
19 analysis in an environmental impact statement prepared for the purpose
20 of compliance with section 303 of this act regarding planned actions;
21 or (ii) the reduction in environmental analysis requirements resulting
22 from the exercise of authority under RCW 43.21C.229 regarding infill
23 development.

24 (b) The amount of the fee must be reasonable and proportionate to
25 the total expenses incurred by the county, city, or town in the
26 preparation of the environmental impact statement.

27 (3) A county, city, or town assessing fees under subsection (2)(a)
28 of this section must provide for a mechanism by which project
29 proponents may either elect to utilize the environmental review
30 completed by the lead agency and pay the fees under subsection (1) of
31 this section or certify that they do not want the local jurisdiction to
32 utilize the environmental review completed as a part of a planned
33 action and therefore not be assessed any associated fees. Project
34 proponents who choose this option may not make use of or benefit from
35 the up-front environmental review prepared by the local jurisdiction.

36 (4) Prior to the collection of fees, the county, city, or town must
37 enact an ordinance that establishes the total amount of expenses to be

1 recovered through fees and provides objective standards for determining
2 the fee amount to be imposed upon each development proposal
3 proportionate to the impacts of each development and to the benefits
4 accruing to each development from the nonproject environmental review.
5 The ordinance must provide (a) a procedure by which an applicant who
6 disagrees with whether the amount of the fee is correct, reasonable, or
7 proportionate may pay the fee with the written stipulation "paid under
8 protest"; and (b) if the county, city, or town provides for an
9 administrative appeal of its decision on the project for which the fees
10 are imposed, any dispute about the amount of the fees must be resolved
11 in the same administrative appeals process. Any disagreement about the
12 reasonableness, proportionality, or amount of the fees imposed upon a
13 development may not be the basis for delay in issuance of a project
14 permit for that development.

15 (5) The ordinance adopted under subsection (4) of this section must
16 make information available about the amount of the expenses designated
17 for recovery. When such expenses have been fully recovered, the
18 county, city, or town may no longer assess a fee under this section.

19 (6) Any fees collected under this section from subsequent
20 development may be used to reimburse funding received from private
21 sources to conduct the environmental review.

22 (7) The city, county, or town shall refund fees collected where a
23 court of competent jurisdiction determines that the environmental
24 review conducted under section 303 of this act, regarding planned
25 actions, or under RCW 43.21C.229, regarding infill development, was not
26 sufficient to comply with the requirements of this chapter regarding
27 the proposed development activity for which the fees were collected.
28 The applicant and the city, county, or town may mutually agree to a
29 partial refund or to waive the refund in the interest of resolving any
30 dispute regarding compliance with this chapter.

31 **Sec. 306.** RCW 43.21C.037 and 2011 c 207 s 3 are each amended to
32 read as follows:

33 (1) Decisions pertaining to applications for Class I, II, and III
34 forest practices, as defined by rule of the forest practices board
35 under RCW 76.09.050, are not subject to the requirements of RCW
36 43.21C.030(2)(c) (~~as now or hereafter amended~~)).

1 (2) When the applicable county, city, or town requires a license in
2 connection with any proposal involving forest practices:

3 (a) On forest lands that are being converted to another use; or

4 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
5 amended, are not to be reforested because of the likelihood of future
6 conversion to urban development, then the local government, rather than
7 the department of natural resources, is responsible for any detailed
8 statement required under RCW 43.21C.030(2)(c).

9 (3)(a) Those forest practices determined by rule of the forest
10 practices board to have a potential for a substantial impact on the
11 environment, and thus to be Class IV practices, require an evaluation
12 by the department of natural resources as to whether or not a detailed
13 statement must be prepared pursuant to this chapter.

14 (b) The evaluation (~~(shall)~~) required by this section must be made
15 within ten days from the date the department receives the application
16 unless the application is subject to concurrence review by the
17 department of fish and wildlife under section 202 of this act.
18 Evaluations for applications that are subject to concurrence review by
19 the department of fish and wildlife under section 202 of this act must
20 be made within ten days from the date the department of fish and
21 wildlife completes the concurrent review.

22 (c) A Class IV forest practice application must be approved or
23 disapproved by the department (~~(within thirty calendar days from the~~
24 ~~date the department receives the application, unless the department~~
25 ~~determines that a detailed statement must be made, in which case the~~
26 ~~application must be approved or disapproved by the department within~~
27 ~~sixty days from the date the department receives the application,~~
28 ~~unless the commissioner of public lands, through the promulgation of a~~
29 ~~formal order, determines that the process cannot be completed within~~
30 ~~such period)) according to the timelines established in RCW 76.09.050.~~

31 (d) This section shall not be construed to prevent any local or
32 regional governmental entity from determining that a detailed statement
33 must be prepared for an action regarding a Class IV forest practice
34 taken by that governmental entity concerning the land on which forest
35 practices will be conducted.

36 **Sec. 307.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to
37 read as follows:

1 Except only as expressly provided in chapters 67.28, 81.104, and
2 82.14 RCW, the state preempts the field of imposing retail sales and
3 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
4 67.16.060, conveyances, and cigarettes, and no county, town, or other
5 municipal subdivision shall have the right to impose taxes of that
6 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
7 82.02.090, no county, city, town, or other municipal corporation shall
8 impose any tax, fee, or charge, either direct or indirect, on the
9 construction or reconstruction of residential buildings, commercial
10 buildings, industrial buildings, or on any other building or building
11 space or appurtenance thereto, or on the development, subdivision,
12 classification, or reclassification of land. However, this section
13 does not preclude dedications of land or easements within the proposed
14 development or plat which the county, city, town, or other municipal
15 corporation can demonstrate are reasonably necessary as a direct result
16 of the proposed development or plat to which the dedication of land or
17 easement is to apply.

18 This section does not prohibit voluntary agreements with counties,
19 cities, towns, or other municipal corporations that allow a payment in
20 lieu of a dedication of land or to mitigate a direct impact that has
21 been identified as a consequence of a proposed development,
22 subdivision, or plat. A local government shall not use such voluntary
23 agreements for local off-site transportation improvements within the
24 geographic boundaries of the area or areas covered by an adopted
25 transportation program authorized by chapter 39.92 RCW. Any such
26 voluntary agreement is subject to the following provisions:

27 (1) The payment shall be held in a reserve account and may only be
28 expended to fund a capital improvement agreed upon by the parties to
29 mitigate the identified, direct impact;

30 (2) The payment shall be expended in all cases within five years of
31 collection; and

32 (3) Any payment not so expended shall be refunded with interest to
33 be calculated from the original date the deposit was received by the
34 county and at the same rate applied to tax refunds pursuant to RCW
35 84.69.100; however, if the payment is not expended within five years
36 due to delay attributable to the developer, the payment shall be
37 refunded without interest.

1 No county, city, town, or other municipal corporation shall require
2 any payment as part of such a voluntary agreement which the county,
3 city, town, or other municipal corporation cannot establish is
4 reasonably necessary as a direct result of the proposed development or
5 plat.

6 Nothing in this section prohibits cities, towns, counties, or other
7 municipal corporations from collecting reasonable fees from an
8 applicant for a permit or other governmental approval to cover the cost
9 to the city, town, county, or other municipal corporation of processing
10 applications, inspecting and reviewing plans, or preparing detailed
11 statements required by chapter 43.21C RCW, including reasonable fees
12 that are consistent with RCW 43.21C.420(6) and section 305 of this act.

13 This section does not limit the existing authority of any county,
14 city, town, or other municipal corporation to impose special
15 assessments on property specifically benefited thereby in the manner
16 prescribed by law.

17 Nothing in this section prohibits counties, cities, or towns from
18 imposing or permits counties, cities, or towns to impose water, sewer,
19 natural gas, drainage utility, and drainage system charges. However,
20 no such charge shall exceed the proportionate share of such utility or
21 system's capital costs which the county, city, or town can demonstrate
22 are attributable to the property being charged. Furthermore, these
23 provisions may not be interpreted to expand or contract any existing
24 authority of counties, cities, or towns to impose such charges.

25 Nothing in this section prohibits a transportation benefit district
26 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
27 the legislative authority of a county, city, or town from approving the
28 imposition of such fees within a transportation benefit district.

29 Nothing in this section prohibits counties, cities, or towns from
30 imposing transportation impact fees authorized pursuant to chapter
31 39.92 RCW.

32 Nothing in this section prohibits counties, cities, or towns from
33 requiring property owners to provide relocation assistance to tenants
34 under RCW 59.18.440 and 59.18.450.

35 Nothing in this section limits the authority of counties, cities,
36 or towns to implement programs consistent with RCW 36.70A.540, nor to
37 enforce agreements made pursuant to such programs.

1 This section does not apply to special purpose districts formed and
2 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority
3 conferred by these titles affected.

4 NEW SECTION. **Sec. 308.** A new section is added to chapter 43.21C
5 RCW to read as follows:

6 The following nonproject actions are categorically exempt from the
7 requirements of this chapter:

8 (1) Amendments to development regulations that are required to
9 ensure consistency with an adopted comprehensive plan pursuant to RCW
10 36.70A.040, where the comprehensive plan was previously subjected to
11 environmental review pursuant to this chapter and the impacts
12 associated with the proposed regulation were specifically addressed in
13 the prior environmental review;

14 (2) Amendments to development regulations that are required to
15 ensure consistency with a shoreline master program approved pursuant to
16 RCW 90.58.090, where the shoreline master program was previously
17 subjected to environmental review pursuant to this chapter and the
18 impacts associated with the proposed regulation were specifically
19 addressed in the prior environmental review;

20 (3) Amendments to development regulations that, upon implementation
21 of a project action, will provide increased environmental protection,
22 limited to the following:

23 (a) Increased protections for critical areas, such as enhanced
24 buffers or setbacks;

25 (b) Increased vegetation retention or decreased impervious surface
26 areas in shoreline jurisdiction; and

27 (c) Increased vegetation retention or decreased impervious surface
28 areas in critical areas;

29 (4) Amendments to technical codes adopted by a county, city, or
30 town to ensure consistency with minimum standards contained in state
31 law, including the following:

32 (a) Building codes required by chapter 19.27 RCW;

33 (b) Energy codes required by chapter 19.27A RCW; and

34 (c) Electrical codes required by chapter 19.28 RCW.

35 NEW SECTION. **Sec. 309.** A new section is added to chapter 43.21C
36 RCW to read as follows:

1 (1) The lead agency for an environmental review under this chapter
2 utilizing an environmental checklist developed by the department of
3 ecology pursuant to RCW 43.21C.110 may identify within the checklist
4 provided to applicants instances where questions on the checklist are
5 adequately covered by a locally adopted ordinance, development
6 regulation, land use plan, or other legal authority.

7 (2) If a lead agency identifies an instance as described in
8 subsection (1) of this section, it still must consider whether the
9 action has an impact on the particular element or elements of the
10 environment in question.

11 (3) In instances where the locally adopted ordinance, development
12 regulation, land use plan, or other legal authority provide the
13 necessary information to answer a specific question, the lead agency
14 must explain how the proposed project satisfies the underlying local
15 legal authority.

16 (4) If the lead agency identifies instances where questions on the
17 checklist are adequately covered by a locally adopted ordinance,
18 development regulation, land use plan, or other legal authority, an
19 applicant may still provide answers to any questions on the checklist.

20 (5) Nothing in this section authorizes a lead agency to ignore or
21 delete a question on the checklist.

22 (6) Nothing in this section changes the standard for whether an
23 environmental impact statement is required for an action that may have
24 a probable significant, adverse environmental impact pursuant to RCW
25 43.21C.030.

26 (7) Nothing in this section affects the appeal provisions provided
27 in this chapter.

28 (8) Nothing in this section modifies existing rules for determining
29 the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor
30 does it modify agency procedures for complying with the state
31 environmental policy act when an agency other than a local government
32 is serving as the lead agency.

33 **Sec. 310.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to
34 read as follows:

35 The growth management planning and environmental review fund is
36 hereby established in the state treasury. Moneys may be placed in the
37 fund from the proceeds of bond sales, tax revenues, budget transfers,

1 federal appropriations, gifts, or any other lawful source. Moneys in
2 the fund may be spent only after appropriation. Moneys in the fund
3 shall be used to make grants or loans to local governments for the
4 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any
5 payment of either principal or interest, or both, derived from loans
6 made from this fund must be deposited into the fund.

7 **Sec. 311.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to
8 read as follows:

9 (1) The department of (~~community, trade, and economic~~
10 ~~development~~) commerce shall provide management services for the growth
11 management planning and environmental review fund created by RCW
12 36.70A.490. The department shall establish procedures for fund
13 management. The department shall encourage participation in the grant
14 or loan program by other public agencies. The department shall develop
15 the grant or loan criteria, monitor the grant or loan program, and
16 select grant or loan recipients in consultation with state agencies
17 participating in the grant or loan program through the provision of
18 grant or loan funds or technical assistance.

19 (2) A grant or loan may be awarded to a county or city that is
20 required to or has chosen to plan under RCW 36.70A.040 and that is
21 qualified pursuant to this section. The grant or loan shall be
22 provided to assist a county or city in paying for the cost of preparing
23 an environmental analysis under chapter 43.21C RCW, that is integrated
24 with a comprehensive plan, subarea plan, plan element, countywide
25 planning policy, development regulation, monitoring program, or other
26 planning activity adopted under or implementing this chapter that:

27 (a) Improves the process for project permit review while
28 maintaining environmental quality; or

29 (b) Encourages use of plans and information developed for purposes
30 of complying with this chapter to satisfy requirements of other state
31 programs.

32 (3) In order to qualify for a grant or loan, a county or city
33 shall:

34 (a) Demonstrate that it will prepare an environmental analysis
35 pursuant to chapter 43.21C RCW and subsection (2) of this section that
36 is integrated with a comprehensive plan, subarea plan, plan element,

1 countywide planning policy, development regulations, monitoring
2 program, or other planning activity adopted under or implementing this
3 chapter;

4 (b) Address environmental impacts and consequences, alternatives,
5 and mitigation measures in sufficient detail to allow the analysis to
6 be adopted in whole or in part by applicants for development permits
7 within the geographic area analyzed in the plan;

8 (c) Demonstrate that procedures for review of development permit
9 applications will be based on the integrated plans and environmental
10 analysis;

11 (d) Include mechanisms to monitor the consequences of growth as it
12 occurs in the plan area and to use the resulting data to update the
13 plan, policy, or implementing mechanisms and associated environmental
14 analysis;

15 (e) Demonstrate substantial progress towards compliance with the
16 requirements of this chapter. A county or city that is more than six
17 months out of compliance with a requirement of this chapter is deemed
18 not to be making substantial progress towards compliance; and

19 (f) Provide local funding, which may include financial
20 participation by the private sector.

21 (4) In awarding grants or loans, the department shall give
22 preference to proposals that include one or more of the following
23 elements:

24 (a) Financial participation by the private sector, or a
25 public/private partnering approach;

26 (b) Identification and monitoring of system capacities for elements
27 of the built environment, and to the extent appropriate, of the natural
28 environment;

29 (c) Coordination with state, federal, and tribal governments in
30 project review;

31 (d) Furtherance of important state objectives related to economic
32 development, protection of areas of statewide significance, and siting
33 of essential public facilities;

34 (e) Programs to improve the efficiency and effectiveness of the
35 permitting process by greater reliance on integrated plans and
36 prospective environmental analysis;

37 (f) Programs for effective citizen and neighborhood involvement

1 that contribute to greater likelihood that planning decisions can be
2 implemented with community support; (~~and~~)

3 (g) Programs to identify environmental impacts and establish
4 mitigation measures that provide effective means to satisfy concurrency
5 requirements and establish project consistency with the plans; or

6 (h) Environmental review that addresses the impacts of increased
7 density or intensity of comprehensive plans, subarea plans, or
8 receiving areas designated by a city or town under the regional
9 transfer of development rights program in chapter 43.362 RCW.

10 (5) If the local funding includes funding provided by other state
11 functional planning programs, including open space planning and
12 watershed or basin planning, the functional plan shall be integrated
13 into and be consistent with the comprehensive plan.

14 (6) State agencies shall work with grant or loan recipients to
15 facilitate state and local project review processes that will implement
16 the projects receiving grants or loans under this section.

17 **Sec. 312.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
18 read as follows:

19 It shall be the duty and function of the department of ecology:

20 (1) To adopt and amend (~~thereafter~~) rules of interpretation and
21 implementation of this chapter, subject to the requirements of chapter
22 34.05 RCW, for the purpose of providing uniform rules and guidelines to
23 all branches of government including state agencies, political
24 subdivisions, public and municipal corporations, and counties. The
25 proposed rules shall be subject to full public hearings requirements
26 associated with rule (~~promulgation~~) adoption. Suggestions for
27 modifications of the proposed rules shall be considered on their
28 merits, and the department shall have the authority and responsibility
29 for full and appropriate independent (~~promulgation and~~) adoption of
30 rules, assuring consistency with this chapter as amended and with the
31 preservation of protections afforded by this chapter. The rule-making
32 powers authorized in this section shall include, but shall not be
33 limited to, the following phases of interpretation and implementation
34 of this chapter:

35 (a) Categories of governmental actions which are not to be
36 considered as potential major actions significantly affecting the
37 quality of the environment, including categories pertaining to

1 applications for water right permits pursuant to chapters 90.03 and
2 90.44 RCW. The types of actions included as categorical exemptions in
3 the rules shall be limited to those types which are not major actions
4 significantly affecting the quality of the environment. The rules
5 shall provide for certain circumstances where actions which potentially
6 are categorically exempt require environmental review. An action that
7 is categorically exempt under the rules adopted by the department may
8 not be conditioned or denied under this chapter.

9 (b) Rules for criteria and procedures applicable to the
10 determination of when an act of a branch of government is a major
11 action significantly affecting the quality of the environment for which
12 a detailed statement is required to be prepared pursuant to RCW
13 43.21C.030.

14 (c) Rules and procedures applicable to the preparation of detailed
15 statements and other environmental documents, including but not limited
16 to rules for timing of environmental review, obtaining comments, data
17 and other information, and providing for and determining areas of
18 public participation which shall include the scope and review of draft
19 environmental impact statements.

20 (d) Scope of coverage and contents of detailed statements assuring
21 that such statements are simple, uniform, and as short as practicable;
22 statements are required to analyze only reasonable alternatives and
23 probable adverse environmental impacts which are significant, and may
24 analyze beneficial impacts.

25 (e) Rules and procedures for public notification of actions taken
26 and documents prepared.

27 (f) Definition of terms relevant to the implementation of this
28 chapter including the establishment of a list of elements of the
29 environment. Analysis of environmental considerations under RCW
30 43.21C.030(2) may be required only for those subjects listed as
31 elements of the environment (or portions thereof). The list of
32 elements of the environment shall consist of the "natural" and "built"
33 environment. The elements of the built environment shall consist of
34 public services and utilities (such as water, sewer, schools, fire and
35 police protection), transportation, environmental health (such as
36 explosive materials and toxic waste), and land and shoreline use
37 (including housing, and a description of the relationships with land
38 use and shoreline plans and designations, including population).

1 (g) Rules for determining the obligations and powers under this
2 chapter of two or more branches of government involved in the same
3 project significantly affecting the quality of the environment.

4 (h) Methods to assure adequate public awareness of the preparation
5 and issuance of detailed statements required by RCW 43.21C.030(2)(c).

6 (i) To prepare rules for projects setting forth the time limits
7 within which the governmental entity responsible for the action shall
8 comply with the provisions of this chapter.

9 (j) Rules for utilization of a detailed statement for more than one
10 action and rules improving environmental analysis of nonproject
11 proposals and encouraging better interagency coordination and
12 integration between this chapter and other environmental laws.

13 (k) Rules relating to actions which shall be exempt from the
14 provisions of this chapter in situations of emergency.

15 (l) Rules relating to the use of environmental documents in
16 planning and decision making and the implementation of the substantive
17 policies and requirements of this chapter, including procedures for
18 appeals under this chapter.

19 (m) Rules and procedures that provide for the integration of
20 environmental review with project review as provided in RCW 43.21C.240.
21 The rules and procedures shall be jointly developed with the department
22 of (~~community, trade, and economic development~~) commerce and shall be
23 applicable to the preparation of environmental documents for actions in
24 counties, cities, and towns planning under RCW 36.70A.040. The rules
25 and procedures shall also include procedures and criteria to analyze
26 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and
27 revisions to the rules adopted under this section to ensure that they
28 are compatible with the requirements and authorizations of chapter 347,
29 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
30 procedures adopted by a county, city, or town to implement the
31 provisions of chapter 347, Laws of 1995 prior to the effective date of
32 rules adopted under this subsection (1)(m) shall continue to be
33 effective until the adoption of any new or revised ordinances or
34 procedures that may be required. If any revisions are required as a
35 result of rules adopted under this subsection (1)(m), those revisions
36 shall be made within the time limits specified in RCW 43.21C.120.

37 (2) In exercising its powers, functions, and duties under this
38 section, the department may:

1 (a) Consult with the state agencies and with representatives of
2 science, industry, agriculture, labor, conservation organizations,
3 state and local governments, and other groups, as it deems advisable;
4 and

5 (b) Utilize, to the fullest extent possible, the services,
6 facilities, and information (including statistical information) of
7 public and private agencies, organizations, and individuals, in order
8 to avoid duplication of effort and expense, overlap, or conflict with
9 similar activities authorized by law and performed by established
10 agencies.

11 (3) Rules adopted pursuant to this section shall be subject to the
12 review procedures of chapter 34.05 RCW.

13 **Sec. 313.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to
14 read as follows:

15 The rules (~~(promulgated)~~) adopted under RCW 43.21C.110 shall be
16 accorded substantial deference in the interpretation of this chapter.

17 **Sec. 314.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to
18 read as follows:

19 (1) The department of ecology is hereby designated as the state
20 water pollution control agency for all purposes of the federal clean
21 water act as it exists on February 4, 1987, and is hereby authorized to
22 participate fully in the programs of the act as well as to take all
23 action necessary to secure to the state the benefits and to meet the
24 requirements of that act. With regard to the national estuary program
25 established by section 320 of that act, the department shall exercise
26 its responsibility jointly with the Puget Sound partnership, created in
27 RCW 90.71.210. The department of ecology may delegate its authority
28 under this chapter, including its national pollutant discharge
29 elimination permit system authority and duties regarding animal feeding
30 operations and concentrated animal feeding operations, to the
31 department of agriculture through a memorandum of understanding. Until
32 any such delegation receives federal approval, the department of
33 agriculture's adoption or issuance of animal feeding operation and
34 concentrated animal feeding operation rules, permits, programs, and
35 directives pertaining to water quality shall be accomplished after
36 reaching agreement with the director of the department of ecology.

1 Adoption or issuance and implementation shall be accomplished so that
2 compliance with such animal feeding operation and concentrated animal
3 feeding operation rules, permits, programs, and directives will achieve
4 compliance with all federal and state water pollution control laws.
5 The powers granted herein include, among others, and notwithstanding
6 any other provisions of this chapter ((90.48-RCW)) or otherwise, the
7 following:

8 (a) Complete authority to establish and administer a comprehensive
9 state point source waste discharge or pollution discharge elimination
10 permit program which will enable the department to qualify for full
11 participation in any national waste discharge or pollution discharge
12 elimination permit system and will allow the department to be the sole
13 agency issuing permits required by such national system operating in
14 the state of Washington subject to the provisions of RCW 90.48.262(2).
15 Program elements authorized herein may include, but are not limited to:
16 (i) Effluent treatment and limitation requirements together with timing
17 requirements related thereto; (ii) applicable receiving water quality
18 standards requirements; (iii) requirements of standards of performance
19 for new sources; (iv) pretreatment requirements; (v) termination and
20 modification of permits for cause; (vi) requirements for public notices
21 and opportunities for public hearings; (vii) appropriate relationships
22 with the secretary of the army in the administration of his or her
23 responsibilities which relate to anchorage and navigation, with the
24 administrator of the environmental protection agency in the performance
25 of his or her duties, and with other governmental officials under the
26 federal clean water act; (viii) requirements for inspection,
27 monitoring, entry, and reporting; (ix) enforcement of the program
28 through penalties, emergency powers, and criminal sanctions; (x) a
29 continuing planning process; and (xi) user charges.

30 (b) The power to establish and administer state programs in a
31 manner which will ((insure)) ensure the procurement of moneys, whether
32 in the form of grants, loans, or otherwise; to assist in the
33 construction, operation, and maintenance of various water pollution
34 control facilities and works; and the administering of various state
35 water pollution control management, regulatory, and enforcement
36 programs.

37 (c) The power to develop and implement appropriate programs

1 pertaining to continuing planning processes, area-wide waste treatment
2 management plans, and basin planning.

3 (2) The governor shall have authority to perform those actions
4 required of him or her by the federal clean water act.

5 ~~((+2))~~ (3) By July 31, 2012, the department shall:

6 (a) Reissue without modification and for a term of one year any
7 national pollutant discharge elimination system municipal storm water
8 general permit applicable to western Washington municipalities first
9 issued on January 17, 2007; and

10 (b) Issue an updated national pollutant discharge elimination
11 system municipal storm water general permit applicable to western
12 Washington municipalities for any permit first issued on January 17,
13 2007. An updated permit issued under this subsection shall become
14 effective beginning August 1, 2013.

15 (i) Provisions of the updated permit issued under (b) of this
16 subsection relating to new requirements for low-impact development and
17 review and revision of local development codes, rules, standards, or
18 other enforceable documents to incorporate low-impact development
19 principles must be implemented simultaneously. These requirements may
20 go into effect no earlier than December 31, 2016, or the time of the
21 scheduled update under RCW 36.70A.130(5), as existing on the effective
22 date of this section, whichever is later.

23 (ii) Provisions of the updated permit issued under (b) of this
24 subsection related to increased catch basin inspection and illicit
25 discharge detection frequencies and application of new storm water
26 controls to projects smaller than one acre may go into effect no
27 earlier than December 31, 2016, or the time of the scheduled update
28 under RCW 36.70A.130(5), as existing on the effective date of this
29 section, whichever is later.

30 (4) By July 31, 2012, the department shall:

31 (a) Reissue without modification and for a term of two years any
32 national pollutant discharge elimination system municipal storm water
33 general permit applicable to eastern Washington municipalities first
34 issued on January 17, 2007; and

35 (b) Issue an updated national pollutant discharge elimination
36 system municipal storm water general permit for any permit first issued
37 on January 17, 2007, applicable to eastern Washington municipalities.

1 An updated permit issued under this subsection becomes effective August
2 1, 2014."

3 Correct the title.

EFFECT: Provides that a forest practices applicant need only submit an application to the department of natural resources and that the department of natural resources will coordinate a concurrent review, when needed, with the department of fish and wildlife. Specifies that the thirty days provided to the department of natural resources to review a forest practices application does not start tolling until the concurrent review is completed.

--- END ---