

ESSB 6406 - S AMD 309

By Senators Hargrove, Schoesler

ADOPTED 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 form and 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) Prior to submitting an application to the department under RCW
11 76.09.050 that includes a forest practices hydraulic project involving
12 one or more water crossing structures meeting the criteria of (b) of
13 this subsection, the applicant shall submit water crossing structure
14 plans and specifications to the department of fish and wildlife for
15 concurrence review consistent with section 201(3) of this act.

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

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

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

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

26 (c) When submitting an application to the department under RCW
27 76.09.050, the applicant shall attach the following to the application:

28 (i) The concurrence review form issued by the department of fish
29 and wildlife; and

30 (ii) Plans and specifications for each water crossing structure
31 subject to concurrence review.

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

34 (1)(a) Where necessary to accomplish the purposes and policies
35 stated in RCW 76.09.010, and to implement the provisions of this

1 chapter, the board shall adopt forest practices rules pursuant to
2 chapter 34.05 RCW and in accordance with the procedures enumerated in
3 this section that:

4 (i) Establish minimum standards for forest practices;

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

10 (iii) Set forth necessary administrative provisions;

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

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

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

19 (c) Forest practices rules shall be administered and enforced by
20 either the department or the local governmental entity as provided in
21 this chapter. Such rules shall be adopted and administered so as to
22 give consideration to all purposes and policies set forth in RCW
23 76.09.010.

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

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

37 ~~(ii) After the expiration of the thirty day period,))~~ The board
38 ~~((and the department of ecology))~~ shall ~~((jointly))~~ hold one or more

1 hearings on the proposed rules pursuant to chapter 34.05 RCW. Any
2 county representative may propose specific forest practices rules
3 relating to problems existing within the county at the hearings.

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

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

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

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

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

35 (4)(a) The board shall establish by rule a program for the
36 acquisition of riparian open space and critical habitat for threatened
37 or endangered species as designated by the board. Acquisition must be
38 a conservation easement. Lands eligible for acquisition are forest

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

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

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

1 averages based on the land value tables established by RCW 84.33.140
2 and revised annually by the department of revenue.

3 (b) Subject to appropriations sufficient to cover the cost of such
4 an acquisition program and the related costs of administering the
5 program, the department must establish a conservation easement in land
6 that an owner tenders for purchase; provided that such lands have been
7 taxed as forest lands and are located within an unconfined channel
8 migration zone or contain critical habitat for threatened or endangered
9 species as designated by the board. Lands acquired under this section
10 shall become riparian or habitat open space. These acquisitions shall
11 not be deemed to trigger the compensating tax of chapters 84.33 and
12 84.34 RCW.

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

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

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

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

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

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

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

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

3 Class I: Minimal or specific forest practices that have no direct
4 potential for damaging a public resource and that may be conducted
5 without submitting an application or a notification except that when
6 the regulating authority is transferred to a local governmental entity,
7 those Class I forest practices that involve timber harvesting or road
8 construction within "urban growth areas," designated pursuant to
9 chapter 36.70A RCW, are processed as Class IV forest practices, but are
10 not subject to environmental review under chapter 43.21C RCW;

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

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

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

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

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

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

28 Class III: Forest practices other than those contained in Class I,
29 II, or IV. A Class III application must be approved or disapproved by
30 the department within thirty calendar days from the date the department
31 receives the application. However, the applicant may not begin work on
32 that forest practice until all forest practice fees required under RCW
33 76.09.065 have been received by the department;

34 Class IV: Forest practices other than those contained in Class I
35 or II:

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

37 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter

1 amended, are not to be reforested because of the likelihood of future
2 conversion to urban development;

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

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

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

15 (d) Which have a potential for a substantial impact on the
16 environment and therefore require an evaluation by the department as to
17 whether or not a detailed statement must be prepared pursuant to the
18 state environmental policy act, chapter 43.21C RCW. Such evaluation
19 shall be made within ten days from the date the department receives the
20 application: PROVIDED, That nothing herein shall be construed to
21 prevent any local or regional governmental entity from determining that
22 a detailed statement must be prepared for an action pursuant to a Class
23 IV forest practice taken by that governmental entity concerning the
24 land on which forest practices will be conducted. A Class IV
25 application must be approved or disapproved by the department within
26 thirty calendar days from the date the department receives the
27 application, (~~unless the department determines that a detailed
28 statement must be made, in which case the application must be approved
29 or disapproved by the department within sixty calendar days from the
30 date the department receives the application, unless the commissioner
31 of public lands, through the promulgation of a formal order, determines
32 that the process cannot be completed within such period~~) except that
33 the department must: Approve or disapprove an application within sixty
34 calendar days from the date the department receives the application if
35 the department determines that a detailed statement must be made,
36 unless the commissioner of public lands, through the promulgation of a
37 formal order, determines that the process cannot be completed within

1 such a period. However, the applicant may not begin work on that
2 forest practice until all forest practice fees required under RCW
3 76.09.065 have been received by the department.

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

7 (2) Except for those forest practices being regulated by local
8 governmental entities as provided elsewhere in this chapter, no Class
9 II, Class III, or Class IV forest practice shall be commenced or
10 continued after January 1, 1975, unless the department has received a
11 notification with regard to a Class II forest practice or approved an
12 application with regard to a Class III or Class IV forest practice
13 containing all information required by RCW 76.09.060 as now or
14 hereafter amended. However, in the event forest practices regulations
15 necessary for the scheduled implementation of this chapter and RCW
16 90.48.420 have not been adopted in time to meet such schedules, the
17 department shall have the authority to regulate forest practices and
18 approve applications on such terms and conditions consistent with this
19 chapter and RCW 90.48.420 and the purposes and policies of RCW
20 76.09.010 until applicable forest practices regulations are in effect.

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

27 (4) Except for those forest practices being regulated by local
28 governmental entities as provided elsewhere in this chapter, forest
29 practices shall be conducted in accordance with the forest practices
30 regulations, orders and directives as authorized by this chapter or the
31 forest practices regulations, and the terms and conditions of any
32 approved applications.

33 (5) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, the
35 department of natural resources shall notify the applicant in writing
36 of either its approval of the application or its disapproval of the
37 application and the specific manner in which the application fails to
38 comply with the provisions of this section or with the forest practices

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

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

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

29 (a) The department receives written notice from the county, city,
30 or town of such objections within fourteen business days from the time
31 of transmittal of the application to the county, city, or town, or one
32 day before the department acts on the application, whichever is later;
33 and

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

36 The department shall either disapprove those portions of such
37 application or appeal the county, city, or town objections to the
38 appeals board. If the objections related to (b) of this subsection are

1 based on local authority consistent with RCW 76.09.240 as now or
2 hereafter amended, the department shall disapprove the application
3 until such time as the county, city, or town consents to its approval
4 or such disapproval is reversed on appeal. The applicant shall be a
5 party to all department appeals of county, city, or town objections.
6 Unless the county, city, or town either consents or has waived its
7 rights under this subsection, the department shall not approve portions
8 of an application affecting such lands until the minimum time for
9 county, city, or town objections has expired.

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

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

22 (10) For those forest practices regulated by the board and the
23 department, the department shall, within four business days notify the
24 county, city, or town of all notifications, approvals, and disapprovals
25 of an application affecting lands within the county, city, or town,
26 except to the extent the county, city, or town has waived its right to
27 such notice.

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

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

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

1 (1) The department shall prescribe the form and contents of the
2 notification and application. The forest practices rules shall specify
3 by whom and under what conditions the notification and application
4 shall be signed or otherwise certified as acceptable. Activities
5 conducted by the department or a contractor under the direction of the
6 department under the provisions of RCW 76.04.660, shall be exempt from
7 the landowner signature requirement on any forest practices application
8 required to be filed. The application or notification shall be
9 delivered in person to the department, sent by first-class mail to the
10 department or electronically filed in a form defined by the department.
11 The form for electronic filing shall be readily convertible to a paper
12 copy, which shall be available to the public pursuant to chapter 42.56
13 RCW. The information required may include, but is not limited to:

14 (a) Name and address of the forest landowner, timber owner, and
15 operator;

16 (b) Description of the proposed forest practice or practices to be
17 conducted;

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

20 (d) Planimetric and topographic maps showing location and size of
21 all lakes and streams and other public waters in and immediately
22 adjacent to the operating area and showing all existing and proposed
23 roads and major tractor roads;

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

27 (f) For an application or notification submitted on or after the
28 effective date of section 202 of this act that includes a forest
29 practices hydraulic project, plans and specifications for the forest
30 practices hydraulic project to ensure the proper protection of fish
31 life;

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

35 ((+g)) (h) Soil, geological, and hydrological data with respect to
36 forest practices;

37 ((+h)) (i) The expected dates of commencement and completion of
38 all forest practices specified in the application;

1 ~~((i))~~ (j) Provisions for continuing maintenance of roads and
2 other construction or other measures necessary to afford protection to
3 public resources;

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

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

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

9 (3) The application for a forest practice or the notification of a
10 forest practice is subject to the reforestation requirement of RCW
11 76.09.070.

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

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

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

22 (iii) The forest practices described in the application are subject
23 to applicable county, city, town, and regional governmental authority
24 permitted under RCW 76.09.240 as well as the forest practices rules.

25 (b) Except as provided elsewhere in this section, if the landowner
26 harvests without an approved application or notification or the
27 landowner does not state that any land covered by the application or
28 notification will be or is intended to be converted, and the department
29 or the county, city, town, or regional governmental entity becomes
30 aware of conversion activities to a use other than commercial timber
31 operations, as that term is defined in RCW 76.09.020, then the
32 department shall send to the department of ecology and the appropriate
33 county, city, town, and regional governmental entities the following
34 documents:

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

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

1 (iii) Copies of any applicable outstanding final orders or
2 decisions issued by the department related to the forest practices
3 application or notification.

4 (c) Failure to comply with the reforestation requirements contained
5 in any final order or decision shall constitute a removal of
6 designation under the provisions of RCW 84.33.140, and a change of use
7 under the provisions of RCW 84.34.080, and, if applicable, shall
8 subject such lands to the payments and/or penalties resulting from such
9 removals or changes.

10 (d) Conversion to a use other than commercial forest product
11 operations within six years after approval of the forest practices
12 application or notification without the consent of the county, city, or
13 town shall constitute a violation of each of the county, municipal
14 city, town, and regional authorities to which the forest practice
15 operations would have been subject if the application had stated an
16 intent to convert.

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

21 (f) Landowners who have not stated an intent to convert the land
22 covered by an application or notification and who decide to convert the
23 land to a nonforestry use within six years of receiving an approved
24 application or notification must do so in a manner consistent with RCW
25 76.09.470.

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

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

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

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

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

10 (b) A notification or application may be renewed for an additional
11 three-year term by the filing and approval of a notification or
12 application, as applicable, prior to the expiration of the original
13 application or notification. A renewal application or notification is
14 subject to the forest practices rules in effect at the time the renewal
15 application or notification is filed. Nothing in this section
16 precludes the applicant from applying for a new application or
17 notification after the renewal period has lapsed.

18 (c) At the option of the applicant, an application or notification
19 may be submitted to cover a single forest practice or a number of
20 forest practices within reasonable geographic or political boundaries
21 as specified by the department. An application or notification that
22 covers more than one forest practice may have an effective term of more
23 than ~~((two))~~ three years.

24 (d) The board shall adopt rules that establish standards and
25 procedures for approving an application or notification that has an
26 effective term of more than ~~((two))~~ three years. Such rules shall
27 include extended time periods for application or notification approval
28 or disapproval. ~~((On an approved application with a term of more than
29 two years, the applicant shall inform the department before commencing
30 operations))~~ The department may require the applicant to provide
31 advance notice before commencing operations on an approved application
32 or notification.

33 (7) Notwithstanding any other provision of this section, no prior
34 application or notification shall be required for any emergency forest
35 practice necessitated by fire, flood, windstorm, earthquake, or other
36 emergency as defined by the board, but the operator shall submit an
37 application or notification, whichever is applicable, to the department

1 within forty-eight hours after commencement of such practice or as
2 required by local regulations.

3 (8) Forest practices applications or notifications are not required
4 for forest practices conducted to control exotic forest insect or
5 disease outbreaks, when conducted by or under the direction of the
6 department of agriculture in carrying out an order of the governor or
7 director of the department of agriculture to implement pest control
8 measures as authorized under chapter 17.24 RCW, and are not required
9 when conducted by or under the direction of the department in carrying
10 out emergency measures under a forest health emergency declaration by
11 the commissioner of public lands as provided in RCW 76.06.130.

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

14 (b) In order to minimize adverse impacts to public resources,
15 control measures must be based on integrated pest management, as
16 defined in RCW 17.15.010, and must follow forest practices rules
17 relating to road construction and maintenance, timber harvest, and
18 forest chemicals, to the extent possible without compromising control
19 objectives.

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

24 (d) When the appropriate regulatory staff of the department are
25 notified under (c) of this subsection, they must consult with the
26 landowner, interested agencies, and affected tribes, and assist the
27 notifying agencies in the development of integrated pest management
28 plans that comply with forest practices rules as required under (b) of
29 this subsection.

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

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

36 (g) The exemption from obtaining approved forest practices
37 applications or notifications does not apply to forest practices
38 conducted after the governor, the director of the department of

1 agriculture, or the commissioner of public lands have declared that an
2 emergency no longer exists because control objectives have been met,
3 that there is no longer an imminent threat, or that there is no longer
4 a good likelihood of control.

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

7 (1) The department shall make inspections of forest lands, before,
8 during, and after the conducting of forest practices as necessary for
9 the purpose of ensuring compliance with this chapter (~~and~~), the
10 forest practices rules, including forest practices rules incorporated
11 under RCW 76.09.040(3), and to ensure that no material damage occurs to
12 the natural resources of this state as a result of (~~such~~) forest
13 practices.

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

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

21 (a) The department has attempted an inspection of forest lands
22 under this chapter to ensure compliance with this chapter and the
23 forest practices rules or to ensure that no potential or actual
24 material damage occurs to the natural resources of this state, and
25 access to all or part of the forest lands has been actually or
26 constructively denied; or

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

30 (4) In connection with any watershed analysis, any review of a
31 pending application by an identification team appointed by the
32 department, any compliance studies, any effectiveness monitoring, or
33 other research that has been agreed to by a landowner, the department
34 may invite representatives of other agencies, tribes, and interest
35 groups to accompany a department representative and, at the landowner's
36 election, the landowner, on any such inspections. Reasonable efforts

1 shall be made by the department to notify the landowner of the persons
2 being invited onto the property and the purposes for which they are
3 being invited.

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

6 (1) By December 31, 2013, the department must make examples of
7 complete, high quality forest practices applications and the resulting
8 approvals readily available to the public on its internet site, as well
9 as the internet site of the office of regulatory assistance established
10 in RCW 43.42.010. The department must maximize assistance to the
11 public and interested parties by seeking to make readily available
12 examples from forest practices that generate significant permitting
13 activity or frequent questions.

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

17 (3) The department must obtain the written permission of an
18 applicant before making publicly available that applicant's application
19 or approval under this section and must work cooperatively with the
20 applicant to ensure that no personal or proprietary information is made
21 available.

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

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

28 (2) (~~For applications and notifications submitted to the~~
29 ~~department, the application fee)) (a) If sections 201 through 203 and
30 206 of this act are not enacted into law by June 30, 2012, then the fee
31 for applications and notifications submitted to the department shall be
32 fifty dollars for class II, III, and IV forest practices applications
33 or notifications relating to the commercial harvest of timber.
34 However, the fee shall be five hundred dollars for class IV forest
35 practices applications on lands being converted to other uses or on
36 lands which are not to be reforested because of the likelihood of~~

1 future conversion to urban development or on lands that are contained
2 within "urban growth areas," designated pursuant to chapter 36.70A RCW,
3 except the fee shall be fifty dollars on those lands where the forest
4 landowner provides:

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

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

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

15 (A) The fee for applications and notifications relating to the
16 commercial harvest of timber submitted to the department shall be one
17 hundred dollars for class II applications and notifications, class III
18 applications, and class IV forest practices that have a potential for
19 a substantial impact on the environment and therefore require an
20 evaluation by the department as to whether or not a detailed statement
21 must be prepared pursuant to the state environmental policy act,
22 chapter 43.21C RCW, when the application or notification is submitted
23 by a landowner who satisfies the definition of small forest landowner
24 provided in RCW 76.09.450 and the application or notification applies
25 to a single contiguous ownership consisting of one or more parcels;

26 (B) The fee for applications and notifications relating to the
27 commercial harvest of timber submitted to the department shall be one
28 hundred fifty dollars for class II applications and notifications,
29 class III applications, and class IV forest practices that have a
30 potential for a substantial impact on the environment and therefore
31 require an evaluation by the department as to whether or not a detailed
32 statement must be prepared pursuant to the state environmental policy
33 act, chapter 43.21C RCW, when the application or notification is
34 submitted by a landowner who does not satisfy the criteria for a
35 reduced application fee as provided in (b)(i)(A) of this subsection
36 (2); and

37 (C) The fee shall be one thousand five hundred dollars for class IV
38 forest practices applications on lands being converted to other uses or

1 on lands that are not to be reforested because of the likelihood of
2 future conversion to urban development or on lands that are contained
3 within urban growth areas, designated pursuant to chapter 36.70A RCW,
4 except the fee shall be the same as for a class III forest practices
5 application where the forest landowner provides:

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

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

14 (ii) If the board has not incorporated fish protection standards
15 adopted under chapter 77.55 RCW into the forest practices rules and
16 approved technical guidance as required under RCW 76.09.040 by December
17 31, 2013, the fee for applications and notifications submitted to the
18 department shall be as provided under (a) of this subsection until the
19 rules are adopted and technical guidance approved.

20 (3) The forest practices application account is created in the
21 state treasury. Moneys in the account may be spent only after
22 appropriation. All money collected from fees under ((this)) subsection
23 (2) of this section shall be deposited in the ((state general fund))
24 forest practices application account for the purposes of implementing
25 this chapter, chapter 76.13 RCW, and Title 222 WAC.

26 ~~((+3))~~ (4) For applications submitted to ((the)) a local
27 governmental entity as provided in this chapter, the fee shall be
28 ~~((five hundred dollars for class IV forest practices on lands being~~
29 ~~converted to other uses or lands that are contained within "urban~~
30 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~
31 ~~otherwise provided in this section, unless a different fee is otherwise~~
32 ~~provided))~~ determined, collected, and retained by the local
33 governmental entity.

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

35 ~~(5) An application fee under subsection (2) of this section shall~~
36 ~~be refunded or credited to the applicant if either the application or~~
37 ~~notification is disapproved by the department or the application or~~

1 notification is withdrawn by the applicant due to restrictions imposed
2 by the department.))

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

5 (1) If a landowner who did not state an intent to convert his or
6 her land to a nonforestry use decides to convert his or her land to a
7 nonforestry use within six years of receiving an approved forest
8 practices application or notification under this chapter, the landowner
9 must:

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

12 (b) Contact the department of ecology and the applicable county,
13 city, town, or regional governmental entity to begin the permitting
14 process; and

15 (c) Notify the department ~~((and))~~, withdraw any applicable
16 applications or notifications ~~((or request))~~, and submit a new
17 application for the conversion. The fee for a new application for
18 conversion under this subsection (1)(c) is the difference between the
19 applicable fee for the new application under RCW 76.09.065 and the fee
20 previously paid for the original application or notification, which
21 must be deposited in the forest practices application account created
22 in RCW 76.09.065.

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

25 (a) Notify the department and request from the department the
26 status of any applicable forest practices applications, notifications,
27 or final orders or decisions; and

28 (b) Complete the following activities:

29 (i) Require that the landowner be in full compliance with chapter
30 43.21C RCW, if applicable;

31 (ii) Receive notification from the department that the landowner
32 has resolved any outstanding final orders or decisions issued by the
33 department; and

34 (iii) Make a determination as to whether or not the condition of
35 the land in question is in full compliance with local ordinances and
36 regulations. If full compliance is not found, a mitigation plan to
37 address violations of local ordinances or regulations must be required

1 for the parcel in question by the county, city, town, or regional
2 governmental entity. Required mitigation plans must be prepared by the
3 landowner and approved by the county, city, town, or regional
4 governmental entity. Once approved, the mitigation plan must be
5 implemented by the landowner. Mitigation measures that may be required
6 include, but are not limited to, revegetation requirements to plant and
7 maintain trees of sufficient maturity and appropriate species
8 composition to restore critical area and buffer function or to be in
9 compliance with applicable local government regulations.

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

12 (1) There is hereby created the forest practices board of the state
13 of Washington as an agency of state government consisting of members as
14 follows:

15 (a) The commissioner of public lands or the commissioner's
16 designee;

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

19 (c) The director of the department of agriculture or the director's
20 designee;

21 (d) The director of the department of ecology or the director's
22 designee;

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

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

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

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

1 (2) (~~The director of the department of fish and wildlife's service~~
2 ~~on the board may be terminated two years after August 18, 1999, if the~~
3 ~~legislature finds that after two years the department has not made~~
4 ~~substantial progress toward integrating the laws, rules, and programs~~
5 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~
6 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~
7 ~~finding shall be based solely on whether the department of fish and~~
8 ~~wildlife makes substantial progress as defined in this subsection, and~~
9 ~~will not be based on other actions taken as a member of the board.~~
10 ~~Substantial progress shall include recommendations to the legislature~~
11 ~~for closer integration of the existing rule-making authorities of the~~
12 ~~board and the department of fish and wildlife, and closer integration~~
13 ~~of the forest practices and hydraulics permitting processes, including~~
14 ~~exploring the potential for a consolidated permitting process. These~~
15 ~~recommendations shall be designed to resolve problems currently~~
16 ~~associated with the existing dual regulatory and permitting processes.~~

17 ~~(3))~~ The members of the initial board appointed by the governor
18 shall be appointed so that the term of one member shall expire December
19 31, 1975, the term of one member shall expire December 31, 1976, the
20 term of one member shall expire December 31, 1977, the terms of two
21 members shall expire December 31, 1978, and the terms of two members
22 shall expire December 31, 1979. Thereafter, each member shall be
23 appointed for a term of four years. Vacancies on the board shall be
24 filled in the same manner as the original appointments. Each member of
25 the board shall continue in office until his or her successor is
26 appointed and qualified. The commissioner of public lands or the
27 commissioner's designee shall be the chair of the board.

28 ~~((4))~~ (3) The board shall meet at such times and places as shall
29 be designated by the chair or upon the written request of the majority
30 of the board. The principal office of the board shall be at the state
31 capital.

32 ~~((5))~~ (4) Members of the board, except public employees and
33 elected officials, shall be compensated in accordance with RCW
34 43.03.250. Each member shall be entitled to reimbursement for travel
35 expenses incurred in the performance of their duties as provided in RCW
36 43.03.050 and 43.03.060.

37 ~~((6))~~ (5) The board may employ such clerical help and staff
38 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

10 (3) "Application" means the application required pursuant to RCW
11 76.09.050.

12 (4) "Aquatic resources" includes water quality, salmon, other
13 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
14 identified in the forests and fish report, the Columbia torrent
15 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
16 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
17 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
18 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
19 their respective habitats.

20 (5) "Board" means the forest practices board created in RCW
21 76.09.030.

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

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

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

29 (9) "Date of receipt" has the same meaning as defined in RCW
30 43.21B.001.

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

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

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

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

3 (14) "Forest land" means all land which is capable of supporting a
4 merchantable stand of timber and is not being actively used for a use
5 which is incompatible with timber growing. Forest land does not
6 include agricultural land that is or was enrolled in the conservation
7 reserve enhancement program by contract if such agricultural land was
8 historically used for agricultural purposes and the landowner intends
9 to continue to use the land for agricultural purposes in the future.
10 As it applies to the operation of the road maintenance and abandonment
11 plan element of the forest practices rules on small forest landowners,
12 the term "forest land" excludes:

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

14 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
15 and the land on which appurtenances necessary to the production,
16 preparation, or sale of crops, fruit, dairy products, fish, and
17 livestock exist.

18 (15) "Forest landowner" means any person in actual control of
19 forest land, whether such control is based either on legal or equitable
20 title, or on any other interest entitling the holder to sell or
21 otherwise dispose of any or all of the timber on such land in any
22 manner. However, any lessee or other person in possession of forest
23 land without legal or equitable title to such land shall be excluded
24 from the definition of "forest landowner" unless such lessee or other
25 person has the right to sell or otherwise dispose of any or all of the
26 timber located on such forest land.

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

30 (a) Road and trail construction, including forest practices
31 hydraulic projects that include water crossing structures, and
32 associated activities and maintenance;

33 (b) Harvesting, final and intermediate;

34 (c) Precommercial thinning;

35 (d) Reforestation;

36 (e) Fertilization;

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

38 (g) Salvage of trees; and

1 (h) Brush control.

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

8 (17) "Forest practices rules" means any rules adopted pursuant to
9 RCW 76.09.040.

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

15 (19) "Forest trees" does not include hardwood trees cultivated by
16 agricultural methods in growing cycles shorter than fifteen years if
17 the trees were planted on land that was not in forest use immediately
18 before the trees were planted and before the land was prepared for
19 planting the trees. "Forest trees" includes Christmas trees, but does
20 not include Christmas trees that are cultivated by agricultural
21 methods, as that term is defined in RCW 84.33.035.

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

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

26 (22) "Person" means any individual, partnership, private, public,
27 or municipal corporation, county, the department or other state or
28 local governmental entity, or association of individuals of whatever
29 nature.

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

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

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

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

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

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

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

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

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

23 The incorporation of fish protection standards adopted under
24 chapter 77.55 RCW into the forest practices rules as required under RCW
25 76.09.040(3) is exempt from compliance with this chapter.

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 215.** Sections 202 and 205 of this act take
12 effect on the date the forest practices board incorporates fish
13 protection standards adopted under chapter 77.55 RCW into the forest
14 practices rules and approves technical guidance as required under RCW
15 76.09.040. The department of natural resources must provide written
16 notice of the effective date of these sections to affected parties, the
17 chief clerk of the house of representatives, the secretary of the
18 senate, the office of the code reviser, and others as deemed
19 appropriate by the department of natural resources.

20 NEW SECTION. **Sec. 216.** Nothing in this act affects any rules,
21 processes, or procedures of the department of fish and wildlife and the
22 department of natural resources existing on the effective date of this
23 section that provide for regulatory integration of hydraulic projects
24 and forest practices for projects in nonfish-bearing waters.

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

29 NEW SECTION. **Sec. 218.** Nothing in this act affects the
30 jurisdiction or other authority of a federally recognized Indian tribe
31 within the boundary of its reservation or on other tribally owned
32 lands.

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

- 3 (i) An incorporated city;
- 4 (ii) An unincorporated area within an urban growth area;
- 5 (iii) An unincorporated area outside of an urban growth area but
6 within a county planning under chapter 36.70A RCW; or
- 7 (iv) An unincorporated area within a county not planning under
8 chapter 36.70A RCW.

9 (c) In updating the environmental checklist found in WAC 197-11-
10 960, the department of ecology shall:

- 11 (i) Improve efficiency of the environmental checklist; and
- 12 (ii) Not include any new subjects into the scope of the checklist,
13 including climate change and greenhouse gases.

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

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

- 23 (i) Update, but not decrease, the thresholds for all other project
24 actions not specified in subsection (2) of this section;
- 25 (ii) Propose methods for integrating the state environmental policy
26 act process with provisions of the growth management act, chapter
27 36.70A RCW, including consideration of ways to revise WAC 197-11-210
28 through 197-11-232 to further the goals of RCW 43.21C.240; and
- 29 (iii) Create categorical exemptions for minor code amendments for
30 which review under chapter 43.21C RCW would not be required because
31 they do not lessen environmental protection.

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

35 (4)(a) The department of ecology shall convene an advisory
36 committee consisting of members representing, at minimum, cities,
37 counties, business interests, environmental interests, agricultural

1 interests, cultural resources interests, state agencies, and tribal
2 governments to:

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

6 (ii) Ensure that state agencies and other interested parties can
7 receive notice about projects of interest through notice under chapter
8 43.21C RCW and means other than chapter 43.21C RCW; and

9 (iii) Ensure that federally recognized tribes receive notice about
10 projects that impact tribal interests through notice under chapter
11 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

17 (1) An environmental impact statement (the detailed statement
18 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
19 legislation and other major actions having a probable significant,
20 adverse environmental impact. The environmental impact statement may
21 be combined with the recommendation or report on the proposal or issued
22 as a separate document. The substantive decisions or recommendations
23 shall be clearly identifiable in the combined document. Actions
24 categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this
25 act do not require environmental review or the preparation of an
26 environmental impact statement under this chapter. (~~(In a county,~~
27 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~
28 ~~provided for in subsection (2) of this section, does not require a~~
29 ~~threshold determination or the preparation of an environmental impact~~
30 ~~statement under this chapter, but is subject to environmental review~~
31 ~~and mitigation as provided in this chapter.))~~

32 (2) An environmental impact statement is required to analyze only
33 those probable adverse environmental impacts which are significant.
34 Beneficial environmental impacts may be discussed. The responsible
35 official shall consult with agencies and the public to identify such
36 impacts and limit the scope of an environmental impact statement. The
37 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate

1 sections of an environmental impact statement. Discussions of
2 significant short-term and long-term environmental impacts, significant
3 irrevocable commitments of natural resources, significant alternatives
4 including mitigation measures, and significant environmental impacts
5 which cannot be mitigated should be consolidated or included, as
6 applicable, in those sections of an environmental impact statement
7 where the responsible official decides they logically belong.

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

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

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

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

19 ~~(iv) Are located within an urban growth area, as defined in RCW
20 36.70A.030;~~

21 ~~(v) Are not essential public facilities, as defined in RCW
22 36.70A.200; and~~

23 ~~(vi) Are consistent with a comprehensive plan adopted under chapter
24 36.70A RCW.~~

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

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

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

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

1 (b) Have had the significant impacts adequately addressed in an
2 environmental impact statement under the requirements of this chapter
3 in conjunction with, or to implement, a comprehensive plan or subarea
4 plan adopted under chapter 36.70A RCW, or a fully contained community,
5 a master planned resort, a master planned development, or a phased
6 project;

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

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

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

15 (f) Are not essential public facilities, as defined in RCW
16 36.70A.200, unless an essential public facility is accessory to or part
17 of a residential, office, school, commercial, recreational, service, or
18 industrial development that is designated a planned action under this
19 subsection; and

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

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

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

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

28 (3)(a) A county, city, or town shall determine during permit review
29 whether a proposed project is consistent with a planned action
30 ordinance adopted by the jurisdiction. To determine project
31 consistency with a planned action ordinance, a county, city, or town
32 may utilize a modified checklist pursuant to the rules adopted to
33 implement RCW 43.21C.110, a form that is designated within the planned
34 action ordinance, or a form contained in agency rules adopted pursuant
35 to RCW 43.21C.120.

36 (b) A county, city, or town is not required to make a threshold
37 determination and may not require additional environmental review, for
38 a proposal that is determined to be consistent with the development or

1 redevelopment described in the planned action ordinance, except for
2 impacts that are specifically deferred to the project level at the time
3 of the planned action ordinance's adoption. At least one community
4 meeting must be held before the notice is issued for the planned action
5 ordinance. Notice for the planned action and notice of the community
6 meeting required by this subsection (3)(b) must be mailed or otherwise
7 verifiably provided to: (i) All affected federally recognized tribal
8 governments; and (ii) agencies with jurisdiction over the future
9 development anticipated for the planned action. The determination of
10 consistency, and the adequacy of any environmental review that was
11 specifically deferred, are subject to the type of administrative appeal
12 that the county, city, or town provides for the proposal itself
13 consistent with RCW 36.70B.060.

14 (4) For a planned action ordinance that encompasses the entire
15 jurisdictional boundary of a county, city, or town, at least one
16 community meeting must be held before the notice is issued for the
17 planned action ordinance. Notice for the planned action ordinance and
18 notice of the community meeting required by this subsection must be
19 mailed or otherwise verifiably provided to:

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

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

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

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

26 (1) In order to accommodate infill development and thereby realize
27 the goals and policies of comprehensive plans adopted according to
28 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is
29 authorized by this section to establish categorical exemptions from the
30 requirements of this chapter. An exemption adopted under this section
31 applies even if it differs from the categorical exemptions adopted by
32 rule of the department under RCW 43.21C.110(1)(a). An exemption may be
33 adopted by a city or county under this section if it meets the
34 following criteria:

35 (a) It categorically exempts government action related to
36 development (~~that is new residential or mixed use development~~)
37 proposed to fill in an urban growth area, designated according to RCW

1 36.70A.110, where current density and intensity of use in the area is
2 lower than called for in the goals and policies of the applicable
3 comprehensive plan and the development is either:

4 (i) Residential development;

5 (ii) Mixed-use development; or

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

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

12 (c) The local government considers the specific probable adverse
13 environmental impacts of the proposed action and determines that these
14 specific impacts are adequately addressed by the development
15 regulations or other applicable requirements of the comprehensive plan,
16 subarea plan element of the comprehensive plan, planned action
17 ordinance, or other local, state, or federal rules or laws; and

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

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

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

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

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

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

35 (b) With funding from private sources; and

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

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

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

11 (3) A county, city, or town assessing fees under subsection (2)(a)
12 of this section must provide for a mechanism by which project
13 proponents may either elect to utilize the environmental review
14 completed by the lead agency and pay the fees under subsection (1) of
15 this section or certify that they do not want the local jurisdiction to
16 utilize the environmental review completed as a part of a planned
17 action and therefore not be assessed any associated fees. Project
18 proponents who choose this option may not make use of or benefit from
19 the up-front environmental review prepared by the local jurisdiction.

20 (4) Prior to the collection of fees, the county, city, or town must
21 enact an ordinance that establishes the total amount of expenses to be
22 recovered through fees and provides objective standards for determining
23 the fee amount to be imposed upon each development proposal
24 proportionate to the impacts of each development and to the benefits
25 accruing to each development from the nonproject environmental review.
26 The ordinance must provide (a) a procedure by which an applicant who
27 disagrees with whether the amount of the fee is correct, reasonable, or
28 proportionate may pay the fee with the written stipulation "paid under
29 protest"; and (b) if the county, city, or town provides for an
30 administrative appeal of its decision on the project for which the fees
31 are imposed, any dispute about the amount of the fees must be resolved
32 in the same administrative appeals process. Any disagreement about the
33 reasonableness, proportionality, or amount of the fees imposed upon a
34 development may not be the basis for delay in issuance of a project
35 permit for that development.

36 (5) The ordinance adopted under subsection (4) of this section must
37 make information available about the amount of the expenses designated

1 for recovery. When such expenses have been fully recovered, the
2 county, city, or town may no longer assess a fee under this section.

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

6 (7) The city, county, or town shall refund fees collected where a
7 court of competent jurisdiction determines that the environmental
8 review conducted under section 303 of this act, regarding planned
9 actions, or under RCW 43.21C.229, regarding infill development, was not
10 sufficient to comply with the requirements of this chapter regarding
11 the proposed development activity for which the fees were collected.
12 The applicant and the city, county, or town may mutually agree to a
13 partial refund or to waive the refund in the interest of resolving any
14 dispute regarding compliance with this chapter.

15 **Sec. 306.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to
16 read as follows:

17 Except only as expressly provided in chapters 67.28, 81.104, and
18 82.14 RCW, the state preempts the field of imposing retail sales and
19 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
20 67.16.060, conveyances, and cigarettes, and no county, town, or other
21 municipal subdivision shall have the right to impose taxes of that
22 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
23 82.02.090, no county, city, town, or other municipal corporation shall
24 impose any tax, fee, or charge, either direct or indirect, on the
25 construction or reconstruction of residential buildings, commercial
26 buildings, industrial buildings, or on any other building or building
27 space or appurtenance thereto, or on the development, subdivision,
28 classification, or reclassification of land. However, this section
29 does not preclude dedications of land or easements within the proposed
30 development or plat which the county, city, town, or other municipal
31 corporation can demonstrate are reasonably necessary as a direct result
32 of the proposed development or plat to which the dedication of land or
33 easement is to apply.

34 This section does not prohibit voluntary agreements with counties,
35 cities, towns, or other municipal corporations that allow a payment in
36 lieu of a dedication of land or to mitigate a direct impact that has
37 been identified as a consequence of a proposed development,

1 subdivision, or plat. A local government shall not use such voluntary
2 agreements for local off-site transportation improvements within the
3 geographic boundaries of the area or areas covered by an adopted
4 transportation program authorized by chapter 39.92 RCW. Any such
5 voluntary agreement is subject to the following provisions:

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

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

11 (3) Any payment not so expended shall be refunded with interest to
12 be calculated from the original date the deposit was received by the
13 county and at the same rate applied to tax refunds pursuant to RCW
14 84.69.100; however, if the payment is not expended within five years
15 due to delay attributable to the developer, the payment shall be
16 refunded without interest.

17 No county, city, town, or other municipal corporation shall require
18 any payment as part of such a voluntary agreement which the county,
19 city, town, or other municipal corporation cannot establish is
20 reasonably necessary as a direct result of the proposed development or
21 plat.

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

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

33 Nothing in this section prohibits counties, cities, or towns from
34 imposing or permits counties, cities, or towns to impose water, sewer,
35 natural gas, drainage utility, and drainage system charges. However,
36 no such charge shall exceed the proportionate share of such utility or
37 system's capital costs which the county, city, or town can demonstrate

1 are attributable to the property being charged. Furthermore, these
2 provisions may not be interpreted to expand or contract any existing
3 authority of counties, cities, or towns to impose such charges.

4 Nothing in this section prohibits a transportation benefit district
5 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
6 the legislative authority of a county, city, or town from approving the
7 imposition of such fees within a transportation benefit district.

8 Nothing in this section prohibits counties, cities, or towns from
9 imposing transportation impact fees authorized pursuant to chapter
10 39.92 RCW.

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

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

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

20 NEW SECTION. **Sec. 307.** A new section is added to chapter 43.21C
21 RCW to read as follows:

22 The following nonproject actions are categorically exempt from the
23 requirements of this chapter:

24 (1) Amendments to development regulations that are required to
25 ensure consistency with an adopted comprehensive plan pursuant to RCW
26 36.70A.040, where the comprehensive plan was previously subjected to
27 environmental review pursuant to this chapter and the impacts
28 associated with the proposed regulation were specifically addressed in
29 the prior environmental review;

30 (2) Amendments to development regulations that are required to
31 ensure consistency with a shoreline master program approved pursuant to
32 RCW 90.58.090, where the shoreline master program was previously
33 subjected to environmental review pursuant to this chapter and the
34 impacts associated with the proposed regulation were specifically
35 addressed in the prior environmental review;

36 (3) Amendments to development regulations that, upon implementation

1 of a project action, will provide increased environmental protection,
2 limited to the following:

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

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

7 (c) Increased vegetation retention or decreased impervious surface
8 areas in critical areas;

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

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

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

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

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

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

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

27 (3) In instances where the locally adopted ordinance, development
28 regulation, land use plan, or other legal authority provide the
29 necessary information to answer a specific question, the lead agency
30 must explain how the proposed project satisfies the underlying local
31 legal authority.

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

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

1 (6) Nothing in this section changes the standard for whether an
2 environmental impact statement is required for an action that may have
3 a probable significant, adverse environmental impact pursuant to RCW
4 43.21C.030.

5 (7) Nothing in this section affects the appeal provisions provided
6 in this chapter.

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

12 **Sec. 309.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to
13 read as follows:

14 The growth management planning and environmental review fund is
15 hereby established in the state treasury. Moneys may be placed in the
16 fund from the proceeds of bond sales, tax revenues, budget transfers,
17 federal appropriations, gifts, or any other lawful source. Moneys in
18 the fund may be spent only after appropriation. Moneys in the fund
19 shall be used to make grants or loans to local governments for the
20 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any
21 payment of either principal or interest, or both, derived from loans
22 made from this fund must be deposited into the fund.

23 **Sec. 310.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to
24 read as follows:

25 (1) The department of (~~community, trade, and economic~~
26 ~~development~~) commerce shall provide management services for the growth
27 management planning and environmental review fund created by RCW
28 36.70A.490. The department shall establish procedures for fund
29 management. The department shall encourage participation in the grant
30 or loan program by other public agencies. The department shall develop
31 the grant or loan criteria, monitor the grant or loan program, and
32 select grant or loan recipients in consultation with state agencies
33 participating in the grant or loan program through the provision of
34 grant or loan funds or technical assistance.

35 (2) A grant or loan may be awarded to a county or city that is
36 required to or has chosen to plan under RCW 36.70A.040 and that is

1 qualified pursuant to this section. The grant or loan shall be
2 provided to assist a county or city in paying for the cost of preparing
3 an environmental analysis under chapter 43.21C RCW, that is integrated
4 with a comprehensive plan, subarea plan, plan element, countywide
5 planning policy, development regulation, monitoring program, or other
6 planning activity adopted under or implementing this chapter that:

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

9 (b) Encourages use of plans and information developed for purposes
10 of complying with this chapter to satisfy requirements of other state
11 programs.

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

14 (a) Demonstrate that it will prepare an environmental analysis
15 pursuant to chapter 43.21C RCW and subsection (2) of this section that
16 is integrated with a comprehensive plan, subarea plan, plan element,
17 countywide planning policy, development regulations, monitoring
18 program, or other planning activity adopted under or implementing this
19 chapter;

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

24 (c) Demonstrate that procedures for review of development permit
25 applications will be based on the integrated plans and environmental
26 analysis;

27 (d) Include mechanisms to monitor the consequences of growth as it
28 occurs in the plan area and to use the resulting data to update the
29 plan, policy, or implementing mechanisms and associated environmental
30 analysis;

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

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

37 (4) In awarding grants or loans, the department shall give

1 preference to proposals that include one or more of the following
2 elements:

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

5 (b) Identification and monitoring of system capacities for elements
6 of the built environment, and to the extent appropriate, of the natural
7 environment;

8 (c) Coordination with state, federal, and tribal governments in
9 project review;

10 (d) Furtherance of important state objectives related to economic
11 development, protection of areas of statewide significance, and siting
12 of essential public facilities;

13 (e) Programs to improve the efficiency and effectiveness of the
14 permitting process by greater reliance on integrated plans and
15 prospective environmental analysis;

16 (f) Programs for effective citizen and neighborhood involvement
17 that contribute to greater likelihood that planning decisions can be
18 implemented with community support; (~~and~~)

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

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

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

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

33 **Sec. 311.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
34 read as follows:

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

36 (1) To adopt and amend (~~thereafter~~) rules of interpretation and
37 implementation of this chapter, subject to the requirements of chapter

1 34.05 RCW, for the purpose of providing uniform rules and guidelines to
2 all branches of government including state agencies, political
3 subdivisions, public and municipal corporations, and counties. The
4 proposed rules shall be subject to full public hearings requirements
5 associated with rule (~~(promulgation)~~) adoption. Suggestions for
6 modifications of the proposed rules shall be considered on their
7 merits, and the department shall have the authority and responsibility
8 for full and appropriate independent (~~(promulgation and)~~) adoption of
9 rules, assuring consistency with this chapter as amended and with the
10 preservation of protections afforded by this chapter. The rule-making
11 powers authorized in this section shall include, but shall not be
12 limited to, the following phases of interpretation and implementation
13 of this chapter:

14 (a) Categories of governmental actions which are not to be
15 considered as potential major actions significantly affecting the
16 quality of the environment, including categories pertaining to
17 applications for water right permits pursuant to chapters 90.03 and
18 90.44 RCW. The types of actions included as categorical exemptions in
19 the rules shall be limited to those types which are not major actions
20 significantly affecting the quality of the environment. The rules
21 shall provide for certain circumstances where actions which potentially
22 are categorically exempt require environmental review. An action that
23 is categorically exempt under the rules adopted by the department may
24 not be conditioned or denied under this chapter.

25 (b) Rules for criteria and procedures applicable to the
26 determination of when an act of a branch of government is a major
27 action significantly affecting the quality of the environment for which
28 a detailed statement is required to be prepared pursuant to RCW
29 43.21C.030.

30 (c) Rules and procedures applicable to the preparation of detailed
31 statements and other environmental documents, including but not limited
32 to rules for timing of environmental review, obtaining comments, data
33 and other information, and providing for and determining areas of
34 public participation which shall include the scope and review of draft
35 environmental impact statements.

36 (d) Scope of coverage and contents of detailed statements assuring
37 that such statements are simple, uniform, and as short as practicable;

1 statements are required to analyze only reasonable alternatives and
2 probable adverse environmental impacts which are significant, and may
3 analyze beneficial impacts.

4 (e) Rules and procedures for public notification of actions taken
5 and documents prepared.

6 (f) Definition of terms relevant to the implementation of this
7 chapter including the establishment of a list of elements of the
8 environment. Analysis of environmental considerations under RCW
9 43.21C.030(2) may be required only for those subjects listed as
10 elements of the environment (or portions thereof). The list of
11 elements of the environment shall consist of the "natural" and "built"
12 environment. The elements of the built environment shall consist of
13 public services and utilities (such as water, sewer, schools, fire and
14 police protection), transportation, environmental health (such as
15 explosive materials and toxic waste), and land and shoreline use
16 (including housing, and a description of the relationships with land
17 use and shoreline plans and designations, including population).

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

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

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

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

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

32 (l) Rules relating to the use of environmental documents in
33 planning and decision making and the implementation of the substantive
34 policies and requirements of this chapter, including procedures for
35 appeals under this chapter.

36 (m) Rules and procedures that provide for the integration of
37 environmental review with project review as provided in RCW 43.21C.240.
38 The rules and procedures shall be jointly developed with the department

1 of (~~community, trade, and economic development~~) commerce and shall be
2 applicable to the preparation of environmental documents for actions in
3 counties, cities, and towns planning under RCW 36.70A.040. The rules
4 and procedures shall also include procedures and criteria to analyze
5 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and
6 revisions to the rules adopted under this section to ensure that they
7 are compatible with the requirements and authorizations of chapter 347,
8 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
9 procedures adopted by a county, city, or town to implement the
10 provisions of chapter 347, Laws of 1995 prior to the effective date of
11 rules adopted under this subsection (1)(m) shall continue to be
12 effective until the adoption of any new or revised ordinances or
13 procedures that may be required. If any revisions are required as a
14 result of rules adopted under this subsection (1)(m), those revisions
15 shall be made within the time limits specified in RCW 43.21C.120.

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

18 (a) Consult with the state agencies and with representatives of
19 science, industry, agriculture, labor, conservation organizations,
20 state and local governments, and other groups, as it deems advisable;
21 and

22 (b) Utilize, to the fullest extent possible, the services,
23 facilities, and information (including statistical information) of
24 public and private agencies, organizations, and individuals, in order
25 to avoid duplication of effort and expense, overlap, or conflict with
26 similar activities authorized by law and performed by established
27 agencies.

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

30 **Sec. 312.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to
31 read as follows:

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

34 **Sec. 313.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to
35 read as follows:

36 (1) The department of ecology is hereby designated as the state

1 water pollution control agency for all purposes of the federal clean
2 water act as it exists on February 4, 1987, and is hereby authorized to
3 participate fully in the programs of the act as well as to take all
4 action necessary to secure to the state the benefits and to meet the
5 requirements of that act. With regard to the national estuary program
6 established by section 320 of that act, the department shall exercise
7 its responsibility jointly with the Puget Sound partnership, created in
8 RCW 90.71.210. The department of ecology may delegate its authority
9 under this chapter, including its national pollutant discharge
10 elimination permit system authority and duties regarding animal feeding
11 operations and concentrated animal feeding operations, to the
12 department of agriculture through a memorandum of understanding. Until
13 any such delegation receives federal approval, the department of
14 agriculture's adoption or issuance of animal feeding operation and
15 concentrated animal feeding operation rules, permits, programs, and
16 directives pertaining to water quality shall be accomplished after
17 reaching agreement with the director of the department of ecology.
18 Adoption or issuance and implementation shall be accomplished so that
19 compliance with such animal feeding operation and concentrated animal
20 feeding operation rules, permits, programs, and directives will achieve
21 compliance with all federal and state water pollution control laws.
22 The powers granted herein include, among others, and notwithstanding
23 any other provisions of this chapter ((90.48-RCW)) or otherwise, the
24 following:

25 (a) Complete authority to establish and administer a comprehensive
26 state point source waste discharge or pollution discharge elimination
27 permit program which will enable the department to qualify for full
28 participation in any national waste discharge or pollution discharge
29 elimination permit system and will allow the department to be the sole
30 agency issuing permits required by such national system operating in
31 the state of Washington subject to the provisions of RCW 90.48.262(2).
32 Program elements authorized herein may include, but are not limited to:
33 (i) Effluent treatment and limitation requirements together with timing
34 requirements related thereto; (ii) applicable receiving water quality
35 standards requirements; (iii) requirements of standards of performance
36 for new sources; (iv) pretreatment requirements; (v) termination and
37 modification of permits for cause; (vi) requirements for public notices
38 and opportunities for public hearings; (vii) appropriate relationships

1 with the secretary of the army in the administration of his or her
2 responsibilities which relate to anchorage and navigation, with the
3 administrator of the environmental protection agency in the performance
4 of his or her duties, and with other governmental officials under the
5 federal clean water act; (viii) requirements for inspection,
6 monitoring, entry, and reporting; (ix) enforcement of the program
7 through penalties, emergency powers, and criminal sanctions; (x) a
8 continuing planning process; and (xi) user charges.

9 (b) The power to establish and administer state programs in a
10 manner which will (~~insure~~) ensure the procurement of moneys, whether
11 in the form of grants, loans, or otherwise; to assist in the
12 construction, operation, and maintenance of various water pollution
13 control facilities and works; and the administering of various state
14 water pollution control management, regulatory, and enforcement
15 programs.

16 (c) The power to develop and implement appropriate programs
17 pertaining to continuing planning processes, area-wide waste treatment
18 management plans, and basin planning.

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

21 (~~(+2)~~) (3) By July 31, 2012, the department shall:

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

26 (b) Issue an updated national pollutant discharge elimination
27 system municipal storm water general permit applicable to western
28 Washington municipalities for any permit first issued on January 17,
29 2007. An updated permit issued under this subsection shall become
30 effective beginning August 1, 2013.

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

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

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

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

13 (b) Issue an updated national pollutant discharge elimination
14 system municipal storm water general permit for any permit first issued
15 on January 17, 2007, applicable to eastern Washington municipalities.
16 An updated permit issued under this subsection becomes effective August
17 1, 2014."

ESSB 6406 - S AMD

By Senators Hargrove, Schoesler

ADOPTED 04/10/2012

18 On page 1, beginning on line 2 of the title, after "resources;"
19 strike the remainder of the title and insert "amending RCW 77.55.021,
20 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065,
21 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490,
22 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and
23 amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections
24 to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding
25 a new section to chapter 43.30 RCW; adding new sections to chapter
26 43.21C RCW; creating new sections; prescribing penalties; providing a
27 contingent effective date; and providing expiration dates."

EFFECT: Removes language specifically authorizing the department

of fish and wildlife to accept applications for and issue general hydraulic project approval permits and removes associated definitions.

Moves the expiration date for hydraulic project approval fees back by one year from June 30, 2016, to June 30, 2017. Exempts hydraulic projects on farm and agricultural lands from hydraulic project approval fees.

Removes the regulatory gap analysis study to have been conducted by the University of Washington.

Removes several references allowing new, replacement, or removal activities under a marina or marine terminal maintenance hydraulic project permit.

Directs the department of fish and wildlife to review, and either verify that the review has occurred or comment on, certain forest practices applications relating to fish bearing waters or shorelines of the state. Requires the department of fish and wildlife and the department of natural resources to enter into an interagency contract regarding implementation of the act, including funding provisions for the department of fish and wildlife's review of forest practices hydraulic projects.

Establishes forest practices application fees at one hundred dollars, instead of one hundred fifty dollars, for small forest landowners harvesting on a single, contiguous ownership.

Specifies time frames for certain requirements within the updated phase II municipal storm water general permit for western Washington to be issued by July 31, 2012.

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