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SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

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State of Washington                      62nd Legislature                      2012 1st Special Session

By Senate Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker, and Shin)

READ FIRST TIME 02/03/12.

1            AN ACT Relating to modifying programs that provide for the  
2 protection of the state's natural resources; amending RCW 77.55.021,  
3 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065,  
4 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490,  
5 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and  
6 amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections  
7 to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding  
8 a new section to chapter 43.30 RCW; adding new sections to chapter  
9 43.21C RCW; creating new sections; prescribing penalties; providing a  
10 contingent effective date; and providing expiration dates.

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

12            NEW SECTION.    **Sec. 1.** The legislature finds that significant  
13 opportunities exist to modify programs that provide for management and  
14 protection of the state's natural resources, including the state's  
15 forests, fish, and wildlife, in order to streamline regulatory  
16 processes and achieve program efficiencies while at the same time  
17 increasing the sustainability of program funding and maintaining  
18 current levels of natural resource protection. The legislature intends  
19 to update provisions relating to natural resource management and

1 regulatory programs including the hydraulic project approval program,  
2 forest practices act, and state environmental policy act, in order to  
3 achieve these opportunities.

4 **PART ONE**

5 **Hydraulic Project Approvals**

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

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

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

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

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

18 (4) "Date of receipt" has the same meaning as defined in RCW  
19 43.21B.001.

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

21 (6) "Director" means the director of the department of fish and  
22 wildlife.

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

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

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

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

35 (11) "Marine terminal" means a public or private commercial wharf

1 located in the navigable water of the state and used, or intended to be  
2 used, as a port or facility for the storing, handling, transferring, or  
3 transporting of goods to and from vessels.

4 (12) "Ordinary high water line" means the mark on the shores of all  
5 water that will be found by examining the bed and banks and  
6 ascertaining where the presence and action of waters are so common and  
7 usual, and so long continued in ordinary years as to mark upon the soil  
8 or vegetation a character distinct from the abutting upland. Provided,  
9 that in any area where the ordinary high water line cannot be found,  
10 the ordinary high water line adjoining saltwater is the line of mean  
11 higher high water and the ordinary high water line adjoining freshwater  
12 is the elevation of the mean annual flood.

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

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

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

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

22 (17) "Streambank stabilization" means those projects that prevent  
23 or limit erosion, slippage, and mass wasting. These projects include,  
24 but are not limited to, bank resloping, log and debris relocation or  
25 removal, planting of woody vegetation, bank protection using rock or  
26 woody material or placement of jetties or groins, gravel removal, or  
27 erosion control.

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

30 (19) "Waters of the state" and "state waters" means all salt and  
31 freshwaters waterward of the ordinary high water line and within the  
32 territorial boundary of the state.

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

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

1       (22) "Forest practices hydraulic project" means a hydraulic project  
2 that requires a forest practices application or notification under  
3 chapter 76.09 RCW.

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

8       (24) "Pamphlet hydraulic project" means a hydraulic project for the  
9 removal or control of aquatic noxious weeds conducted under the aquatic  
10 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral  
11 prospecting and mining conducted under the gold and fish pamphlet  
12 authorized by RCW 77.55.091.

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

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

18       (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~  
19 77.55.041, and section 201 of this act, in the event that any person or  
20 government agency desires to undertake a hydraulic project, the person  
21 or government agency shall, before commencing work thereon, secure the  
22 approval of the department in the form of a permit as to the adequacy  
23 of the means proposed for the protection of fish life.

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

26       (a) General plans for the overall project;

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

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

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

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

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

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

8       (5) With the exception of emergency permits as provided in  
9 subsection (12) of this section, applications for permits must be  
10 submitted to the department's headquarters office in Olympia. Requests  
11 for emergency permits as provided in subsection (12) of this section  
12 may be made to the permitting biologist assigned to the location in  
13 which the emergency occurs, to the department's regional office in  
14 which the emergency occurs, or to the department's headquarters office.

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

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

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

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

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

30       (iii) The applicant requests a delay; or

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

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

36       (~~(e)~~) (d) The period of forty-five calendar days may be extended  
37 if the permit is part of a multiagency permit streamlining effort and

1 all participating permitting agencies and the permit applicant agree to  
2 an extended timeline longer than forty-five calendar days.

3 ~~((+4))~~ (8) If the department denies approval of a permit, the  
4 department shall provide the applicant a written statement of the  
5 specific reasons why and how the proposed project would adversely  
6 affect fish life.

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

11 (b) Issuance, denial, conditioning, or modification of a permit may  
12 be informally appealed to the department within thirty days from the  
13 date of receipt of the decision. Requests for informal appeals must be  
14 filed in the form and manner prescribed by the department by rule. A  
15 permit decision that has been informally appealed to the department is  
16 appealable to the board within thirty days from the date of receipt of  
17 the department's decision on the informal appeal.

18 ~~((+5))~~ (9)(a) The permittee must demonstrate substantial progress  
19 on construction of that portion of the project relating to the permit  
20 within two years of the date of issuance.

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

24 (c) A permit remains in effect without need for periodic renewal  
25 for hydraulic projects that divert water for agricultural irrigation or  
26 stock watering purposes and that involve seasonal construction or other  
27 work. A permit for streambank stabilization projects to protect farm  
28 and agricultural land as defined in RCW 84.34.020 remains in effect  
29 without need for periodic renewal if the problem causing the need for  
30 the streambank stabilization occurs on an annual or more frequent  
31 basis. The permittee must notify the appropriate agency before  
32 commencing the construction or other work within the area covered by  
33 the permit.

34 ~~((+6))~~ (10) The department may, after consultation with the  
35 permittee, modify a permit due to changed conditions. A modification  
36 under this subsection is not subject to the fees provided under section  
37 103 of this act. The modification is appealable as provided in  
38 subsection ~~((+4))~~ (8) of this section. For a hydraulic project~~((s))~~

1 that diverts water for agricultural irrigation or stock watering  
2 purposes, ~~((e))~~ when the hydraulic project or other work is associated  
3 with streambank stabilization to protect farm and agricultural land as  
4 defined in RCW 84.34.020, the burden is on the department to show that  
5 changed conditions warrant the modification in order to protect fish  
6 life.

7 ~~((+7))~~ (11) A permittee may request modification of a permit due  
8 to changed conditions. The request must be processed within forty-five  
9 calendar days of receipt of the written request and payment of  
10 applicable fees under section 103 of this act. A decision by the  
11 department is appealable as provided in subsection ~~((+4))~~ (8) of this  
12 section. For a hydraulic project ~~((s))~~ that diverts water for  
13 agricultural irrigation or stock watering purposes, ~~((e))~~ when the  
14 hydraulic project or other work is associated with streambank  
15 stabilization to protect farm and agricultural land as defined in RCW  
16 84.34.020, the burden is on the permittee to show that changed  
17 conditions warrant the requested modification and that such a  
18 modification will not impair fish life.

19 ~~((+8))~~ (12)(a) The department, the county legislative authority,  
20 or the governor may declare and continue an emergency. If the county  
21 legislative authority declares an emergency under this subsection, it  
22 shall immediately notify the department. A declared state of emergency  
23 by the governor under RCW 43.06.010 shall constitute a declaration  
24 under this subsection.

25 (b) The department, through its authorized representatives, shall  
26 issue immediately, upon request, ~~((e))~~ verbal approval for a stream  
27 crossing, or work to remove any obstructions, repair existing  
28 structures, restore streambanks, protect fish life, or protect property  
29 threatened by the stream or a change in the stream flow without the  
30 necessity of obtaining a written permit prior to commencing work.  
31 Conditions of the emergency ~~((e))~~ verbal permit must be  
32 ~~((established by the department and))~~ reduced to writing within thirty  
33 days and complied with as provided for in this chapter.

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

37 ~~((+9))~~ (d) The department may not charge a person requesting an

1 emergency permit any of the fees authorized by section 103 of this act  
2 until after the emergency permit is issued and reduced to writing.

3 (13) All state and local agencies with authority under this chapter  
4 to issue permits or other authorizations in connection with emergency  
5 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
6 expedite the processing of such permits or authorizations in keeping  
7 with the emergency nature of such requests and shall provide a decision  
8 to the applicant within fifteen calendar days of the date of  
9 application.

10 ~~((+10+))~~ (14) The department or the county legislative authority  
11 may determine an imminent danger exists. The county legislative  
12 authority shall notify the department, in writing, if it determines  
13 that an imminent danger exists. In cases of imminent danger, the  
14 department shall issue an expedited written permit, upon request, for  
15 work to remove any obstructions, repair existing structures, restore  
16 banks, protect fish resources, or protect property. Expedited permit  
17 requests require a complete written application as provided in  
18 subsection (2) of this section and must be issued within fifteen  
19 calendar days of the receipt of a complete written application.  
20 Approval of an expedited permit is valid for up to sixty days from the  
21 date of issuance. The department may not require the provisions of the  
22 state environmental policy act, chapter 43.21C RCW, to be met as a  
23 condition of issuing a permit under this subsection.

24 ~~((+11+))~~ (15)(a) For any property, except for property located on  
25 a marine shoreline, that has experienced at least two consecutive years  
26 of flooding or erosion that has damaged or has threatened to damage a  
27 major structure, water supply system, septic system, or access to any  
28 road or highway, the county legislative authority may determine that a  
29 chronic danger exists. The county legislative authority shall notify  
30 the department, in writing, when it determines that a chronic danger  
31 exists. In cases of chronic danger, the department shall issue a  
32 permit, upon request, for work necessary to abate the chronic danger by  
33 removing any obstructions, repairing existing structures, restoring  
34 banks, restoring road or highway access, protecting fish resources, or  
35 protecting property. Permit requests must be made and processed in  
36 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

37 (b) Any projects proposed to address a chronic danger identified  
38 under (a) of this subsection that satisfies the project description



1 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
2 of the state environmental policy act, chapter 43.21C RCW. However,  
3 the project is subject to the review process established in RCW  
4 77.55.181(3) as if it were a fish habitat improvement project.

5 ~~((12))~~ (16) The department may issue an expedited written permit  
6 in those instances where normal permit processing would result in  
7 significant hardship for the applicant or unacceptable damage to the  
8 environment. Expedited permit requests require a complete written  
9 application as provided in subsection (2) of this section and must be  
10 issued within fifteen calendar days of the receipt of a complete  
11 written application. Approval of an expedited permit is valid for up  
12 to sixty days from the date of issuance. The department may not  
13 require the provisions of the state environmental policy act, chapter  
14 43.21C RCW, to be met as a condition of issuing a permit under this  
15 subsection.

16 NEW SECTION. Sec. 103. A new section is added to chapter 77.55  
17 RCW to read as follows:

18 (1) The department shall charge an application fee of one hundred  
19 fifty dollars for a hydraulic project permit or permit modification  
20 issued under RCW 77.55.021 where the project is located at or below the  
21 ordinary high water line. The application fee established under this  
22 subsection may not be charged after June 30, 2017.

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

25 (a) Hydraulic projects approved under applicant-funded contracts  
26 with the department that pay for the costs of processing those  
27 projects;

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

30 (c) Pamphlet hydraulic projects;

31 (d) Mineral prospecting and mining activities; and

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

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

36 (4) The fee provisions contained in this section are prospective

1 only. The department of fish and wildlife may not charge fees for  
2 hydraulic project permits issued under this title prior to the  
3 effective date of this section.

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

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

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

11 (2) Except for unanticipated receipts under RCW 43.79.260 through  
12 43.79.282, moneys in the hydraulic project approval account may be  
13 spent only after appropriation.

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

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

19 ~~(1) ((For a marina or marine terminal in existence on June 6, 1996,~~  
20 ~~or a marina or marine terminal that has received a permit for its~~  
21 ~~initial construction, a renewable, five-year permit shall be issued,~~  
22 ~~upon request, for regular maintenance activities of the marina or~~  
23 ~~marine terminal.~~

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

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

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

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

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

5       (b) Maintenance or repair of an existing overwater structure within  
6 the existing footprint;

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

8       (d) Maintenance or repair of pilings, including the replacement of  
9 bumper pilings;

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

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

12       (g) Maintenance or repair of wetland, riparian, or estuarine  
13 habitat; and

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

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

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

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

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

27       (2) The permit must contain provisions allowing for minor  
28 modifications to the plans and specifications without requiring  
29 reissuance of the permit.

30       (3) The permit must contain provisions that allow for minor  
31 modifications to the required work timing without requiring the  
32 reissuance of the permit. "Minor modifications to the required work  
33 timing" means a minor deviation from the timing window set forth in the  
34 permit when there are no spawning or incubating fish present within the  
35 vicinity of the project.



1 consistent with section 202 of this act. The concurrence review  
2 process must allow the department up to thirty days to review forest  
3 practices hydraulic projects meeting the criteria under section 202(2)  
4 (a) and (b) of this act for consistency with fish protection standards.

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

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

12 (6) The department may review and provide comments on any forest  
13 practices application. The department shall review, and either verify  
14 that the review has occurred or comment on, forest practices  
15 applications that include a forest practices hydraulic project  
16 involving fish bearing waters or shorelines of the state, as that term  
17 is defined in RCW 90.58.030. Prior to commenting and whenever  
18 reasonably practicable, the department shall communicate with the  
19 applicant regarding the substance of the project.

20 (7) The department shall participate in effectiveness monitoring  
21 for forest practices hydraulic projects through its role in the review  
22 processes provided under WAC 222-08-160 as it existed on the effective  
23 date of this section.

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

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

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

31 (a) Prior to submitting an application to the department under RCW  
32 76.09.050 that includes a forest practices hydraulic project involving  
33 one or more water crossing structures meeting the criteria of (b) of  
34 this subsection, the applicant shall submit water crossing structure  
35 plans and specifications to the department of fish and wildlife for  
36 concurrence review consistent with section 201(3) of this act.

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

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

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

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

10 (c) When submitting an application to the department under RCW  
11 76.09.050, the applicant shall attach the following to the application:

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

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

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

18 (1)(a) Where necessary to accomplish the purposes and policies  
19 stated in RCW 76.09.010, and to implement the provisions of this  
20 chapter, the board shall adopt forest practices rules pursuant to  
21 chapter 34.05 RCW and in accordance with the procedures enumerated in  
22 this section that:

23 (i) Establish minimum standards for forest practices;

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

29 (iii) Set forth necessary administrative provisions;

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

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

33 (b) Forest practices rules pertaining to water quality protection  
34 shall be adopted by the board after reaching agreement with the  
35 director of the department of ecology or the director's designee on the  
36 board with respect (~~thereto~~) to these rules. All other forest  
37 practices rules shall be adopted by the board.

1 (c) Forest practices rules shall be administered and enforced by  
2 either the department or the local governmental entity as provided in  
3 this chapter. Such rules shall be adopted and administered so as to  
4 give consideration to all purposes and policies set forth in RCW  
5 76.09.010.

6 (2)(a) The board shall prepare proposed forest practices rules  
7 consistent with this section and chapter 34.05 RCW. In addition to any  
8 forest practices rules relating to water quality protection proposed by  
9 the board, the department of ecology may submit to the board proposed  
10 forest practices rules relating to water quality protection.

11 ~~(b)(i) ((Prior to initiating the rule-making process, the proposed~~  
12 ~~rules shall be submitted for review and comments to the department of~~  
13 ~~fish and wildlife and to the counties of the state. After receipt of~~  
14 ~~the proposed forest practices rules, the department of fish and~~  
15 ~~wildlife and the counties of the state shall have thirty days in which~~  
16 ~~to review and submit comments to the board, and to the department of~~  
17 ~~ecology with respect to its proposed rules relating to water quality~~  
18 ~~protection.~~

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

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

27 (3)(a) The board shall incorporate into the forest practices rules  
28 those fish protection standards in the rules adopted under chapter  
29 77.55 RCW, as the rules existed on the effective date of this section,  
30 that are applicable to activities regulated under the forest practices  
31 rules. If fish protection standards are incorporated by reference, the  
32 board shall minimize administrative processes by utilizing the  
33 exception from the administrative procedures controlling significant  
34 legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation  
35 of rules adopted by other state agencies.

36 (b) Thereafter, the board shall incorporate into the forest  
37 practices rules any changes to those fish protection standards in the  
38 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent

1 with section 201 of this act; and (ii) applicable to activities  
2 regulated under the forest practices rules. If fish protection  
3 standards are incorporated by reference, the board shall minimize  
4 administrative processes by utilizing the exception from the  
5 administrative procedures controlling significant legislative rules  
6 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted  
7 by other state agencies.

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

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

17 (4)(a) The board shall establish by rule a program for the  
18 acquisition of riparian open space and critical habitat for threatened  
19 or endangered species as designated by the board. Acquisition must be  
20 a conservation easement. Lands eligible for acquisition are forest  
21 lands within unconfined channel migration zones or forest lands  
22 containing critical habitat for threatened or endangered species as  
23 designated by the board. Once acquired, these lands may be held and  
24 managed by the department, transferred to another state agency,  
25 transferred to an appropriate local government agency, or transferred  
26 to a private nonprofit nature conservancy corporation, as defined in  
27 RCW 64.04.130, in fee or transfer of management obligation. The board  
28 shall adopt rules governing the acquisition by the state or donation to  
29 the state of such interest in lands including the right of refusal if  
30 the lands are subject to unacceptable liabilities. The rules shall  
31 include definitions of qualifying lands, priorities for acquisition,  
32 and provide for the opportunity to transfer such lands with limited  
33 warranties and with a description of boundaries that does not require  
34 full surveys where the cost of securing the surveys would be  
35 unreasonable in relation to the value of the lands conveyed. The rules  
36 shall provide for the management of the lands for ecological protection  
37 or fisheries enhancement. For the purposes of conservation easements  
38 entered into under this section, the following apply:



1 (i) For conveyances of a conservation easement in which the  
2 landowner conveys an interest in the trees only, the compensation must  
3 include the timber value component, as determined by the cruised volume  
4 of any timber located within the channel migration zone or critical  
5 habitat for threatened or endangered species as designated by the  
6 board, multiplied by the appropriate quality code stumpage value for  
7 timber of the same species shown on the appropriate table used for  
8 timber harvest excise tax purposes under RCW 84.33.091;

9 (ii) For conveyances of a conservation easement in which the  
10 landowner conveys interests in both land and trees, the compensation  
11 must include the timber value component in (a)(i) of this subsection  
12 plus such portion of the land value component as determined just and  
13 equitable by the department. The land value component must be the  
14 acreage of qualifying channel migration zone or critical habitat for  
15 threatened or endangered species as determined by the board, to be  
16 conveyed, multiplied by the average per acre value of all commercial  
17 forest land in western Washington or the average for eastern  
18 Washington, whichever average is applicable to the qualifying lands.  
19 The department must determine the western and eastern Washington  
20 averages based on the land value tables established by RCW 84.33.140  
21 and revised annually by the department of revenue.

22 (b) Subject to appropriations sufficient to cover the cost of such  
23 an acquisition program and the related costs of administering the  
24 program, the department must establish a conservation easement in land  
25 that an owner tenders for purchase; provided that such lands have been  
26 taxed as forest lands and are located within an unconfined channel  
27 migration zone or contain critical habitat for threatened or endangered  
28 species as designated by the board. Lands acquired under this section  
29 shall become riparian or habitat open space. These acquisitions shall  
30 not be deemed to trigger the compensating tax of chapters 84.33 and  
31 84.34 RCW.

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

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

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

3        (1) The department and the department of natural resources shall  
4    enter into and maintain a memorandum of agreement between the two  
5    agencies that describes how to implement integration of hydraulic  
6    project approvals into forest practices applications consistent with  
7    this act.

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

12       (3) The department and the department of natural resources shall  
13   enter into and maintain an interagency contract to ensure  
14   implementation of this act and the memorandum of agreement between the  
15   two agencies required under subsection (1) of this section. The  
16   contract must include funding provisions for the department's review of  
17   forest practices hydraulic projects.

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

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

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

30        Class II: Forest practices which have a less than ordinary  
31   potential for damaging a public resource that may be conducted without  
32   submitting an application and may begin five calendar days, or such  
33   lesser time as the department may determine, after written notification  
34   by the operator, in the manner, content, and form as prescribed by the  
35   department, is received by the department. However, the work may not  
36   begin until all forest practice fees required under RCW 76.09.065 have

1 been received by the department. Class II shall not include forest  
2 practices:

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

4 (b) ~~((Which — require — approvals — under — the — provisions — of — the~~  
5 ~~hydraulics act, RCW 77.55.021;~~

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

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

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

11 Class III: Forest practices other than those contained in Class I,  
12 II, or IV. A Class III application must be approved or disapproved by  
13 the department within thirty calendar days from the date the department  
14 receives the application. However, the applicant may not begin work on  
15 that forest practice until all forest practice fees required under RCW  
16 76.09.065 have been received by the department;

17 Class IV: Forest practices other than those contained in Class I  
18 or II:

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

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

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

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

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

35 (d) Which have a potential for a substantial impact on the  
36 environment and therefore require an evaluation by the department as to  
37 whether or not a detailed statement must be prepared pursuant to the  
38 state environmental policy act, chapter 43.21C RCW. Such evaluation

1 shall be made within ten days from the date the department receives the  
2 application: PROVIDED, That nothing herein shall be construed to  
3 prevent any local or regional governmental entity from determining that  
4 a detailed statement must be prepared for an action pursuant to a Class  
5 IV forest practice taken by that governmental entity concerning the  
6 land on which forest practices will be conducted. A Class IV  
7 application must be approved or disapproved by the department within  
8 thirty calendar days from the date the department receives the  
9 application, (~~unless the department determines that a detailed~~  
10 ~~statement must be made, in which case the application must be approved~~  
11 ~~or disapproved by the department within sixty calendar days from the~~  
12 ~~date the department receives the application, unless the commissioner~~  
13 ~~of public lands, through the promulgation of a formal order, determines~~  
14 ~~that the process cannot be completed within such period)) except that  
15 the department must: Approve or disapprove an application within sixty  
16 calendar days from the date the department receives the application if  
17 the department determines that a detailed statement must be made,  
18 unless the commissioner of public lands, through the promulgation of a  
19 formal order, determines that the process cannot be completed within  
20 such a period. However, the applicant may not begin work on that  
21 forest practice until all forest practice fees required under RCW  
22 76.09.065 have been received by the department.~~

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

26 (2) Except for those forest practices being regulated by local  
27 governmental entities as provided elsewhere in this chapter, no Class  
28 II, Class III, or Class IV forest practice shall be commenced or  
29 continued after January 1, 1975, unless the department has received a  
30 notification with regard to a Class II forest practice or approved an  
31 application with regard to a Class III or Class IV forest practice  
32 containing all information required by RCW 76.09.060 as now or  
33 hereafter amended. However, in the event forest practices regulations  
34 necessary for the scheduled implementation of this chapter and RCW  
35 90.48.420 have not been adopted in time to meet such schedules, the  
36 department shall have the authority to regulate forest practices and  
37 approve applications on such terms and conditions consistent with this

1 chapter and RCW 90.48.420 and the purposes and policies of RCW  
2 76.09.010 until applicable forest practices regulations are in effect.

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

9 (4) Except for those forest practices being regulated by local  
10 governmental entities as provided elsewhere in this chapter, forest  
11 practices shall be conducted in accordance with the forest practices  
12 regulations, orders and directives as authorized by this chapter or the  
13 forest practices regulations, and the terms and conditions of any  
14 approved applications.

15 (5) Except for those forest practices being regulated by local  
16 governmental entities as provided elsewhere in this chapter, the  
17 department of natural resources shall notify the applicant in writing  
18 of either its approval of the application or its disapproval of the  
19 application and the specific manner in which the application fails to  
20 comply with the provisions of this section or with the forest practices  
21 regulations. Except as provided otherwise in this section, if the  
22 department fails to either approve or disapprove an application or any  
23 portion thereof within the applicable time limit, the application shall  
24 be deemed approved and the operation may be commenced: PROVIDED, That  
25 this provision shall not apply to applications which are neither  
26 approved nor disapproved pursuant to the provisions of subsection (7)  
27 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
28 prevent the department from being able to properly evaluate the  
29 application, the department may issue an approval conditional upon  
30 further review within sixty days(~~(:—PROVIDED,—FURTHER,—That—the~~  
31 ~~department shall have until April 1, 1975, to approve or disapprove an~~  
32 ~~application involving forest practices allowed to continue to April 1,~~  
33 ~~1975, under the provisions of subsection (2) of this section)). Upon~~  
34 receipt of any notification or any satisfactorily completed application  
35 the department shall in any event no later than two business days after  
36 such receipt transmit a copy to the departments of ecology and fish and  
37 wildlife, and to the county, city, or town in whose jurisdiction the

1 forest practice is to be commenced. Any comments by such agencies  
2 shall be directed to the department of natural resources.

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

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

12 (a) The department receives written notice from the county, city,  
13 or town of such objections within fourteen business days from the time  
14 of transmittal of the application to the county, city, or town, or one  
15 day before the department acts on the application, whichever is later;  
16 and

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

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

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

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

6 (10) For those forest practices regulated by the board and the  
7 department, the department shall, within four business days notify the  
8 county, city, or town of all notifications, approvals, and disapprovals  
9 of an application affecting lands within the county, city, or town,  
10 except to the extent the county, city, or town has waived its right to  
11 such notice.

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

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

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

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

35 (a) Name and address of the forest landowner, timber owner, and  
36 operator;

1 (b) Description of the proposed forest practice or practices to be  
2 conducted;

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

5 (d) Planimetric and topographic maps showing location and size of  
6 all lakes and streams and other public waters in and immediately  
7 adjacent to the operating area and showing all existing and proposed  
8 roads and major tractor roads;

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

12 (f) For an application or notification submitted on or after the  
13 effective date of section 202 of this act that includes a forest  
14 practices hydraulic project, plans and specifications for the forest  
15 practices hydraulic project to ensure the proper protection of fish  
16 life;

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

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

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

24 (~~(i)~~) (j) Provisions for continuing maintenance of roads and  
25 other construction or other measures necessary to afford protection to  
26 public resources;

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

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

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

32 (3) The application for a forest practice or the notification of a  
33 forest practice is subject to the reforestation requirement of RCW  
34 76.09.070.

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

37 (i) The reforestation requirements of this chapter and of the



1 forest practices rules shall not apply if the land is in fact converted  
2 unless applicable alternatives or limitations are provided in forest  
3 practices rules issued under RCW 76.09.070;

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

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

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

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

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

24 (iii) Copies of any applicable outstanding final orders or  
25 decisions issued by the department related to the forest practices  
26 application or notification.

27 (c) Failure to comply with the reforestation requirements contained  
28 in any final order or decision shall constitute a removal of  
29 designation under the provisions of RCW 84.33.140, and a change of use  
30 under the provisions of RCW 84.34.080, and, if applicable, shall  
31 subject such lands to the payments and/or penalties resulting from such  
32 removals or changes.

33 (d) Conversion to a use other than commercial forest product  
34 operations within six years after approval of the forest practices  
35 application or notification without the consent of the county, city, or  
36 town shall constitute a violation of each of the county, municipal  
37 city, town, and regional authorities to which the forest practice

1 operations would have been subject if the application had stated an  
2 intent to convert.

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

7 (f) Landowners who have not stated an intent to convert the land  
8 covered by an application or notification and who decide to convert the  
9 land to a nonforestry use within six years of receiving an approved  
10 application or notification must do so in a manner consistent with RCW  
11 76.09.470.

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

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

22 (5) Before the operator commences any forest practice in a manner  
23 or to an extent significantly different from that described in a  
24 previously approved application or notification, there shall be  
25 submitted to the department a new application or notification form in  
26 the manner set forth in this section.

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

33 (b) A notification or application may be renewed for an additional  
34 three-year term by the filing and approval of a notification or  
35 application, as applicable, prior to the expiration of the original  
36 application or notification. A renewal application or notification is  
37 subject to the forest practices rules in effect at the time the renewal

1 application or notification is filed. Nothing in this section  
2 precludes the applicant from applying for a new application or  
3 notification after the renewal period has lapsed.

4 (c) At the option of the applicant, an application or notification  
5 may be submitted to cover a single forest practice or a number of  
6 forest practices within reasonable geographic or political boundaries  
7 as specified by the department. An application or notification that  
8 covers more than one forest practice may have an effective term of more  
9 than ~~((two))~~ three years.

10 (d) The board shall adopt rules that establish standards and  
11 procedures for approving an application or notification that has an  
12 effective term of more than ~~((two))~~ three years. Such rules shall  
13 include extended time periods for application or notification approval  
14 or disapproval. ~~((On an approved application with a term of more than~~  
15 ~~two years, the applicant shall inform the department before commencing~~  
16 ~~operations))~~ The department may require the applicant to provide  
17 advance notice before commencing operations on an approved application  
18 or notification.

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

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

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

37 (b) In order to minimize adverse impacts to public resources,  
38 control measures must be based on integrated pest management, as

1 defined in RCW 17.15.010, and must follow forest practices rules  
2 relating to road construction and maintenance, timber harvest, and  
3 forest chemicals, to the extent possible without compromising control  
4 objectives.

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

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

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

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

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

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

30 (1) The department shall make inspections of forest lands, before,  
31 during, and after the conducting of forest practices as necessary for  
32 the purpose of ensuring compliance with this chapter (~~and~~), the  
33 forest practices rules, including forest practices rules incorporated  
34 under RCW 76.09.040(3), and to ensure that no material damage occurs to  
35 the natural resources of this state as a result of (~~such~~) forest  
36 practices.

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

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

8 (a) The department has attempted an inspection of forest lands  
9 under this chapter to ensure compliance with this chapter and the  
10 forest practices rules or to ensure that no potential or actual  
11 material damage occurs to the natural resources of this state, and  
12 access to all or part of the forest lands has been actually or  
13 constructively denied; or

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

17 (4) In connection with any watershed analysis, any review of a  
18 pending application by an identification team appointed by the  
19 department, any compliance studies, any effectiveness monitoring, or  
20 other research that has been agreed to by a landowner, the department  
21 may invite representatives of other agencies, tribes, and interest  
22 groups to accompany a department representative and, at the landowner's  
23 election, the landowner, on any such inspections. Reasonable efforts  
24 shall be made by the department to notify the landowner of the persons  
25 being invited onto the property and the purposes for which they are  
26 being invited.

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

29 (1) By December 31, 2013, the department must make examples of  
30 complete, high quality forest practices applications and the resulting  
31 approvals readily available to the public on its internet site, as well  
32 as the internet site of the office of regulatory assistance established  
33 in RCW 43.42.010. The department must maximize assistance to the  
34 public and interested parties by seeking to make readily available  
35 examples from forest practices that generate significant permitting  
36 activity or frequent questions.

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

4 (3) The department must obtain the written permission of an  
5 applicant before making publicly available that applicant's application  
6 or approval under this section and must work cooperatively with the  
7 applicant to ensure that no personal or proprietary information is made  
8 available.

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

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

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

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

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

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

1       (A) The fee for applications and notifications relating to the  
2 commercial harvest of timber submitted to the department shall be one  
3 hundred dollars for class II applications and notifications, class III  
4 applications, and class IV forest practices that have a potential for  
5 a substantial impact on the environment and therefore require an  
6 evaluation by the department as to whether or not a detailed statement  
7 must be prepared pursuant to the state environmental policy act,  
8 chapter 43.21C RCW, when the application or notification is submitted  
9 by a landowner who satisfies the definition of small forest landowner  
10 provided in RCW 76.09.450 and the application or notification applies  
11 to a single contiguous ownership consisting of one or more parcels;

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

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

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

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

1 (ii) If the board has not incorporated fish protection standards  
2 adopted under chapter 77.55 RCW into the forest practices rules and  
3 approved technical guidance as required under RCW 76.09.040 by December  
4 31, 2013, the fee for applications and notifications submitted to the  
5 department shall be as provided under (a) of this subsection until the  
6 rules are adopted and technical guidance approved.

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

13 ~~((3))~~ (4) For applications submitted to ((the)) a local  
14 governmental entity as provided in this chapter, the fee shall be  
15 ~~((five hundred dollars for class IV forest practices on lands being~~  
16 ~~converted to other uses or lands that are contained within "urban~~  
17 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~  
18 ~~otherwise provided in this section, unless a different fee is otherwise~~  
19 ~~provided))~~ determined, collected, and retained by the local  
20 governmental entity.

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

22 ~~(5) An application fee under subsection (2) of this section shall~~  
23 ~~be refunded or credited to the applicant if either the application or~~  
24 ~~notification is disapproved by the department or the application or~~  
25 ~~notification is withdrawn by the applicant due to restrictions imposed~~  
26 ~~by the department.))~~

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

29 (1) If a landowner who did not state an intent to convert his or  
30 her land to a nonforestry use decides to convert his or her land to a  
31 nonforestry use within six years of receiving an approved forest  
32 practices application or notification under this chapter, the landowner  
33 must:

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

36 (b) Contact the department of ecology and the applicable county,



1 city, town, or regional governmental entity to begin the permitting  
2 process; and

3 (c) Notify the department (~~and~~), withdraw any applicable  
4 applications or notifications (~~or request~~), and submit a new  
5 application for the conversion. The fee for a new application for  
6 conversion under this subsection (1)(c) is the difference between the  
7 applicable fee for the new application under RCW 76.09.065 and the fee  
8 previously paid for the original application or notification, which  
9 must be deposited in the forest practices application account created  
10 in RCW 76.09.065.

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

13 (a) Notify the department and request from the department the  
14 status of any applicable forest practices applications, notifications,  
15 or final orders or decisions; and

16 (b) Complete the following activities:

17 (i) Require that the landowner be in full compliance with chapter  
18 43.21C RCW, if applicable;

19 (ii) Receive notification from the department that the landowner  
20 has resolved any outstanding final orders or decisions issued by the  
21 department; and

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

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

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

4 (a) The commissioner of public lands or the commissioner's  
5 designee;

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

8 (c) The director of the department of agriculture or the director's  
9 designee;

10 (d) The director of the department of ecology or the director's  
11 designee;

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

14 (f) An elected member of a county legislative authority appointed  
15 by the governor(~~;- PROVIDED, - That - such~~). However, the county  
16 member's service on the board shall be conditioned on the member's  
17 continued service as an elected county official;

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

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

26 (2) (~~The director of the department of fish and wildlife's service~~  
27 ~~on the board may be terminated two years after August 18, 1999, if the~~  
28 ~~legislature finds that after two years the department has not made~~  
29 ~~substantial progress toward integrating the laws, rules, and programs~~  
30 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~  
31 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~  
32 ~~finding shall be based solely on whether the department of fish and~~  
33 ~~wildlife makes substantial progress as defined in this subsection, and~~  
34 ~~will not be based on other actions taken as a member of the board.~~  
35 ~~Substantial progress shall include recommendations to the legislature~~  
36 ~~for closer integration of the existing rule-making authorities of the~~  
37 ~~board and the department of fish and wildlife, and closer integration~~  
38 ~~of the forest practices and hydraulics permitting processes, including~~

1 ~~exploring the potential for a consolidated permitting process. These~~  
2 ~~recommendations shall be designed to resolve problems currently~~  
3 ~~associated with the existing dual regulatory and permitting processes.~~

4 ~~(3))~~ The members of the initial board appointed by the governor  
5 shall be appointed so that the term of one member shall expire December  
6 31, 1975, the term of one member shall expire December 31, 1976, the  
7 term of one member shall expire December 31, 1977, the terms of two  
8 members shall expire December 31, 1978, and the terms of two members  
9 shall expire December 31, 1979. Thereafter, each member shall be  
10 appointed for a term of four years. Vacancies on the board shall be  
11 filled in the same manner as the original appointments. Each member of  
12 the board shall continue in office until his or her successor is  
13 appointed and qualified. The commissioner of public lands or the  
14 commissioner's designee shall be the chair of the board.

15 ~~((4))~~ (3) The board shall meet at such times and places as shall  
16 be designated by the chair or upon the written request of the majority  
17 of the board. The principal office of the board shall be at the state  
18 capital.

19 ~~((5))~~ (4) Members of the board, except public employees and  
20 elected officials, shall be compensated in accordance with RCW  
21 43.03.250. Each member shall be entitled to reimbursement for travel  
22 expenses incurred in the performance of their duties as provided in RCW  
23 43.03.050 and 43.03.060.

24 ~~((6))~~ (5) The board may employ such clerical help and staff  
25 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

28 The definitions in this section apply throughout this chapter  
29 unless the context clearly requires otherwise.

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

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

35 (3) "Application" means the application required pursuant to RCW  
36 76.09.050.

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

9 (5) "Board" means the forest practices board created in RCW  
10 76.09.030.

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

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

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

18 (9) "Date of receipt" has the same meaning as defined in RCW  
19 43.21B.001.

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

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

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

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

29 (14) "Forest land" means all land which is capable of supporting a  
30 merchantable stand of timber and is not being actively used for a use  
31 which is incompatible with timber growing. Forest land does not  
32 include agricultural land that is or was enrolled in the conservation  
33 reserve enhancement program by contract if such agricultural land was  
34 historically used for agricultural purposes and the landowner intends  
35 to continue to use the land for agricultural purposes in the future.  
36 As it applies to the operation of the road maintenance and abandonment  
37 plan element of the forest practices rules on small forest landowners,  
38 the term "forest land" excludes:

- 1 (a) Residential home sites, which may include up to five acres; and
- 2 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
- 3 and the land on which appurtenances necessary to the production,
- 4 preparation, or sale of crops, fruit, dairy products, fish, and
- 5 livestock exist.

6 (15) "Forest landowner" means any person in actual control of  
7 forest land, whether such control is based either on legal or equitable  
8 title, or on any other interest entitling the holder to sell or  
9 otherwise dispose of any or all of the timber on such land in any  
10 manner. However, any lessee or other person in possession of forest  
11 land without legal or equitable title to such land shall be excluded  
12 from the definition of "forest landowner" unless such lessee or other  
13 person has the right to sell or otherwise dispose of any or all of the  
14 timber located on such forest land.

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

18 (a) Road and trail construction, including forest practices  
19 hydraulic projects that include water crossing structures, and  
20 associated activities and maintenance;

- 21 (b) Harvesting, final and intermediate;
- 22 (c) Precommercial thinning;
- 23 (d) Reforestation;
- 24 (e) Fertilization;
- 25 (f) Prevention and suppression of diseases and insects;
- 26 (g) Salvage of trees; and
- 27 (h) Brush control.

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

34 (17) "Forest practices rules" means any rules adopted pursuant to  
35 RCW 76.09.040.

36 (18) "Forest road," as it applies to the operation of the road  
37 maintenance and abandonment plan element of the forest practices rules

1 on small forest landowners, means a road or road segment that crosses  
2 land that meets the definition of forest land, but excludes residential  
3 access roads.

4 (19) "Forest trees" does not include hardwood trees cultivated by  
5 agricultural methods in growing cycles shorter than fifteen years if  
6 the trees were planted on land that was not in forest use immediately  
7 before the trees were planted and before the land was prepared for  
8 planting the trees. "Forest trees" includes Christmas trees, but does  
9 not include Christmas trees that are cultivated by agricultural  
10 methods, as that term is defined in RCW 84.33.035.

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

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

15 (22) "Person" means any individual, partnership, private, public,  
16 or municipal corporation, county, the department or other state or  
17 local governmental entity, or association of individuals of whatever  
18 nature.

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

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

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

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

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

36 (28) "Unconfined stream" means generally fifth order or larger  
37 waters that experience abrupt shifts in channel location, creating a  
38 complex floodplain characterized by extensive gravel bars, disturbance

1 species of vegetation of variable age, numerous side channels, wall-  
2 based channels, oxbow lakes, and wetland complexes. Many of these  
3 streams have dikes and levees that may temporarily or permanently  
4 restrict channel movement.

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

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

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

12 The incorporation of fish protection standards adopted under  
13 chapter 77.55 RCW into the forest practices rules as required under RCW  
14 76.09.040(3) is exempt from compliance with this chapter.

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

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

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

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

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

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

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





1 in place under chapters 36.70A and 90.58 RCW, and other laws. It is  
2 the intent of the legislature to direct the department of ecology to  
3 conduct two phases of rule making over the next two years to increase  
4 the thresholds for these categorical exemptions.

5 (2) By December 31, 2012, the department of ecology shall increase  
6 the rule-based categorical exemptions to chapter 43.21C RCW found in  
7 WAC 197-11-800 and update the environmental checklist found in WAC 197-  
8 11-960. In updating the categorical exemptions, the department of  
9 ecology must:

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

12 (i) The construction or location of single-family residential  
13 developments;

14 (ii) The construction or location of multifamily residential  
15 developments;

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

20 (iv) The construction of the following, including any associated  
21 parking areas or facilities: An office, a school, a commercial  
22 building, a recreational building, a service building, or a storage  
23 building;

24 (v) Landfilling or excavation activities; and

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

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

29 (i) An incorporated city;

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

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

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

35 (c) In updating the environmental checklist found in WAC 197-11-  
36 960, the department of ecology shall:

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

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

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

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

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

14 (ii) Propose methods for integrating the state environmental policy  
15 act process with provisions of the growth management act, chapter  
16 36.70A RCW, including consideration of ways to revise WAC 197-11-210  
17 through 197-11-232 to further the goals of RCW 43.21C.240; and

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

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

24 (4)(a) The department of ecology shall convene an advisory  
25 committee consisting of members representing, at minimum, cities,  
26 counties, business interests, environmental interests, agricultural  
27 interests, cultural resources interests, state agencies, and tribal  
28 governments to:

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

32 (ii) Ensure that state agencies and other interested parties can  
33 receive notice about projects of interest through notice under chapter  
34 43.21C RCW and means other than chapter 43.21C RCW; and

35 (iii) Ensure that federally recognized tribes receive notice about  
36 projects that impact tribal interests through notice under chapter  
37 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

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

21 (2) An environmental impact statement is required to analyze only  
22 those probable adverse environmental impacts which are significant.  
23 Beneficial environmental impacts may be discussed. The responsible  
24 official shall consult with agencies and the public to identify such  
25 impacts and limit the scope of an environmental impact statement. The  
26 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate  
27 sections of an environmental impact statement. Discussions of  
28 significant short-term and long-term environmental impacts, significant  
29 irrevocable commitments of natural resources, significant alternatives  
30 including mitigation measures, and significant environmental impacts  
31 which cannot be mitigated should be consolidated or included, as  
32 applicable, in those sections of an environmental impact statement  
33 where the responsible official decides they logically belong.

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

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

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

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

8       ~~(iv) Are located within an urban growth area, as defined in RCW~~  
9 ~~36.70A.030;~~

10       ~~(v) Are not essential public facilities, as defined in RCW~~  
11 ~~36.70A.200; and~~

12       ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
13 ~~36.70A RCW.~~

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

20       NEW SECTION. Sec. 303. A new section is added to chapter 43.21C  
21 RCW to read as follows:

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

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

27       (b) Have had the significant impacts adequately addressed in an  
28 environmental impact statement under the requirements of this chapter  
29 in conjunction with, or to implement, a comprehensive plan or subarea  
30 plan adopted under chapter 36.70A RCW, or a fully contained community,  
31 a master planned resort, a master planned development, or a phased  
32 project;

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

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

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

5 (f) Are not essential public facilities, as defined in RCW  
6 36.70A.200, unless an essential public facility is accessory to or part  
7 of a residential, office, school, commercial, recreational, service, or  
8 industrial development that is designated a planned action under this  
9 subsection; and

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

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

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

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

18 (3)(a) A county, city, or town shall determine during permit review  
19 whether a proposed project is consistent with a planned action  
20 ordinance adopted by the jurisdiction. To determine project  
21 consistency with a planned action ordinance, a county, city, or town  
22 may utilize a modified checklist pursuant to the rules adopted to  
23 implement RCW 43.21C.110, a form that is designated within the planned  
24 action ordinance, or a form contained in agency rules adopted pursuant  
25 to RCW 43.21C.120.

26 (b) A county, city, or town is not required to make a threshold  
27 determination and may not require additional environmental review, for  
28 a proposal that is determined to be consistent with the development or  
29 redevelopment described in the planned action ordinance, except for  
30 impacts that are specifically deferred to the project level at the time  
31 of the planned action ordinance's adoption. At least one community  
32 meeting must be held before the notice is issued for the planned action  
33 ordinance. Notice for the planned action and notice of the community  
34 meeting required by this subsection (3)(b) must be mailed or otherwise  
35 verifiably provided to: (i) All affected federally recognized tribal  
36 governments; and (ii) agencies with jurisdiction over the future  
37 development anticipated for the planned action. The determination of  
38 consistency, and the adequacy of any environmental review that was

1 specifically deferred, are subject to the type of administrative appeal  
2 that the county, city, or town provides for the proposal itself  
3 consistent with RCW 36.70B.060.

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

- 10 (a) All property owners of record within the county, city, or town;  
11 (b) All affected federally recognized tribal governments; and  
12 (c) All agencies with jurisdiction over the future development  
13 anticipated for the planned action.

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

16 (1) In order to accommodate infill development and thereby realize  
17 the goals and policies of comprehensive plans adopted according to  
18 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is  
19 authorized by this section to establish categorical exemptions from the  
20 requirements of this chapter. An exemption adopted under this section  
21 applies even if it differs from the categorical exemptions adopted by  
22 rule of the department under RCW 43.21C.110(1)(a). An exemption may be  
23 adopted by a city or county under this section if it meets the  
24 following criteria:

25 (a) It categorically exempts government action related to  
26 development (~~((that is new residential or mixed use development))~~)  
27 proposed to fill in an urban growth area, designated according to RCW  
28 36.70A.110, where current density and intensity of use in the area is  
29 lower than called for in the goals and policies of the applicable  
30 comprehensive plan and the development is either:

- 31 (i) Residential development;  
32 (ii) Mixed-use development; or  
33 (iii) Commercial development up to sixty-five thousand square feet,  
34 excluding retail development;

35 (b) It does not exempt government action related to development  
36 that is inconsistent with the applicable comprehensive plan or would

1 exceed the density or intensity of use called for in the goals and  
2 policies of the applicable comprehensive plan; (~~and~~)

3 (c) The local government considers the specific probable adverse  
4 environmental impacts of the proposed action and determines that these  
5 specific impacts are adequately addressed by the development  
6 regulations or other applicable requirements of the comprehensive plan,  
7 subarea plan element of the comprehensive plan, planned action  
8 ordinance, or other local, state, or federal rules or laws; and

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

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

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

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

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

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

26 (b) With funding from private sources; and

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

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

36 (b) The amount of the fee must be reasonable and proportionate to

1 the total expenses incurred by the county, city, or town in the  
2 preparation of the environmental impact statement.

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

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

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

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

35 (7) The city, county, or town shall refund fees collected where a  
36 court of competent jurisdiction determines that the environmental  
37 review conducted under section 303 of this act, regarding planned  
38 actions, or under RCW 43.21C.229, regarding infill development, was not



1 sufficient to comply with the requirements of this chapter regarding  
2 the proposed development activity for which the fees were collected.  
3 The applicant and the city, county, or town may mutually agree to a  
4 partial refund or to waive the refund in the interest of resolving any  
5 dispute regarding compliance with this chapter.

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

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

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

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

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

3 (3) Any payment not so expended shall be refunded with interest to  
4 be calculated from the original date the deposit was received by the  
5 county and at the same rate applied to tax refunds pursuant to RCW  
6 84.69.100; however, if the payment is not expended within five years  
7 due to delay attributable to the developer, the payment shall be  
8 refunded without interest.

9 No county, city, town, or other municipal corporation shall require  
10 any payment as part of such a voluntary agreement which the county,  
11 city, town, or other municipal corporation cannot establish is  
12 reasonably necessary as a direct result of the proposed development or  
13 plat.

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

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

25 Nothing in this section prohibits counties, cities, or towns from  
26 imposing or permits counties, cities, or towns to impose water, sewer,  
27 natural gas, drainage utility, and drainage system charges. However,  
28 no such charge shall exceed the proportionate share of such utility or  
29 system's capital costs which the county, city, or town can demonstrate  
30 are attributable to the property being charged. Furthermore, these  
31 provisions may not be interpreted to expand or contract any existing  
32 authority of counties, cities, or towns to impose such charges.

33 Nothing in this section prohibits a transportation benefit district  
34 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
35 the legislative authority of a county, city, or town from approving the  
36 imposition of such fees within a transportation benefit district.

37 Nothing in this section prohibits counties, cities, or towns from

1 imposing transportation impact fees authorized pursuant to chapter  
2 39.92 RCW.

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

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

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

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

14 The following nonproject actions are categorically exempt from the  
15 requirements of this chapter:

16 (1) Amendments to development regulations that are required to  
17 ensure consistency with an adopted comprehensive plan pursuant to RCW  
18 36.70A.040, where the comprehensive plan was previously subjected to  
19 environmental review pursuant to this chapter and the impacts  
20 associated with the proposed regulation were specifically addressed in  
21 the prior environmental review;

22 (2) Amendments to development regulations that are required to  
23 ensure consistency with a shoreline master program approved pursuant to  
24 RCW 90.58.090, where the shoreline master program was previously  
25 subjected to environmental review pursuant to this chapter and the  
26 impacts associated with the proposed regulation were specifically  
27 addressed in the prior environmental review;

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

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

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

35 (c) Increased vegetation retention or decreased impervious surface  
36 areas in critical areas;

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

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

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

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

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

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

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

19 (3) In instances where the locally adopted ordinance, development  
20 regulation, land use plan, or other legal authority provide the  
21 necessary information to answer a specific question, the lead agency  
22 must explain how the proposed project satisfies the underlying local  
23 legal authority.

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

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

30 (6) Nothing in this section changes the standard for whether an  
31 environmental impact statement is required for an action that may have  
32 a probable significant, adverse environmental impact pursuant to RCW  
33 43.21C.030.

34 (7) Nothing in this section affects the appeal provisions provided  
35 in this chapter.

36 (8) Nothing in this section modifies existing rules for determining  
37 the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor

1 does it modify agency procedures for complying with the state  
2 environmental policy act when an agency other than a local government  
3 is serving as the lead agency.

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

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

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

17 (1) The department of (~~community, — trade, — and — economic~~  
18 ~~development~~) commerce shall provide management services for the growth  
19 management planning and environmental review fund created by RCW  
20 36.70A.490. The department shall establish procedures for fund  
21 management. The department shall encourage participation in the grant  
22 or loan program by other public agencies. The department shall develop  
23 the grant or loan criteria, monitor the grant or loan program, and  
24 select grant or loan recipients in consultation with state agencies  
25 participating in the grant or loan program through the provision of  
26 grant or loan funds or technical assistance.

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

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

1 (b) Encourages use of plans and information developed for purposes  
2 of complying with this chapter to satisfy requirements of other state  
3 programs.

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

6 (a) Demonstrate that it will prepare an environmental analysis  
7 pursuant to chapter 43.21C RCW and subsection (2) of this section that  
8 is integrated with a comprehensive plan, subarea plan, plan element,  
9 countywide planning policy, development regulations, monitoring  
10 program, or other planning activity adopted under or implementing this  
11 chapter;

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

16 (c) Demonstrate that procedures for review of development permit  
17 applications will be based on the integrated plans and environmental  
18 analysis;

19 (d) Include mechanisms to monitor the consequences of growth as it  
20 occurs in the plan area and to use the resulting data to update the  
21 plan, policy, or implementing mechanisms and associated environmental  
22 analysis;

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

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

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

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

34 (b) Identification and monitoring of system capacities for elements  
35 of the built environment, and to the extent appropriate, of the natural  
36 environment;

37 (c) Coordination with state, federal, and tribal governments in  
38 project review;

1 (d) Furtherance of important state objectives related to economic  
2 development, protection of areas of statewide significance, and siting  
3 of essential public facilities;

4 (e) Programs to improve the efficiency and effectiveness of the  
5 permitting process by greater reliance on integrated plans and  
6 prospective environmental analysis;

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

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

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

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

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

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

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

27 (1) To adopt and amend (~~thereafter~~) rules of interpretation and  
28 implementation of this chapter, subject to the requirements of chapter  
29 34.05 RCW, for the purpose of providing uniform rules and guidelines to  
30 all branches of government including state agencies, political  
31 subdivisions, public and municipal corporations, and counties. The  
32 proposed rules shall be subject to full public hearings requirements  
33 associated with rule (~~promulgation~~) adoption. Suggestions for  
34 modifications of the proposed rules shall be considered on their  
35 merits, and the department shall have the authority and responsibility  
36 for full and appropriate independent (~~promulgation and~~) adoption of  
37 rules, assuring consistency with this chapter as amended and with the

1 preservation of protections afforded by this chapter. The rule-making  
2 powers authorized in this section shall include, but shall not be  
3 limited to, the following phases of interpretation and implementation  
4 of this chapter:

5 (a) Categories of governmental actions which are not to be  
6 considered as potential major actions significantly affecting the  
7 quality of the environment, including categories pertaining to  
8 applications for water right permits pursuant to chapters 90.03 and  
9 90.44 RCW. The types of actions included as categorical exemptions in  
10 the rules shall be limited to those types which are not major actions  
11 significantly affecting the quality of the environment. The rules  
12 shall provide for certain circumstances where actions which potentially  
13 are categorically exempt require environmental review. An action that  
14 is categorically exempt under the rules adopted by the department may  
15 not be conditioned or denied under this chapter.

16 (b) Rules for criteria and procedures applicable to the  
17 determination of when an act of a branch of government is a major  
18 action significantly affecting the quality of the environment for which  
19 a detailed statement is required to be prepared pursuant to RCW  
20 43.21C.030.

21 (c) Rules and procedures applicable to the preparation of detailed  
22 statements and other environmental documents, including but not limited  
23 to rules for timing of environmental review, obtaining comments, data  
24 and other information, and providing for and determining areas of  
25 public participation which shall include the scope and review of draft  
26 environmental impact statements.

27 (d) Scope of coverage and contents of detailed statements assuring  
28 that such statements are simple, uniform, and as short as practicable;  
29 statements are required to analyze only reasonable alternatives and  
30 probable adverse environmental impacts which are significant, and may  
31 analyze beneficial impacts.

32 (e) Rules and procedures for public notification of actions taken  
33 and documents prepared.

34 (f) Definition of terms relevant to the implementation of this  
35 chapter including the establishment of a list of elements of the  
36 environment. Analysis of environmental considerations under RCW  
37 43.21C.030(2) may be required only for those subjects listed as  
38 elements of the environment (or portions thereof). The list of



1 elements of the environment shall consist of the "natural" and "built"  
2 environment. The elements of the built environment shall consist of  
3 public services and utilities (such as water, sewer, schools, fire and  
4 police protection), transportation, environmental health (such as  
5 explosive materials and toxic waste), and land and shoreline use  
6 (including housing, and a description of the relationships with land  
7 use and shoreline plans and designations, including population).

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

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

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

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

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

22 (l) Rules relating to the use of environmental documents in  
23 planning and decision making and the implementation of the substantive  
24 policies and requirements of this chapter, including procedures for  
25 appeals under this chapter.

26 (m) Rules and procedures that provide for the integration of  
27 environmental review with project review as provided in RCW 43.21C.240.  
28 The rules and procedures shall be jointly developed with the department  
29 of (~~community, trade, and economic development~~) commerce and shall be  
30 applicable to the preparation of environmental documents for actions in  
31 counties, cities, and towns planning under RCW 36.70A.040. The rules  
32 and procedures shall also include procedures and criteria to analyze  
33 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and  
34 revisions to the rules adopted under this section to ensure that they  
35 are compatible with the requirements and authorizations of chapter 347,  
36 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or  
37 procedures adopted by a county, city, or town to implement the  
38 provisions of chapter 347, Laws of 1995 prior to the effective date of

1 rules adopted under this subsection (1)(m) shall continue to be  
2 effective until the adoption of any new or revised ordinances or  
3 procedures that may be required. If any revisions are required as a  
4 result of rules adopted under this subsection (1)(m), those revisions  
5 shall be made within the time limits specified in RCW 43.21C.120.

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

8 (a) Consult with the state agencies and with representatives of  
9 science, industry, agriculture, labor, conservation organizations,  
10 state and local governments, and other groups, as it deems advisable;  
11 and

12 (b) Utilize, to the fullest extent possible, the services,  
13 facilities, and information (including statistical information) of  
14 public and private agencies, organizations, and individuals, in order  
15 to avoid duplication of effort and expense, overlap, or conflict with  
16 similar activities authorized by law and performed by established  
17 agencies.

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

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

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

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

26 (1) The department of ecology is hereby designated as the state  
27 water pollution control agency for all purposes of the federal clean  
28 water act as it exists on February 4, 1987, and is hereby authorized to  
29 participate fully in the programs of the act as well as to take all  
30 action necessary to secure to the state the benefits and to meet the  
31 requirements of that act. With regard to the national estuary program  
32 established by section 320 of that act, the department shall exercise  
33 its responsibility jointly with the Puget Sound partnership, created in  
34 RCW 90.71.210. The department of ecology may delegate its authority  
35 under this chapter, including its national pollutant discharge  
36 elimination permit system authority and duties regarding animal feeding

1 operations and concentrated animal feeding operations, to the  
2 department of agriculture through a memorandum of understanding. Until  
3 any such delegation receives federal approval, the department of  
4 agriculture's adoption or issuance of animal feeding operation and  
5 concentrated animal feeding operation rules, permits, programs, and  
6 directives pertaining to water quality shall be accomplished after  
7 reaching agreement with the director of the department of ecology.  
8 Adoption or issuance and implementation shall be accomplished so that  
9 compliance with such animal feeding operation and concentrated animal  
10 feeding operation rules, permits, programs, and directives will achieve  
11 compliance with all federal and state water pollution control laws.  
12 The powers granted herein include, among others, and notwithstanding  
13 any other provisions of this chapter (~~(90.48-RCW)~~) or otherwise, the  
14 following:

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

37 (b) The power to establish and administer state programs in a  
38 manner which will (~~(insure)~~) ensure the procurement of moneys, whether

1 in the form of grants, loans, or otherwise; to assist in the  
2 construction, operation, and maintenance of various water pollution  
3 control facilities and works; and the administering of various state  
4 water pollution control management, regulatory, and enforcement  
5 programs.

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

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

11 ((+2)) (3) By July 31, 2012, the department shall:

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

16 (b) Issue an updated national pollutant discharge elimination  
17 system municipal storm water general permit applicable to western  
18 Washington municipalities for any permit first issued on January 17,  
19 2007. An updated permit issued under this subsection shall become  
20 effective beginning August 1, 2013.

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

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

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

37 (a) Reissue without modification and for a term of two years any

1 national pollutant discharge elimination system municipal storm water  
2 general permit applicable to eastern Washington municipalities first  
3 issued on January 17, 2007; and

4 (b) Issue an updated national pollutant discharge elimination  
5 system municipal storm water general permit for any permit first issued  
6 on January 17, 2007, applicable to eastern Washington municipalities.  
7 An updated permit issued under this subsection becomes effective August  
8 1, 2014.

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