
SENATE BILL 6406

State of Washington

62nd Legislature

2012 Regular Session

By Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker, and Shin

Read first time 01/20/12. Referred to Committee on Energy, Natural Resources & Marine Waters.

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 77.15.300, 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150,
4 76.09.065, 76.09.460, 76.09.470, 76.09.030, 43.21C.170, 43.21C.110,
5 43.21C.229, 43.21C.031, 36.70A.280, 43.21C.010, 43.21C.030, 43.21C.033,
6 43.21C.036, 43.21C.0382, 43.21C.0383, 43.21C.0384, 43.21C.060,
7 43.21C.120, 43.21C.130, 43.21C.135, 43.21C.240, and 43.21C.300;
8 reenacting and amending RCW 77.55.011, 76.09.060, and 76.09.020; adding
9 new sections to chapter 77.55 RCW; adding a new section to chapter
10 76.09 RCW; adding a new section to chapter 43.30 RCW; adding new
11 sections to chapter 43.21C RCW; adding a new section to chapter 36.70B
12 RCW; creating new sections; decodifying RCW 43.21C.910, 43.21C.911,
13 43.21C.912, 43.21C.913, and 43.21C.914; repealing RCW 77.55.291,
14 36.70B.110, 43.21C.175, 43.21C.160, and 43.21C.040; prescribing
15 penalties; providing contingent effective dates; and providing
16 expiration dates.

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

18 NEW SECTION. **Sec. 1.** The legislature finds that significant
19 opportunities exist to modify programs that provide for management and

1 protection of the state's natural resources, including the state's
2 forests, fish, and wildlife, in order to streamline regulatory
3 processes and achieve program efficiencies while at the same time
4 increasing the sustainability of program funding and maintaining
5 current levels of natural resource protection. The legislature intends
6 to update provisions relating to natural resource management and
7 regulatory programs including the hydraulic project approval program,
8 forest practices act, and state environmental policy act, in order to
9 achieve these opportunities.

10 **PART ONE**

11 **Hydraulic Project Approvals**

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

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

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

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

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

24 (4) "Date of receipt" has the same meaning as defined in RCW
25 43.21B.001.

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

27 (6) "Director" means the director of the department of fish and
28 wildlife.

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

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

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

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

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

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

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

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

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

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

27 (~~("Streambank stabilization" means those projects that prevent~~
28 ~~or limit erosion, slippage, and mass wasting. These projects include,~~
29 ~~but are not limited to, bank resloping, log and debris relocation or~~
30 ~~removal, planting of woody vegetation, bank protection using rock or~~
31 ~~woody material or placement of jetties or groins, gravel removal, or~~
32 ~~erosion control.~~

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

35 ~~((19))~~ (18) "Waters of the state" and "state waters" means all
36 salt and freshwaters waterward of the ordinary high water line and
37 within the territorial boundary of the state.

1 (19) "Emergency permit" means a verbal hydraulic project approval
2 or the written follow-up to the verbal approval issued to a person
3 under RCW 77.55.021(12).

4 (20) "Expedited permit" means a hydraulic project approval issued
5 to a person under RCW 77.55.021 (14) and (16).

6 (21) "General permit" means a hydraulic project approval issued to
7 a person under RCW 77.55.021 for multiple hydraulic projects that: (a)
8 Involve repair or maintenance activities; and (b) occur over a defined
9 geographic area, but for which specific project sites have not been
10 designated.

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

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

18 (24) "Pamphlet hydraulic project" means a hydraulic project for the
19 removal or control of aquatic noxious weeds conducted under the aquatic
20 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
21 prospecting and mining conducted under the gold and fish pamphlet
22 authorized by RCW 77.55.091.

23 (25) "One hundred year floodplain" means those areas subject to a
24 base (one hundred year) flood and designated as special flood hazard
25 areas on the most recent maps provided by the federal emergency
26 management agency for the national flood insurance program. Best
27 available information must be used if these maps are not available or
28 sufficient as determined by the federal emergency management agency.

29 (26)(a) "Shoreline or streambank protection project" means the
30 physical armoring of any surface that is adjacent to waters of the
31 state using materials including concrete, rock, large woody material,
32 or the use of other man-made materials for the purposes of preventing
33 or limiting erosion.

34 (b) "Shoreline or streambank protection project" does not include
35 the use of live native vegetation unless that vegetation is required as
36 mitigation for impacts to fish life.

37 (27) "Forest practices hydraulic project" means a hydraulic project
38 that requires a forest practices application under chapter 76.09 RCW.

1 (28) "Adjacent" means within: (a) Fifty horizontal feet of the
2 ordinary high water line for marine shorelines, freshwater lakes, and
3 freshwater rivers or streams within a moderately confined channel; and
4 (b) two hundred horizontal feet of the ordinary high water line for
5 rivers or streams within unconfined channels.

6 (29) "Unconfined channel" means larger rivers or streams that can
7 experience abrupt shifts in channel location, creating a complex
8 floodplain characterized by gravel bars, disturbance of vegetation of
9 variable age, two or more side channels, wall-based channels, oxbow
10 lakes, or wetland complexes.

11 (30) "Moderately confined channel" means streams that consist of
12 single channels with low to moderate sinuosity. These channels are
13 typically located within a narrow valley with a marginal floodplain or
14 narrow terrace development.

15 (31)(a) "Repair or maintenance" means the care and upkeep of
16 existing structures and conditions that have the potential to impact
17 the natural bed or flow of any waters of the state.

18 (b) "Repair or maintenance" does not include routine, repetitive
19 maintenance activities that do not have the potential to impact the
20 natural flow or bed of any waters of the state.

21 (32)(a) "Stream channelization" means the excavation or trenching
22 of soils or gravel adjacent to the ordinary high water line that may
23 use, obstruct, or divert stream flow from freshwaters of the state.

24 (b) "Stream channelization" does not include roadside ditches that
25 do not convey waters of the state or temporary excavation and trenching
26 that will not intercept or capture waters of the state prior to the
27 site being restored to its condition prior to the project.

28 (33) "Outfall" means a structure designed or used for the purpose
29 of discharging water or other fluids from a storm water, sewer, or
30 irrigation conveyance system into waters of the state.

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

33 (1)(a) Except as provided in RCW 77.55.031, 77.55.041, and
34 77.55.051(~~(7)~~) and (~~(77.55.041)~~) section 201 of this act, (~~in the~~
35 event that any)) a person (~~or government agency desires to undertake~~
36 a hydraulic project, the person or government agency)) shall(~~(7, before~~
37 commencing work thereon,7)):

1 (i) Secure the approval of the department in the form of a permit
2 as to the adequacy of the means proposed for the protection of fish
3 life before conducting a hydraulic project at or below the ordinary
4 high water line, including those components of the project located
5 above the ordinary high water line that are physically connected to
6 those at or below the ordinary high water line that will use, divert,
7 obstruct, or change the natural flow or bed of any of the salt or
8 freshwaters of the state; and

9 (ii) Submit a written application to the department as provided in
10 this section before conducting a hydraulic project above the ordinary
11 high water line that involves one of the following project types:

12 (A) A new dike or levee within the one hundred year floodplain;

13 (B) Repair or maintenance of an existing bridge, dike, or levee
14 adjacent to the ordinary high water line;

15 (C) A new or replacement bridge that crosses waters of the state;

16 (D) A shoreline or streambank protection project adjacent to the
17 ordinary high water line;

18 (E) An outfall that discharges to waters of the state;

19 (F) Mineral prospecting not covered under the gold and fish
20 pamphlet authorized by RCW 77.55.091 adjacent to the ordinary high
21 water line; or

22 (G) Stream channelization adjacent to the ordinary high water line.

23 (b)(i) Upon receipt of an application under (a)(ii) of this
24 subsection, the director shall determine whether the proposed hydraulic
25 project requires a permit. A permit is required if the proposed
26 hydraulic project: (A) Involves the construction or performance of
27 work that will use, divert, obstruct, or change the natural flow or bed
28 of any of the salt or freshwaters of the state; and (B) creates a
29 reasonable likelihood of impacts to fish life. In making this
30 determination, the director may consider factors including, but not
31 limited to, project size, scope, planned time frame and duration, and
32 proximity to waters of the state.

33 (ii) If the director determines that a proposed hydraulic project
34 creates a reasonable likelihood of impacts to fish life, the department
35 shall review and process the application as provided in this section.
36 If the director determines that a proposed hydraulic project does not
37 create a reasonable likelihood of impacts to fish life, no permit is

1 required and the department shall refund all fees as provided in
2 section 103(13) of this act.

3 (iii) The director may not delegate the authority to make the
4 determinations required under this subsection (1)(b) to department
5 personnel, except for temporary circumstances in which the director is
6 not able or available to do so.

7 (2) Except for pamphlet hydraulic projects, a complete written
8 application for a permit ((may)) must be submitted ((in person or by
9 registered mail)) to the department and must contain the following:

10 (a) ((General plans for the overall project;
11 (b)) Complete plans and specifications ((of the proposed
12 construction or work within the mean higher high water line in
13 saltwater or within the ordinary high water line in freshwater)) for
14 the hydraulic project;

15 ((c) Complete plans and specifications)) (b) Proposed measures for
16 the proper protection of fish life; ((and

17 (d)) (c) Notice of compliance with any applicable requirements of
18 the state environmental policy act, unless otherwise provided for in
19 this chapter; and

20 (d) Payment of all applicable application submittal and permit
21 processing fees charged by the department under section 103 of this
22 act.

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

26 (4) The department may accept complete, written applications as
27 provided in this section for multiple site permits and general permits
28 and may issue these permits. For multiple site permits, each specific
29 location must be identified.

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

37 (6) Except as provided for emergency permits in subsection (12) of

1 this section, the department may not proceed with permit review until
2 all fees are paid in full as required in section 103 of this act.

3 ~~((3))~~ (7)(a) Protection of fish life is the only ground upon
4 which approval of a permit may be denied or conditioned. Approval of
5 a permit may not be unreasonably withheld or unreasonably conditioned.

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

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

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

15 (iii) The applicant requests a delay; or

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

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

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

25 (e) The department has sixty calendar days upon receipt of a
26 complete application submitted under subsection (1)(a)(ii) of this
27 section to grant or deny approval of a permit.

28 ~~((4))~~ (8) If the department denies approval of a permit, the
29 department shall provide the applicant a written statement of the
30 specific reasons why and how the proposed project would adversely
31 affect fish life.

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

36 (b) Issuance, denial, conditioning, or modification of a permit may
37 be informally appealed to the department within thirty days from the
38 date of receipt of the decision. Requests for informal appeals must be

1 filed in the form and manner prescribed by the department by rule. A
2 permit decision that has been informally appealed to the department is
3 appealable to the board within thirty days from the date of receipt of
4 the department's decision on the informal appeal.

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

8 ~~(b))~~ Approval of a permit is valid for ~~((a period of))~~ up to five
9 years from the date of issuance, except as provided in ~~((+e))~~ (b) of
10 this subsection and in RCW 77.55.151.

11 ~~((+e))~~ (b) A permit remains in effect without need for periodic
12 renewal for hydraulic projects that divert water for agricultural
13 irrigation or stock watering purposes and that involve seasonal
14 construction or other work. A permit for streambank stabilization
15 projects to protect farm and agricultural land as defined in RCW
16 84.34.020 remains in effect without need for periodic renewal if the
17 problem causing the need for the streambank stabilization occurs on an
18 annual or more frequent basis. The permittee must notify the
19 appropriate agency before commencing the construction or other work
20 within the area covered by the permit.

21 ~~((+6))~~ (10) The department may, after consultation with the
22 permittee, modify a permit due to changed conditions. The modification
23 is appealable as provided in subsection ~~((+4))~~ (8) of this section.
24 For a hydraulic project~~((s))~~ that diverts water for agricultural
25 irrigation or stock watering purposes, ~~((or))~~ when the hydraulic
26 project or other work is associated with streambank stabilization to
27 protect farm and agricultural land as defined in RCW 84.34.020, the
28 burden is on the department to show that changed conditions warrant the
29 modification in order to protect fish life.

30 ~~((+7))~~ (11) A permittee may request modification of a permit due
31 to changed conditions. The request must be processed within forty-five
32 calendar days of receipt of the written request and payment of
33 applicable fees under section 103 of this act. A decision by the
34 department is appealable as provided in subsection ~~((+4))~~ (8) of this
35 section. For a hydraulic project~~((s))~~ that diverts water for
36 agricultural irrigation or stock watering purposes, ~~((or))~~ when the
37 hydraulic project or other work is associated with streambank
38 stabilization to protect farm and agricultural land as defined in RCW

1 84.34.020, the burden is on the permittee to show that changed
2 conditions warrant the requested modification and that such a
3 modification will not impair fish life.

4 ~~((+8))~~ (12)(a) The department, the county legislative authority,
5 or the governor may declare and continue an emergency. If the county
6 legislative authority declares an emergency under this subsection, it
7 shall immediately notify the department. A declared state of emergency
8 by the governor under RCW 43.06.010 shall constitute a declaration
9 under this subsection.

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

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

22 (d) The department may not charge a person requesting an emergency
23 permit any of the fees authorized by section 103 of this act until
24 after the emergency permit is issued and reduced to writing.

25 ~~((+9))~~ (13) All state and local agencies with authority under this
26 chapter to issue permits or other authorizations in connection with
27 emergency water withdrawals and facilities authorized under RCW
28 43.83B.410 shall expedite the processing of such permits or
29 authorizations in keeping with the emergency nature of such requests
30 and shall provide a decision to the applicant within fifteen calendar
31 days of the date of application.

32 ~~((+10))~~ (14) The department or the county legislative authority
33 may determine an imminent danger exists. The county legislative
34 authority shall notify the department, in writing, if it determines
35 that an imminent danger exists. In cases of imminent danger, the
36 department shall issue an expedited written permit, upon request, for
37 work to remove any obstructions, repair existing structures, restore
38 banks, protect fish resources, or protect property. Expedited permit

1 requests require a complete written application as provided in
2 subsection (2) of this section and must be issued within fifteen
3 calendar days of the receipt of a complete written application.
4 Approval of an expedited permit is valid for up to sixty days from the
5 date of issuance. The department may not require the provisions of the
6 state environmental policy act, chapter 43.21C RCW, to be met as a
7 condition of issuing a permit under this subsection.

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

21 (b) Any projects proposed to address a chronic danger identified
22 under (a) of this subsection that satisfies the project description
23 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
24 of the state environmental policy act, chapter 43.21C RCW. However,
25 the project is subject to the review process established in RCW
26 77.55.181(3) as if it were a fish habitat improvement project.

27 ~~((+12+))~~ (16) The department may issue an expedited written permit
28 in those instances where normal permit processing would result in
29 significant hardship for the applicant or unacceptable damage to the
30 environment. Expedited permit requests require a complete written
31 application as provided in subsection (2) of this section and must be
32 issued within fifteen calendar days of the receipt of a complete
33 written application. Approval of an expedited permit is valid for up
34 to sixty days from the date of issuance. The department may not
35 require the provisions of the state environmental policy act, chapter
36 43.21C RCW, to be met as a condition of issuing a permit under this
37 subsection.

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

3 (1) Except as otherwise provided in this section, the department
4 shall charge a submittal fee and a processing fee, established by the
5 department consistent with this section, for all hydraulic project
6 permits issued under RCW 77.55.021, to recover a portion of the costs
7 for processing and issuing decisions on permit notifications and
8 applications, administering fee collections, and compliance and
9 effectiveness monitoring and enforcement of projects requiring a
10 permit.

11 (2) When assessing fees for permits under this section, the
12 department must categorize the following hydraulic projects as low
13 complexity:

- 14 (a) Anchoring or mooring buoys and navigation aids;
- 15 (b) Water crossing structures in nonfish bearing waters
16 (maintenance or repair);
- 17 (c) Bridge repair or maintenance above the ordinary high water line
18 (cleaning, painting, or redecking);
- 19 (d) Conduit crossing using boring;
- 20 (e) Boat ramps or launches within the existing footprint
21 (maintenance, repair, or replacement);
- 22 (f) Temporary or permanent stream gauges or scientific instruments;
- 23 (g) Boom (installation or maintenance);
- 24 (h) Existing overwater structure within the existing footprint, not
25 including marinas or marine terminals (maintenance or repair);
- 26 (i) Beaver dam work;
- 27 (j) Riparian habitat (maintenance or repair);
- 28 (k) Existing outfall (maintenance or repair);
- 29 (l) Aquaculture (maintenance or repair);
- 30 (m) Habitat freshwater beach creation (maintenance or repair);
- 31 (n) Shoreline armoring or bank protection (maintenance or repair);
- 32 (o) Breeding substrate (maintenance or repair);
- 33 (p) Large woody material (maintenance or repair);
- 34 (q) Wetland and estuarine habitat work (maintenance or repair);
- 35 (r) Dredging of less than fifty cubic yards (maintenance or
36 repair);
- 37 (s) Boat lifts or railway launches (maintenance or repair);
- 38 (t) Existing pilings (maintenance or repair);

- 1 (u) Pump water diversions and fish screens (maintenance or repair);
2 (v) Gravity water diversions and fish screens (maintenance or
3 repair);
4 (w) Tidegates (maintenance or repair); and
5 (x) Temporary water crossing structures installed and removed
6 within one season in fish-bearing waters.
- 7 (3) When assessing fees for permits under this section, the
8 department must categorize the following hydraulic projects as medium
9 complexity:
- 10 (a) Water crossing structures in fish-bearing waters (maintenance
11 or repair);
12 (b) Aquaculture;
13 (c) Habitat freshwater beach creation (new, replacement, or
14 removal);
15 (d) Shoreline armoring or bank protection of less than one hundred
16 feet in length (new, replacement, or removal);
17 (e) Jetties, dikes, or levees (maintenance or repair);
18 (f) Breeding substrate (new, replacement, or removal);
19 (g) Large woody material (removal, placement, or repositioning);
20 (h) Off channel, side channel, or in channel enhancement or
21 restoration work (maintenance or repair);
22 (i) Riparian habitat work (new, replacement, or removal);
23 (j) Bed modification excluding enhancement (maintenance or repair);
24 (k) Channel realignment in fish-bearing waters (maintenance or
25 repair);
26 (l) Conduit and cable work using trenching (new, replacement, or
27 removal);
28 (m) Dredging of less than fifty cubic yards (new);
29 (n) Fish passage barrier removal with replacement or retrofit using
30 methods such as baffles or log controls for passage through or over a
31 structure;
32 (o) Fish passage not associated with a water crossing structure
33 such as to bypass a natural barrier or a dam;
34 (p) Boat lifts and railway launches (new, replacement, and
35 removal);
36 (q) Boat ramps or launches outside of the footprint of any existing
37 (new, replacement, or removal);
38 (r) Work on pilings (new, replacement, or removal);

- 1 (s) Pump water diversions or fish screens (new, replacement, or
2 removal);
- 3 (t) Gravity water diversions or fish screens (new, replacement, or
4 removal);
- 5 (u) Outfalls (new, replacement, or removal);
- 6 (v) Tidegates (new, replacement, or removal);
- 7 (w) Mechanical aquatic plant control that is not a pamphlet
8 hydraulic project;
- 9 (x) Overwater structure outside of the footprint of any existing
10 structure, not including marinas or marine terminals (new or
11 replacement);
- 12 (y) Marinas or marine terminals (maintenance or repair);
- 13 (z) Dams not under jurisdiction of the federal energy regulatory
14 commission (maintenance or repair);
- 15 (aa) New water crossing structures in nonfish-bearing waters (new,
16 replacement, or removal); and
- 17 (bb) Temporary water crossing structures present for multiple
18 seasons in fish-bearing waters.
- 19 (4) When assessing fees for permits under this section, the
20 department must categorize the following hydraulic projects as high
21 complexity:
- 22 (a) Water crossing structures in fish-bearing waters (new,
23 replacement, removal, or modification);
- 24 (b) Shoreline armoring or bank protection of greater than one
25 hundred feet in length (new, replacement, or removal);
- 26 (c) Jetties, dikes, or levees (new, replacement, or removal);
- 27 (d) Off channel, side channel, or in channel enhancement or
28 restoration work (new, replacement, or removal);
- 29 (e) Wetland or estuarine habitat work (new, replacement, or
30 removal);
- 31 (f) Bed modification excluding enhancement (new, replacement, or
32 removal);
- 33 (g) Channel realignment in fish-bearing waters (new, replacement,
34 or removal);
- 35 (h) Dredging of more than fifty cubic yards (new, replacement,
36 removal, or maintenance);
- 37 (i) Fish passage barrier removal with replacement or retrofit using

1 methods such as baffles or log controls for passage through or over a
2 structure (new, replacement, or removal);

3 (j) Fish passage not associated with a water crossing structure
4 such as to bypass a natural barrier or a dam (new, replacement, or
5 removal);

6 (k) Marinas or marine terminals (new, replacement, or removal);

7 (l) Dams not under jurisdiction of the federal energy regulatory
8 commission (new, replacement, or removal);

9 (m) New project types not identified as low or medium complexity;
10 and

11 (n) Perpetual agriculture hydraulic projects.

12 (5) If the department receives applications for project types not
13 identified in subsections (2) through (4) of this section, it shall
14 categorize them as low, medium, or high complexity and charge fees
15 based on those categories consistent with the most similar project
16 types identified in subsections (2) through (4) of this section.

17 (6)(a) The department shall charge the following submittal fees:

18 (i) Fifty dollars for single site low complexity hydraulic project
19 permits and multiple site low complexity hydraulic project permits;

20 (ii) Seventy-five dollars for single site medium complexity
21 hydraulic project permits and multiple site medium complexity hydraulic
22 project permits; and

23 (iii) One hundred twenty-five dollars for single site high
24 complexity hydraulic project permits, multiple site high complexity
25 hydraulic project permits, and general permits.

26 (b) The department may not charge a submittal fee for permit
27 modifications.

28 (7) Unless the department establishes a lower fee consistent with
29 this section, a hydraulic project permit application must be assessed
30 one of the following processing fees:

31 (a) Seventy-five dollars for a single site low complexity hydraulic
32 project;

33 (b) One hundred seventy-five dollars for a single site medium
34 complexity hydraulic project;

35 (c) Five hundred seventy-five dollars for a single site high
36 complexity hydraulic project;

37 (d) For a multiple site permit, the applicable permit processing
38 fee assessed under this subsection for one of the hydraulic project

1 sites identified in the permit application, and twenty percent of the
2 applicable permit processing fee assessed under this subsection for
3 each additional site; and

4 (e) Four thousand eight hundred seventy-five dollars for a general
5 permit authorizing up to three types of hydraulic projects, and twenty
6 percent of the applicable permit processing fee assessed under this
7 subsection for each additional type of hydraulic project.

8 (8) In cases where hydraulic projects include work that falls into
9 more than one of the permit categories outlined in this section, the
10 fee charged must be based on the most complex component of the project.

11 (9) Unless the department establishes a lower fee consistent with
12 this section, all permit modifications must be assessed a seventy-five
13 dollar processing fee, except for those modified under RCW
14 77.55.021(10).

15 (10) The following hydraulic projects are exempt from all fees
16 listed under this section:

17 (a) Approved fish habitat enhancement projects authorized under RCW
18 77.55.181;

19 (b) Hydraulic projects approved under applicant-funded contracts
20 with the department that pay for the costs of processing those
21 projects;

22 (c) Projects approved under the cost-sharing program for fish
23 passage barriers authorized under RCW 76.13.150;

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

26 (e) Pamphlet hydraulic projects; and

27 (f) Mineral prospecting and mining activities.

28 (11) The fees assessed in this section must be based on the scale
29 and complexity of the project and the relative effort required for
30 department staff to review the application, conduct site visits, and
31 consult with applicants as necessary. As such, at its discretion, the
32 department may reduce the fees charged to a person under this section
33 when the work required by the department to receive and process that
34 person's application or modify a permit is substantially less than
35 typically required. Decisions made by the department under this
36 subsection are not subject to appeal under RCW 77.55.021(8).

37 (12) The department shall refund fifty percent of the permit

1 processing fee to any person that properly applies for any permit or
2 permit modification under RCW 77.55.021 if the department:

3 (a) Fails to process the application or request within the
4 timelines required by RCW 77.55.021; or

5 (b) Denies the permit because the proposed project would adversely
6 affect fish life.

7 (13) The department shall refund one hundred percent of all fees
8 if:

9 (a) No permit is required for the proposed work; or

10 (b) The hydraulic project is exempted from substantial development
11 permit requirements under RCW 90.58.147 and the project proponent
12 provides to the department a copy of the letter documenting exemption
13 approval by the local government.

14 (14) On September 30th of each year, the department shall calculate
15 adjusted fees by the rate of inflation. The adjusted fees must be
16 calculated to the nearest dollar using the consumer price index for the
17 twelve months prior to each September 1st as calculated by the United
18 States department of labor. Each adjusted fee calculated under this
19 section takes effect on the following January 1st.

20 (15) All fees collected under this section must be deposited in the
21 hydraulic project approval account created in section 106 of this act.

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

24 To ensure that all hydraulic project approvals provide for the
25 protection of fish life, by January 1, 2013, the department shall
26 develop and implement a program to monitor the effectiveness of the
27 approvals it grants under this chapter. For the purposes of this
28 chapter, effectiveness monitoring must evaluate if project standards
29 are adequate to protect overall fish life. If the department
30 identifies approvals that do not meet standards and provide for
31 protection of fish life, the department shall use adaptive management
32 principles to ensure protection under this chapter.

33 NEW SECTION. **Sec. 105.** (1) By December 31, 2014, the department
34 of fish and wildlife shall provide a report to the legislature that
35 includes: (a) A summary of the impact of fee collection under this act
36 on the department of fish and wildlife's hydraulic project approval

1 permit program; and (b) recommendations to improve the department of
2 fish and wildlife's permit streamlining efforts and permit fee
3 schedule, which the department must develop in consultation with
4 affected stakeholders.

5 (2) The department of fish and wildlife must submit the report to
6 the legislature consistent with RCW 43.01.036.

7 (3) This section expires July 31, 2015.

8 NEW SECTION. **Sec. 106.** A new section is added to chapter 77.55
9 RCW to read as follows:

10 (1) The hydraulic project approval account is created in the state
11 treasury. All receipts from submittal fees and permit processing fees
12 for hydraulic project approval applications collected under section 103
13 of this act must be deposited into the account.

14 (2) Except for unanticipated receipts under RCW 43.79.260 through
15 43.79.282, moneys in the hydraulic project approval account may be
16 spent only after appropriation.

17 (3) Expenditures from the hydraulic project approval account may be
18 used only to fund department activities relating to processing and
19 issuing hydraulic project approval decisions, compliance and
20 effectiveness monitoring, enforcement activities related to this
21 chapter, conducting informal appeals or participating in administrative
22 or judicial appeals of hydraulic project approval decisions, providing
23 technical assistance by biologists and environmental engineers on
24 project design and implementation that provides for the protection of
25 fish life, and for the associated management and administrative costs
26 incurred to implement and operate the hydraulic project approval
27 program.

28 **Sec. 107.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
29 read as follows:

30 (1) A person is guilty of unlawfully undertaking hydraulic project
31 activities if the person (~~constructs any form of hydraulic project or~~
32 ~~performs other work on a hydraulic project and:~~

33 ~~(a) Fails to have a hydraulic project approval required under~~
34 ~~chapter 77.55 RCW for such construction or work; or~~

35 ~~(b) Violates any requirements or conditions of the hydraulic~~
36 ~~project approval for such construction or work.~~

1 ~~(2) Unlawfully undertaking hydraulic project activities is a gross~~
2 ~~misdemeanor)):~~

3 (a) Constructs any form of hydraulic project or performs other work
4 on a hydraulic project that requires a hydraulic project approval under
5 chapter 77.55 RCW and fails to have a hydraulic project approval for
6 the construction or work;

7 (b) Violates any requirements or conditions of the hydraulic
8 project approval for the construction or other activities;

9 (c) Violates any compliance order issued under section 108 of this
10 act; or

11 (d) Violates any department rule that identifies the conditions
12 under which a hydraulic project is approved.

13 (2) Violation of a compliance order under section 108 of this act
14 must be punished as a separate offense from the underlying hydraulic
15 code violation.

16 (3) Unlawfully undertaking hydraulic project activities is a gross
17 misdemeanor.

18 (4) Notwithstanding the provisions of subsection (3) of this
19 section, the commission may by rule identify certain acts that violate
20 the hydraulic code as being of minimal impact to fish life, and may
21 classify these acts, on an individual basis, as infractions, punishable
22 under RCW 77.15.160 and chapter 7.84 RCW.

23 (5) On and after the effective date of section 202 of this act,
24 nothing in this section applies to a forest practices hydraulic project
25 included in an approved forest practices application or to any
26 activities that are associated with such a project.

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

29 (1)(a) The director may issue a compliance notice or order to a
30 person who:

31 (i) Constructs any form of hydraulic project or performs other work
32 on a hydraulic project that requires a hydraulic project approval under
33 this chapter and fails to have a hydraulic project approval for the
34 construction or work;

35 (ii) Violates any requirements or conditions of the hydraulic
36 project approval for the construction or other activities; or

1 (iii) Violates any department rule that identifies the conditions
2 under which a hydraulic project is approved.

3 (b) A compliance notice may be issued to inform a person of a
4 potential violation and recommend actions to prevent, correct, or
5 mitigate for adverse impacts to fish life. A notice to comply must:

6 (i) Be served upon the person and any known agents and applicants;

7 (ii) Specify the nature, extent, date, and time of the potential
8 violation; and

9 (iii) Specify any recommended actions to prevent, correct, or
10 mitigate for adverse impacts to fish life.

11 (c) A compliance order must specify measures or actions necessary
12 to prevent, correct, or mitigate for adverse impacts to fish life. A
13 compliance order is effective immediately and remains in effect until
14 withdrawn by the director or until the board orders otherwise. A
15 compliance order must:

16 (i) Be served upon the person and any known agents;

17 (ii) Specify the nature, extent, date, and time of the violation;

18 (iii) Include specific measures or actions necessary to prevent,
19 correct, or mitigate for adverse impacts to fish life;

20 (iv) Specify any necessary action before work may resume; and

21 (v) Specify the right of the person to an appeal.

22 (d) Within thirty days from the date of receipt of a compliance
23 order issued under this section, a person may file a written request
24 appealing the notice or order to the board.

25 (e) A compliance order may be informally appealed to the department
26 within thirty days from the date of receipt of the decision. Requests
27 for informal appeals must be filed in the form and manner prescribed by
28 the department by rule. A compliance order that has been informally
29 appealed to the department is appealable to the board within thirty
30 days from the date of receipt of the department's decision on the
31 informal appeal.

32 (2)(a) Consistent with the penalty schedule described in this
33 subsection, the director may levy civil penalties of up to:

34 (i) Two thousand five hundred dollars for a violation of this
35 chapter or rules adopted under this chapter relating to a hydraulic
36 project categorized or that would be categorized as a low complexity
37 hydraulic project under section 103 of this act;

1 (ii) Five thousand dollars for a violation of this chapter or rules
2 adopted under this chapter relating to a hydraulic project categorized
3 or that would be categorized as a medium complexity hydraulic project
4 under section 103 of this act; and

5 (iii) Ten thousand dollars for a violation of this chapter or rules
6 adopted under this chapter relating to a hydraulic project categorized
7 or that would be categorized as a high complexity hydraulic project
8 under section 103 of this act.

9 (b) Each and every violation of this chapter or rules adopted under
10 this chapter is a separate and distinct civil offense.

11 (c) The penalty provided must be imposed by notice in writing by
12 the director describing the violation. The civil penalty notice must
13 specify the:

14 (i) Basis for the penalty and the amount levied; and

15 (ii) Right of the person to an appeal.

16 (d) Within thirty days from the date of receipt of a civil penalty
17 order issued under this section, a person may file a written request
18 appealing the order to the board.

19 (e) Issuance of a civil penalty may be informally appealed to the
20 department within thirty days from the date of receipt of the penalty.
21 Requests for informal appeal must be filed in the form and manner
22 prescribed by the department by rule. A civil penalty that has been
23 informally appealed to the department is appealable to the board within
24 thirty days from the date of receipt of the department's decision on
25 the informal appeal.

26 (f) The penalty imposed becomes due and payable thirty days after
27 receipt of a notice imposing the penalty unless an appeal is filed.
28 Whenever an appeal of any penalty incurred under this chapter is filed,
29 the penalty becomes due and payable only upon completion of all
30 administrative and judicial review proceedings and the issuance of a
31 final decision confirming the penalty in whole or in part. When the
32 penalty becomes past due, it is also subject to interest at the rate
33 allowed by RCW 43.17.240 for debts owed to the state.

34 (g) If the amount of any penalty is not paid within thirty days
35 after it becomes due and payable, the attorney general, upon the
36 request of the director, shall bring an action in the name of the state
37 of Washington in the superior court of Thurston county or of any county
38 in which the violator may do business, to recover the penalty. In all

1 such actions, the procedure and rules of evidence are the same as an
2 ordinary civil action. The department is also entitled to recover
3 reasonable attorneys' fees and costs incurred in connection with the
4 penalty.

5 (h) The director shall establish by rule a penalty schedule. The
6 schedule must be developed in consideration of the following:

7 (i) Previous violation history;
8 (ii) Severity of the impact on fish and fish habitat;
9 (iii) Whether the violation of this chapter or its rules was
10 intentional;

11 (iv) Cooperation with the department;
12 (v) Reparability of the adverse effect from the violation; and

13 (vi) The extent to which a penalty to be imposed on a person for a
14 violation committed by another should be reduced if the person was
15 unaware of the violation and has not received a substantial economic
16 benefit from the violation.

17 (3) When receiving or recovering a penalty under this section, the
18 department may deposit an amount not to exceed its costs incurred in
19 connection with processing and recovering the penalty into the
20 hydraulic project approval account created in section 106 of this act.
21 The department shall deposit the remainder of the penalty recovered
22 into the general fund.

23 (4) The director may apply for an administrative inspection warrant
24 in either Thurston county superior court or the superior court in the
25 county where the project is located. The court may issue an
26 administrative inspection warrant where:

27 (a) Department personnel need to inspect the project site to ensure
28 that a person:

29 (i) Possesses a hydraulic project approval required under this
30 chapter for the construction of any form of hydraulic project or
31 performance of other work on a hydraulic project;

32 (ii) Complies with any requirements or conditions of the hydraulic
33 project approval for the construction or other activities;

34 (iii) Complies with any compliance order issued under subsection
35 (1) of this section; or

36 (iv) Complies with any department rule that identifies the
37 conditions under which a hydraulic project is approved; or

1 (b) Department personnel have reasonable cause to believe that a
2 person:

3 (i) Is constructing or has constructed any form of hydraulic
4 project or performs other work on a hydraulic project and fails to have
5 a hydraulic project approval required under this chapter for the
6 construction or work;

7 (ii) Is violating or has violated any requirements or conditions of
8 the hydraulic project approval for the construction or other
9 activities;

10 (iii) Is violating or has violated any compliance order issued
11 under subsection (1) of this section; or

12 (iv) Is violating or has violated any department rule that
13 identifies the conditions under which a hydraulic project is approved.

14 (5) The director may not delegate the authority to issue a
15 compliance order or levy a civil penalty under this section to
16 department personnel, except for temporary circumstances in which the
17 director is not able or available to do so.

18 (6) On and after the effective date of section 202 of this act,
19 nothing in this section applies to a forest practices hydraulic project
20 included in an approved forest practices application or to any
21 activities that are associated with such a project.

22 NEW SECTION. **Sec. 109.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 The department shall make available to the public on its internet
25 site statistics on: (1) Civil enforcement actions taken and penalties
26 issued under section 108 of this act; and (2) criminal enforcement
27 actions taken under RCW 77.15.300. The statistics must include the
28 number of civil and criminal enforcement actions taken in each county.
29 The department must update the statistics at least twice a year.

30 **Sec. 110.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to
31 read as follows:

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

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

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

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

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

16 (a) Maintenance, repair, or replacement of a boat ramp, launch, or
17 float within the existing footprint;

18 (b) Maintenance or repair of an existing overwater structure within
19 the existing footprint;

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

21 (d) New, maintenance, or removal of pilings;

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

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

24 (g) Maintenance or repair of wetland, riparian, or estuarine
25 habitat; and

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

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

30 (4) A permit under this section is subject to the fee for a general
31 permit provided in section 103 of this act.

32 NEW SECTION. Sec. 111. A new section is added to chapter 77.55
33 RCW to read as follows:

34 (1) By December 31, 2012, the department must make examples of
35 complete, high quality applications and the resulting issued hydraulic
36 project approvals readily available to the public on its internet site,
37 as well as the internet site of the office of regulatory assistance

1 established in RCW 43.42.010. The department must maximize assistance
2 to the public and interested parties by seeking to make readily
3 available examples from hydraulic projects that generate significant
4 permitting activity or frequent questions.

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

8 (3) The department must obtain the written permission of a permit
9 applicant or permittee before making publicly available that applicant
10 or permittee's application or permit under this section and must work
11 cooperatively with the permit applicant or permittee to ensure that no
12 personal or proprietary information is made available.

13 **Sec. 112.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
14 read as follows:

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

20 (2) The permit must contain provisions allowing for minor
21 modifications to the plans and specifications without requiring
22 reissuance of the permit.

23 (3) The permit must contain provisions that allow for minor
24 modifications to the required work timing without requiring the
25 reissuance of the permit. Minor modifications to the required work
26 timing means a minor deviation from the timing window set forth in the
27 permit when there are no spawning or incubating fish present within the
28 vicinity of the project.

29 NEW SECTION. **Sec. 113.** A new section is added to chapter 77.55
30 RCW to read as follows:

31 The department shall prepare and distribute technical and
32 educational information to the general public to assist the public in
33 complying with the requirements of this chapter, including the changes
34 resulting from this act.

1 NEW SECTION. **Sec. 114.** A new section is added to chapter 77.55
2 RCW to read as follows:

3 This chapter may be known and cited as the hydraulic code.

4 NEW SECTION. **Sec. 115.** The fee provisions contained in section
5 103 of this act are prospective only. The department of fish and
6 wildlife may not charge fees for hydraulic project permits issued under
7 Title 77 RCW prior to the effective date of this section. However, if
8 a person requests modification of a hydraulic project permit that was
9 issued by the department of fish and wildlife prior to the effective
10 date of this section, the department of fish and wildlife shall charge
11 all applicable fees as provided in section 103 of this act.

12 NEW SECTION. **Sec. 116.** A new section is added to chapter 77.55
13 RCW to read as follows:

14 The department shall develop a system to provide local governments,
15 affected tribes, and other interested parties with access to hydraulic
16 project approval applications, including applications for a general
17 permit.

18 NEW SECTION. **Sec. 117.** (1) In consultation with affected
19 stakeholders, the office of regulatory assistance established under RCW
20 43.42.010 shall: (a) Review relevant state, federal, and local
21 government natural resources and environmental regulatory programs to
22 determine if those programs have the authority to provide adequate fish
23 protection measures for hydraulic projects conducted above the ordinary
24 high water line; (b) review those same programs to determine if they
25 are currently providing adequate fish protection measures for projects
26 above the ordinary high water line; and (c) identify opportunities to
27 synchronize permit application and approval timelines to streamline
28 permit processes that apply to hydraulic projects.

29 (2) The office of regulatory assistance shall provide its findings
30 and any recommendations to the legislature, the governor, and the
31 department of fish and wildlife by September 1, 2013.

32 (3) This section expires December 31, 2013.

33 NEW SECTION. **Sec. 118.** The director of fish and wildlife shall
34 develop rules for the development and issuance of general permits under

1 RCW 77.55.021. The department of fish and wildlife must convene a
2 forum, including local governments, state agencies, tribal governments,
3 and other stakeholders to assist in the development of criteria that
4 will serve as a guide for development and issuance of such permits.

5 NEW SECTION. **Sec. 119.** A new section is added to chapter 77.55
6 RCW to read as follows:

7 An applicant may enter into a cost-reimbursement agreement with the
8 department under RCW 43.300.080 for the purpose of preapplication
9 project coordination. The department must convene a meeting with the
10 applicant and invite other regulatory agencies to attend. The
11 department shall facilitate discussions between the applicant and
12 regulatory agencies on regulatory requirements and methods to improve
13 the proposed project to allow prompt review and approval upon the
14 submittal of a complete application.

15 NEW SECTION. **Sec. 120.** The director of fish and wildlife shall
16 adopt rules to implement section 103 of this act. The department of
17 fish and wildlife may not impose fees under section 103 of this act for
18 repair or maintenance activities associated with a single site permit
19 until the director of fish and wildlife adopts rules to implement that
20 section.

21 NEW SECTION. **Sec. 121.** The director of fish and wildlife shall
22 adopt rules required or deemed necessary to implement section 108 of
23 this act. Sections 108 and 124 of this act take effect six months from
24 the date the director of the department of fish and wildlife adopts
25 rules to implement that section. The department of fish and wildlife
26 must provide written notice of the effective date of sections 108 and
27 124 of this act to affected parties, the chief clerk of the house of
28 representatives, the secretary of the senate, the office of the code
29 reviser, and others as deemed appropriate by the department.

30 NEW SECTION. **Sec. 122.** The director of fish and wildlife shall
31 adopt any rules required or deemed necessary to implement sections 101
32 through 121 of this act.

1 practicable, the department shall communicate with the applicant
2 regarding the substance of the project.

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

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

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

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

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

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

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

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

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

30 (c) When submitting an application to the department under RCW
31 76.09.050, the applicant shall attach the following to the application:

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

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

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

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

8 (i) Establish minimum standards for forest practices;

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

14 (iii) Set forth necessary administrative provisions;

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

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

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

23 (c) Forest practices rules shall be administered and enforced by
24 either the department or the local governmental entity as provided in
25 this chapter. Such rules shall be adopted and administered so as to
26 give consideration to all purposes and policies set forth in RCW
27 76.09.010.

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

33 (b)(i) ~~((Prior to initiating the rule-making process, the proposed
34 rules shall be submitted for review and comments to the department of
35 fish and wildlife and to the counties of the state. After receipt of
36 the proposed forest practices rules, the department of fish and
37 wildlife and the counties of the state shall have thirty days in which~~

1 ~~to review and submit comments to the board, and to the department of~~
2 ~~ecology with respect to its proposed rules relating to water quality~~
3 ~~protection.~~

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

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

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

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

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

37 (d) The board must complete the requirements of (a) of this

1 subsection and establish initial technical guidance under (c) of this
2 subsection by July 1, 2013.

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

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

33 (ii) For conveyances of a conservation easement in which the
34 landowner conveys interests in both land and trees, the compensation
35 must include the timber value component in (a)(i) of this subsection
36 plus such portion of the land value component as determined just and
37 equitable by the department. The land value component must be the
38 acreage of qualifying channel migration zone or critical habitat for

1 threatened or endangered species as determined by the board, to be
2 conveyed, multiplied by the average per acre value of all commercial
3 forest land in western Washington or the average for eastern
4 Washington, whichever average is applicable to the qualifying lands.
5 The department must determine the western and eastern Washington
6 averages based on the land value tables established by RCW 84.33.140
7 and revised annually by the department of revenue.

8 (b) Subject to appropriations sufficient to cover the cost of such
9 an acquisition program and the related costs of administering the
10 program, the department must establish a conservation easement in land
11 that an owner tenders for purchase; provided that such lands have been
12 taxed as forest lands and are located within an unconfined channel
13 migration zone or contain critical habitat for threatened or endangered
14 species as designated by the board. Lands acquired under this section
15 shall become riparian or habitat open space. These acquisitions shall
16 not be deemed to trigger the compensating tax of chapters 84.33 and
17 84.34 RCW.

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

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

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

25 (1) The department and the department of natural resources shall
26 enter into and maintain a memorandum of agreement between the two
27 agencies that describes how to implement integration of hydraulic
28 project approvals into forest practices applications consistent with
29 this act.

30 (2) The initial memorandum of agreement between the two departments
31 must be executed by December 31, 2012. The memorandum of agreement may
32 be amended as agreed to by the two departments.

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

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

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

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

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

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

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

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

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

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

32 Class IV: Forest practices other than those contained in Class I
33 or II:

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

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

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

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

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

13 (d) Which have a potential for a substantial impact on the
14 environment and therefore require an evaluation by the department as to
15 whether or not a detailed statement must be prepared pursuant to the
16 state environmental policy act, chapter 43.21C RCW. Such evaluation
17 shall be made within ten days from the date the department receives the
18 application: PROVIDED, That nothing herein shall be construed to
19 prevent any local or regional governmental entity from determining that
20 a detailed statement must be prepared for an action pursuant to a Class
21 IV forest practice taken by that governmental entity concerning the
22 land on which forest practices will be conducted. A Class IV
23 application must be approved or disapproved by the department within
24 thirty calendar days from the date the department receives the
25 application, (~~unless the department determines that a detailed~~
26 ~~statement must be made, in which case the application must be approved~~
27 ~~or disapproved by the department within sixty calendar days from the~~
28 ~~date the department receives the application, unless the commissioner~~
29 ~~of public lands, through the promulgation of a formal order, determines~~
30 ~~that the process cannot be completed within such period)) except that
31 the department must: Approve or disapprove an application within sixty
32 calendar days from the date the department receives the application if
33 the department determines that a detailed statement must be made,
34 unless the commissioner of public lands, through the promulgation of a
35 formal order, determines that the process cannot be completed within
36 such a period. However, the applicant may not begin work on that
37 forest practice until all forest practice fees required under RCW
38 76.09.065 have been received by the department.~~

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

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

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

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

30 (5) Except for those forest practices being regulated by local
31 governmental entities as provided elsewhere in this chapter, the
32 department of natural resources shall notify the applicant in writing
33 of either its approval of the application or its disapproval of the
34 application and the specific manner in which the application fails to
35 comply with the provisions of this section or with the forest practices
36 regulations. Except as provided otherwise in this section, if the
37 department fails to either approve or disapprove an application or any
38 portion thereof within the applicable time limit, the application shall

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

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

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

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

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

33 The department shall either disapprove those portions of such
34 application or appeal the county, city, or town objections to the
35 appeals board. If the objections related to (b) of this subsection are
36 based on local authority consistent with RCW 76.09.240 as now or
37 hereafter amended, the department shall disapprove the application
38 until such time as the county, city, or town consents to its approval

1 or such disapproval is reversed on appeal. The applicant shall be a
2 party to all department appeals of county, city, or town objections.
3 Unless the county, city, or town either consents or has waived its
4 rights under this subsection, the department shall not approve portions
5 of an application affecting such lands until the minimum time for
6 county, city, or town objections has expired.

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

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

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

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

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

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

35 (1) The department shall prescribe the form and contents of the
36 notification and application. The forest practices rules shall specify
37 by whom and under what conditions the notification and application

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

11 (a) Name and address of the forest landowner, timber owner, and
12 operator;

13 (b) Description of the proposed forest practice or practices to be
14 conducted;

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

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

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

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

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

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

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

35 ~~((i))~~ (j) Provisions for continuing maintenance of roads and
36 other construction or other measures necessary to afford protection to
37 public resources;

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

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

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

6 (3) The application for a forest practice or the notification of a
7 forest practice is subject to the reforestation requirement of RCW
8 76.09.070.

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

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

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

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

22 ~~(b)(i)~~ Except as provided elsewhere in this section, ~~((if the))~~
23 when the department becomes aware of a landowner ((harvests))
24 harvesting without an approved application or notification or the
25 landowner ~~((does not state))~~ has not stated that any land covered by
26 ~~((the))~~ an application or notification will be or is intended to be
27 converted~~((, and the department or the county, city, town, or regional~~
28 ~~governmental entity becomes aware of)), the department shall:~~

29 (A) Take appropriate action under the authority of RCW 76.09.080
30 through 76.09.140; and

31 (B) Provide electronic notice to the department of ecology and the
32 county, city, or town, or regional governmental entities of potential
33 conversion activities to a use other than commercial timber operations,
34 as that term is defined in RCW 76.09.020~~((, then the department shall~~
35 ~~send to the department of ecology and the appropriate county, city,~~
36 ~~town, and regional governmental entities the following documents:~~

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

1 (ii) The county, city, town, or regional governmental entity shall,
2 consistent with RCW 76.09.460, issue a notice of a conversion to a
3 nonforestry use to the landowner and send copies to the department and
4 the department of ecology. Upon receipt, the department shall send to
5 the appropriate county, city, town, or regional governmental entity:

6 (A) A copy of the applicable forest practices application or
7 notification, if any; and

8 ~~((+iii))~~ (B) Copies of any applicable outstanding final orders or
9 decisions issued by the department related to the forest practices
10 application or notification.

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

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

24 (e) Land that is the subject of a notice of conversion to a
25 nonforestry use produced by ~~((the department and sent to the department~~
26 ~~of ecology and))~~ a local ~~((government under this subsection))~~
27 governmental entity is subject to the development prohibition and
28 conditions provided in RCW 76.09.460.

29 (f) Landowners who have not stated an intent to convert the land
30 covered by an application or notification and who decide to convert the
31 land to a nonforestry use within six years of receiving an approved
32 application or notification must do so in a manner consistent with RCW
33 76.09.470.

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

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

7 (5) Before the operator commences any forest practice in a manner
8 or to an extent significantly different from that described in a
9 previously approved application or notification, there shall be
10 submitted to the department a new application or notification form in
11 the manner set forth in this section.

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

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

26 (c) At the option of the applicant, an application or notification
27 may be submitted to cover a single forest practice or a number of
28 forest practices within reasonable geographic or political boundaries
29 as specified by the department. An application or notification that
30 covers more than one forest practice may have an effective term of more
31 than ~~((two))~~ three years.

32 (d) The board shall adopt rules that establish standards and
33 procedures for approving an application or notification that has an
34 effective term of more than ~~((two))~~ three years. Such rules shall
35 include extended time periods for application or notification approval
36 or disapproval. ~~((On an approved application with a term of more than
37 two years, the applicant shall inform the department before commencing~~

1 operations)) The department may require the applicant to provide
2 advance notice before commencing operations on an approved application
3 or notification.

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

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

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

22 (b) In order to minimize adverse impacts to public resources,
23 control measures must be based on integrated pest management, as
24 defined in RCW 17.15.010, and must follow forest practices rules
25 relating to road construction and maintenance, timber harvest, and
26 forest chemicals, to the extent possible without compromising control
27 objectives.

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

32 (d) When the appropriate regulatory staff of the department are
33 notified under (c) of this subsection, they must consult with the
34 landowner, interested agencies, and affected tribes, and assist the
35 notifying agencies in the development of integrated pest management
36 plans that comply with forest practices rules as required under (b) of
37 this subsection.

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

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

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

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

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

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

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

30 (a) The department has attempted an inspection of forest lands
31 under this chapter to ensure compliance with this chapter and the
32 forest practices rules or to ensure that no potential or actual
33 material damage occurs to the natural resources of this state, and
34 access to all or part of the forest lands has been actually or
35 constructively denied; or

36 (b) The department has reasonable cause to believe that a violation

1 of this chapter or of rules adopted under this chapter is occurring or
2 has occurred.

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

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

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

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

26 (3) The department must obtain the written permission of a permit
27 applicant or permittee before making publicly available that
28 applicant's or permittee's application or permit under this section and
29 must work cooperatively with the permit applicant or permittee to
30 ensure that no personal or proprietary information is made available.

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

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

1 (2) ~~((For applications and notifications submitted to the~~
2 ~~department, the application fee))~~ (a) If sections 201 through 203 and
3 206 of this act are not enacted into law by June 30, 2012, then the fee
4 for applications and notifications submitted to the department shall be
5 fifty dollars for class II, III, and IV forest practices applications
6 or notifications relating to the commercial harvest of timber.
7 However, the fee shall be five hundred dollars for class IV forest
8 practices applications on lands being converted to other uses or on
9 lands which are not to be reforested because of the likelihood of
10 future conversion to urban development or on lands that are contained
11 within "urban growth areas," designated pursuant to chapter 36.70A RCW,
12 except the fee shall be fifty dollars on those lands where the forest
13 landowner provides:

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

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

22 (b) If sections 201 through 203 and 206 of this act are enacted
23 into law by June 30, 2012, then the fee for applications and
24 notifications submitted to the department shall be one hundred fifty
25 dollars for class II applications and notifications, class III
26 applications, and class IV forest practices that have a potential for
27 a substantial impact on the environment and therefore require an
28 evaluation by the department as to whether or not a detailed statement
29 must be prepared pursuant to the state environmental policy act,
30 chapter 43.21C RCW. The fee shall be one thousand five hundred dollars
31 for class IV forest practices applications on lands being converted to
32 other uses or on lands that are not to be reforested because of the
33 likelihood of future conversion to urban development or on lands that
34 are contained within urban growth areas, designated pursuant to chapter
35 36.70A RCW, except the fee shall be the same as for a class III forest
36 practices application where the forest landowner provides:

37 (i) A written statement of intent signed by the forest landowner
38 not to convert to a use other than commercial forest product operations

1 for ten years, accompanied by either a written forest management plan
2 acceptable to the department or documentation that the land is enrolled
3 under the provisions of chapter 84.33 RCW; or

4 (ii) A conversion option harvest plan approved by the local
5 governmental entity and submitted to the department as part of the
6 forest practices application.

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 by the local governmental entity.~~

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

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

26 **Sec. 210.** RCW 76.09.460 and 2007 c 106 s 2 are each amended to
27 read as follows:

28 ~~((If))~~ When a county, city, town, or regional governmental entity
29 ~~((receives))~~ issues a notice of conversion to nonforestry use ~~((by the~~
30 ~~department))~~ under RCW 76.09.060, then the county, city, town, or
31 regional governmental entity must deny all applications for permits or
32 approvals, including building permits and subdivision approvals,
33 relating to nonforestry uses of the land that is the subject of the
34 notification. The prohibition ~~((created by this section))~~ must be
35 enforced by the county, city, town, or regional governmental entity:

36 (1) For a period of six years from the approval date of the

1 applicable forest practices application or notification or the date
2 that the department was made aware of the harvest activities; or

3 (2) Until the following activities are completed for the land that
4 is the subject of the notice of conversion to a nonforestry use:

5 (a) Full compliance with chapter 43.21C RCW, if applicable;

6 (b) The department has notified the county, city, town, or regional
7 governmental entity that the landowner has resolved any outstanding
8 final orders or decisions issued by the department; and

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

23 **Sec. 211.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to
24 read as follows:

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

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

32 (b) Contact the department of ecology and the applicable county,
33 city, town, or regional governmental entity to begin the permitting
34 process; and

35 (c) Notify the department ~~((and))~~, withdraw any applicable
36 applications or notifications ~~((or request))~~, and submit a new
37 application for the conversion. The fee for a new application for

1 conversion under this subsection (1)(c) is the difference between the
2 applicable fee for the new application under RCW 76.09.065 and the fee
3 previously paid for the original application or notification, which
4 must be deposited in the forest practices application account created
5 in RCW 76.09.065.

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

8 (a) Notify the department and request from the department the
9 status of any applicable forest practices applications, notifications,
10 or final orders or decisions; and

11 (b) Complete the following activities:

12 (i) Require that the landowner be in full compliance with chapter
13 43.21C RCW, if applicable;

14 (ii) Receive notification from the department that the landowner
15 has resolved any outstanding final orders or decisions issued by the
16 department; and

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

30 **Sec. 212.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read
31 as follows:

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

35 (a) The commissioner of public lands or the commissioner's
36 designee;

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

3 (c) The director of the department of agriculture or the director's
4 designee;

5 (d) The director of the department of ecology or the director's
6 designee;

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

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

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

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

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

37 ~~(3))~~ The members of the initial board appointed by the governor
38 shall be appointed so that the term of one member shall expire December

1 31, 1975, the term of one member shall expire December 31, 1976, the
2 term of one member shall expire December 31, 1977, the terms of two
3 members shall expire December 31, 1978, and the terms of two members
4 shall expire December 31, 1979. Thereafter, each member shall be
5 appointed for a term of four years. Vacancies on the board shall be
6 filled in the same manner as the original appointments. Each member of
7 the board shall continue in office until his or her successor is
8 appointed and qualified. The commissioner of public lands or the
9 commissioner's designee shall be the chair of the board.

10 ~~((+4))~~ (3) The board shall meet at such times and places as shall
11 be designated by the chair or upon the written request of the majority
12 of the board. The principal office of the board shall be at the state
13 capital.

14 ~~((+5))~~ (4) Members of the board, except public employees and
15 elected officials, shall be compensated in accordance with RCW
16 43.03.250. Each member shall be entitled to reimbursement for travel
17 expenses incurred in the performance of their duties as provided in RCW
18 43.03.050 and 43.03.060.

19 ~~((+6))~~ (5) The board may employ such clerical help and staff
20 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

21 **Sec. 213.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are
22 each reenacted and amended to read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

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

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

30 (3) "Application" means the application required pursuant to RCW
31 76.09.050.

32 (4) "Aquatic resources" includes water quality, salmon, other
33 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
34 identified in the forests and fish report, the Columbia torrent
35 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
36 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*

1 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
2 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
3 their respective habitats.

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

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

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

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

13 (9) "Date of receipt" has the same meaning as defined in RCW
14 43.21B.001.

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

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

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

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

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

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

35 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
36 and the land on which appurtenances necessary to the production,
37 preparation, or sale of crops, fruit, dairy products, fish, and
38 livestock exist.

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

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

13 (a) Road and trail construction, including forest practices
14 hydraulic projects that include water crossing structures, and
15 associated activities and maintenance;

16 (b) Harvesting, final and intermediate;

17 (c) Precommercial thinning;

18 (d) Reforestation;

19 (e) Fertilization;

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

21 (g) Salvage of trees; and

22 (h) Brush control.

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

29 (17) "Forest practices rules" means any rules adopted pursuant to
30 RCW 76.09.040.

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

36 (19) "Forest trees" does not include hardwood trees cultivated by
37 agricultural methods in growing cycles shorter than fifteen years if
38 the trees were planted on land that was not in forest use immediately

1 before the trees were planted and before the land was prepared for
2 planting the trees. "Forest trees" includes Christmas trees, but does
3 not include Christmas trees that are cultivated by agricultural
4 methods, as that term is defined in RCW 84.33.035.

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

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

9 (22) "Person" means any individual, partnership, private, public,
10 or municipal corporation, county, the department or other state or
11 local governmental entity, or association of individuals of whatever
12 nature.

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

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

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

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

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

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

37 (29) "Forest practices hydraulic project" means a hydraulic

1 project, as defined under RCW 77.55.011, that requires a forest
2 practices application under this chapter.

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

5 NEW SECTION. Sec. 214. A new section is added to chapter 43.21C
6 RCW to read as follows:

7 The incorporation of fish protection standards adopted under
8 chapter 77.55 RCW into the forest practices rules as required under RCW
9 76.09.040(3) is exempt from compliance with this chapter.

10 NEW SECTION. Sec. 215. (1) The departments of natural resources
11 and fish and wildlife must jointly provide a report to the appropriate
12 committees of the legislature containing findings and any
13 recommendations relating to the regulatory integration of hydraulic
14 projects and forest practices as provided in this act, including:

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

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

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

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

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

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

30 NEW SECTION. Sec. 216. Sections 202 and 205 of this act take
31 effect on the date the forest practices board incorporates fish
32 protection standards adopted under chapter 77.55 RCW into the forest
33 practices rules and approves technical guidance as required under RCW
34 76.09.040. The department of natural resources must provide written
35 notice of the effective date of these sections to affected parties, the

1 chief clerk of the house of representatives, the secretary of the
2 senate, the office of the code reviser, and others as deemed
3 appropriate by the department of natural resources.

4 NEW SECTION. **Sec. 217.** Nothing in this act affects any rules,
5 processes, or procedures of the department of fish and wildlife and the
6 department of natural resources existing on the effective date of this
7 section that provide for regulatory integration of hydraulic projects
8 and forest practices for projects in nonfish-bearing waters.

9 NEW SECTION. **Sec. 218.** Nothing in this act authorizes the
10 department of fish and wildlife to assume authority over approval,
11 disapproval, conditioning, or enforcement of applications submitted
12 under chapter 76.09 RCW.

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

17 **PART THREE**

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

19 **Sec. 301.** RCW 43.21C.170 and 1983 c 117 s 6 are each amended to
20 read as follows:

21 (1) The ((legislature may establish a)) council on environmental
22 policy ((to review and assist in the implementation of this chapter))
23 is established consisting of the following members:

24 (a) The director of the department of ecology, or the director's
25 designee, who shall serve as chair of the council;

26 (b) A county planning director, or commensurate position,
27 responsible for the implementation of this chapter in a county,
28 appointed by the governor;

29 (c) A city planning director, or commensurate position, responsible
30 for the implementation of this chapter in a city, appointed by the
31 governor;

32 (d) A representative of environmental interests, appointed by the
33 governor; and

1 (e) A representative of business interests, appointed by the
2 governor.

3 (2) Appointed members of the council serve four year terms, except
4 that the governor may appoint initial members to the council in
5 staggered terms so that the terms of no more than two gubernatorial
6 appointees expire in the same calendar year. If a vacancy occurs on
7 the council prior to the expiration of a term, the governor shall
8 appoint a new member within thirty days to complete the term.

9 (3) The council shall meet at least biannually. Official meetings
10 may be held at any location or time designated by the chair of the
11 council. Regardless of meeting location, members of the council may
12 participate in official meetings through conference calls or other
13 remote location meeting technologies. Three members constitute a
14 quorum for the transaction of business.

15 (4) For administrative purposes, the council is located in the
16 department of ecology. The department of ecology shall provide
17 clerical and research staff support to the council.

18 (5) The council may delegate to the department of ecology any
19 powers or duties provided to the council under this chapter.

20 (6) Members of the council that are not state employees are
21 entitled to reimbursement for travel expenses related to participation
22 on the board consistent with RCW 43.03.050 and 43.03.060.

23 (7) The governor shall make appointments to the council with the
24 advice and consent of the senate.

25 **Sec. 302.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
26 read as follows:

27 It shall be the duty and function of the (~~department of ecology~~)
28 council on environmental policy:

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

1 and responsibility for full and appropriate independent promulgation
2 and adoption of rules, assuring consistency with this chapter as
3 amended and with the preservation of protections afforded by this
4 chapter. The rule-making powers authorized in this section shall
5 include, but shall not be limited to, the following phases of
6 interpretation and implementation of this chapter:

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

19 (b) Rules for criteria and procedures applicable to the
20 determination of when an act of a branch of government is a major
21 action significantly affecting the quality of the environment for which
22 a detailed statement is required to be prepared pursuant to RCW
23 43.21C.030.

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

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

35 (e) Rules and procedures for public notification of actions taken
36 and documents prepared.

37 (f) Definition of terms relevant to the implementation of this
38 chapter including the establishment of a list of elements of the

1 environment. Analysis of environmental considerations under RCW
2 43.21C.030(2) may be required only for those subjects listed as
3 elements of the environment (or portions thereof). The list of
4 elements of the environment shall consist of the "natural" and "built"
5 environment. The elements of the built environment shall consist of
6 public services and utilities (such as water, sewer, schools, fire and
7 police protection), transportation, environmental health (such as
8 explosive materials and toxic waste), and land and shoreline use
9 (including housing, and a description of the relationships with land
10 use and shoreline plans and designations, including population).

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

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

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

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

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

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

29 (m) Rules and procedures that provide for the integration of
30 environmental review with project review as provided in RCW 43.21C.240.
31 The rules and procedures shall be jointly developed with the department
32 of (~~community, trade, and economic development~~) commerce and shall be
33 applicable to the preparation of environmental documents for actions in
34 counties, cities, and towns planning under RCW 36.70A.040. The rules
35 and procedures shall also include procedures and criteria to analyze
36 planned actions under (~~RCW 43.21C.031(2)~~) section 308 of this act and
37 revisions to the rules adopted under this section to ensure that they
38 are compatible with the requirements and authorizations of chapter 347,

1 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
2 procedures adopted by a county, city, or town to implement the
3 provisions of chapter 347, Laws of 1995 prior to the effective date of
4 rules adopted under this subsection (1)(m) shall continue to be
5 effective until the adoption of any new or revised ordinances or
6 procedures that may be required. If any revisions are required as a
7 result of rules adopted under this subsection (1)(m), those revisions
8 shall be made within the time limits specified in RCW 43.21C.120.

9 (2) In exercising its powers, functions, and duties under this
10 section, the (~~department~~) council on environmental policy may:

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

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

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

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

25 The council on environmental policy shall periodically review the
26 rules adopted under RCW 43.21C.110 for purposes including to:

- 27 (1) Ensure that the rules reflect current conditions;
- 28 (2) Reduce duplicative rules and regulations; and
- 29 (3) Minimize avoidable costs while still meeting the environmental
30 review objectives of this chapter.

31 NEW SECTION. Sec. 304. (1) By December 31, 2012, the council on
32 environmental policy shall review the rules adopted under RCW
33 43.21C.110 and conduct rule making, consistent with the criteria
34 identified in section 303 of this act, on those rules prioritized for
35 immediate review by the council. The initial rule review and rule
36 making must include, but is not limited to:

1 (a) Categories of governmental actions that are not to be
2 considered as potential major actions significantly affecting the
3 quality of the environment, with a focus on maximum threshold levels by
4 project type and location; and

5 (b) The environmental checklist process outlined in WAC 197-11-315,
6 as it existed on the effective date of this section.

7 (2) By December 31, 2013, the council on environmental policy shall
8 conduct a second rule review and proceed with a rule-making process to
9 adopt further updates to the rules adopted under RCW 43.21C.110
10 consistent with this section.

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

12 NEW SECTION. **Sec. 305.** A new section is added to chapter 43.21C
13 RCW to read as follows:

14 All rules adopted by the department of ecology under RCW 43.21C.110
15 prior to the effective date of this section remain in effect. The
16 council on environmental policy assumes all responsibility and
17 authority for amending the rules.

18 **Sec. 306.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to
19 read as follows:

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

29 (a) It categorically exempts ~~((government action related to
30 development that is))~~ project actions that propose new residential,
31 commercial, industrial, or mixed-use development ~~((proposed))~~ to fill
32 in an urban growth area, designated according to RCW 36.70A.110, where
33 current density and intensity of use in the area is lower than called
34 for in the goals and policies of the applicable comprehensive plan;

35 (b) It does not exempt ~~((government action related to))~~ project

1 actions that propose development that would be for a use or would
2 exceed the density or intensity of a use called for in the goals and
3 policies of the applicable comprehensive plan; and

4 (c)(i) The county, city, or ((county's)) town's applicable
5 comprehensive or subarea plan was previously subjected to environmental
6 ~~((analysis through an environmental impact statement))~~ review under the
7 requirements of this chapter prior to adoption.

8 (2) Any categorical exemption adopted by a county, city, or
9 ~~((county))~~ town under this section shall be ~~((subject to the rules of~~
10 ~~the department adopted according to RCW 43.21C.110(1)(a) that provide~~
11 ~~exceptions to the use of categorical exemptions adopted by the~~
12 ~~department))~~ contained in rules adopted pursuant to RCW 43.21C.120.

13 **Sec. 307.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to
14 read as follows:

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

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

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

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

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

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

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

17 ~~(iv) Are located within an urban growth area, as defined in RCW
18 36.70A.030;~~

19 ~~(v) Are not essential public facilities, as defined in RCW
20 36.70A.200; and~~

21 ~~(vi) Are consistent with a comprehensive plan adopted under chapter
22 36.70A RCW.~~

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

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

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

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

36 (b) Have been subjected to environmental review under the
37 requirements of this chapter in conjunction with, or to implement, a

1 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or
2 a fully contained community, a master planned resort, a master planned
3 development, or a phased project;

4 (c) Are subsequent or implementing projects for the proposals
5 listed in (b) of this subsection;

6 (d) Are located within an urban growth area designated pursuant to
7 RCW 36.70A.110;

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

13 (f) Are consistent with a comprehensive plan or subarea plan
14 adopted under chapter 36.70A RCW.

15 (2) A county, city, or town shall define the types of development
16 included in the planned action or a specific geographical area that is
17 less extensive than the jurisdictional boundaries of the county, city,
18 or town, and may limit a planned action to a time period identified in
19 the ordinance or resolution adopted under this subsection.

20 (3) A county, city, or town shall determine during permit review
21 whether a proposal is consistent with a planned action ordinance
22 adopted by the jurisdiction. To determine project consistency with a
23 planned action ordinance, a county, city, or town may utilize the
24 environmental checklist, a modified checklist pursuant to the rules
25 adopted to implement RCW 43.21C.110, a form that is designated within
26 the planned action ordinance, or a form contained in agency rules
27 adopted pursuant to RCW 43.21C.120. Except for impacts that are
28 specifically deferred for consideration at the project level, a county,
29 city, or town is not required to make a threshold determination and may
30 not require additional environmental review for a proposal that is
31 determined to be consistent with the development or redevelopment
32 described in the planned action ordinance. The determination of
33 consistency, and the adequacy of any environmental review that was
34 specifically deferred, is subject to any administrative appeal that the
35 county, city, or town provides consistent with RCW 36.70B.060.

36 (4) A county, city, or town may recover its reasonable expenses of
37 preparation of nonproject environmental documents prepared under
38 subsection (1)(b) of this section through access to financial

1 assistance under RCW 36.70A.490 or funding from private sources. In
2 addition, a county, city, or town is authorized to recover a portion of
3 its reasonable expenses of preparation of such nonproject environmental
4 documents by the assessment of reasonable and proportionate fees upon
5 subsequent development that is consistent with a planned action meeting
6 the criteria of this section, as long as the development makes use of
7 and benefits from, as described in subsection (3) of this section, the
8 nonproject environmental documents prepared by the county, city, or
9 town. Any assessment fees collected from subsequent development may be
10 used to reimburse funding received from private sources. In order to
11 collect such fees, the county, city, or town must enact an ordinance
12 that sets forth objective standards for determining how the fees to be
13 imposed upon each development will be proportionate to the impacts of
14 each development and to the benefits accruing to each development from
15 the nonproject environmental review. Any disagreement about the
16 reasonableness or amount of the fees imposed upon a development may not
17 be the basis for delay in issuance of a project permit for that
18 development. The fee assessed by the county, city, or town may be paid
19 with the written stipulation "paid under protest" and if the county,
20 city, or town provides for an administrative appeal of its decision on
21 the project for which the fees are imposed, any dispute about the
22 amount of the fees must be resolved in the same administrative appeal
23 process.

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

26 (1)(a) A county, city, or town may adopt an ordinance to create a
27 local environmental checklist. The local environmental checklist must
28 be used to determine whether the environmental impacts of a proposal
29 are significant and whether preparation of an environmental impact
30 statement is required under this chapter.

31 (b) A county, city, or town that adopts a local environmental
32 checklist under this section is not required to use the environmental
33 checklist adopted under RCW 43.21C.110. A local environmental
34 checklist is not required to include every question contained in the
35 environmental checklist adopted under RCW 43.21C.110, if the county,
36 city, or town determines that the questions and determination of
37 environmental impacts will be adequately analyzed and mitigated below

1 a level of significance by other local, state, or federal laws and
2 rules. A local environmental checklist may provide that some
3 environmental impacts of a proposal are adequately covered by other
4 statutes, ordinances, or rules that adequately address any
5 environmental concerns such that an environmental impact statement is
6 not required under this chapter.

7 (2)(a) Prior to adopting a local environmental checklist under this
8 section, a county, city, or town shall:

9 (i) Make a determination that the local environmental checklist or
10 other federal, state, or local statutes or rules adequately disclose or
11 adequately addresses all environmental concerns contained in the
12 environmental checklist adopted under RCW 43.21C.110; and

13 (ii) Find that the local environmental checklist does not lessen
14 environmental protection.

15 (b) A local environmental checklist may contain questions or
16 requests for information not included in the environmental checklist
17 adopted under RCW 43.21C.110 if the information is needed by the
18 county, city, or town to determine whether probable significant adverse
19 environmental impacts would be adequately analyzed and mitigated below
20 a level of significance by other local, state, or federal laws and
21 rules and whether any remaining probable adverse environmental impacts
22 of a proposal would be significant.

23 (3) The adoption or amendment of an ordinance under this section
24 may be appealed consistent with RCW 43.21C.075. The application of an
25 ordinance adopted under this section is not subject to appeal under
26 this chapter.

27 NEW SECTION. **Sec. 310.** A new section is added to chapter 43.21C
28 RCW to read as follows:

29 (1)(a) Except as otherwise provided in this subsection (1), the
30 proposed actions contained in subsections (2) and (3) of this section
31 are categorically exempt from the requirements of this chapter if the
32 proposed action is located within a county, city, or town planning
33 under RCW 36.70A.040. If a proposed action is located in more than one
34 county, city, or town, the lower of the agencies' adopted categorical
35 exemption levels controls, regardless of which agency is the lead
36 agency.

1 (b) An ordinance or resolution may be adopted by a county, city, or
2 town to establish lower exemption levels for specific geographic areas
3 within the county, city, or town and remove the otherwise exempt
4 proposed actions identified in subsections (2) and (3) of this section
5 from being considered exempt.

6 (2) Except as provided in subsection (1)(b) of this section, the
7 following actions are categorically exempt from the requirements of
8 this chapter if the proposed action is located within an urban growth
9 area designated pursuant to RCW 36.70A.110:

10 (a) The following are nonproject actions:

11 (i) Amendments to development regulations that are required to
12 ensure consistency with an adopted comprehensive plan pursuant to RCW
13 36.70A.040, where the comprehensive plan was previously subjected to
14 environmental review pursuant to this chapter;

15 (ii) Amendments to development regulations that are required to
16 ensure consistency with a shoreline master program approved pursuant to
17 RCW 90.58.090, where the shoreline master program was previously
18 subjected to environmental review pursuant to this chapter;

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

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

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

26 (C) Increased vegetation retention or decreased impervious surface
27 areas in critical areas;

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

31 (A) Building codes required by chapter 19.27 RCW;

32 (B) Energy codes required by chapter 19.27A RCW; and

33 (C) Electrical codes required by chapter 19.28 RCW.

34 (b) The following are project actions:

35 (i) The construction or location of single-family residential
36 developments of fifty dwelling units or fewer;

37 (ii) The construction or location of multifamily residential
38 developments of eighty dwelling units or fewer;

1 (iii) The construction of an office, school, commercial,
2 recreational, service, or storage building with thirty thousand or
3 fewer square feet of gross floor area, and with associated parking
4 facilities designed for one hundred automobiles or fewer; and

5 (iv) Any landfill or excavation of one thousand two hundred cubic
6 yards or fewer of disturbed area throughout the total lifetime of the
7 fill or excavation.

8 (3) Except as provided in subsection (1)(b) of this section, the
9 following types of construction are categorically exempt from the
10 requirements of this chapter if the proposed action is located outside
11 an urban growth area designated pursuant to RCW 36.70A.110:

12 (a) The following are nonproject actions:

13 (i) Amendments to development regulations that are required to
14 ensure consistency with an adopted comprehensive plan pursuant to RCW
15 36.70A.040, where the comprehensive plan was previously subjected to
16 environmental review pursuant to this chapter;

17 (ii) Amendments to development regulations that are required to
18 ensure consistency with a shoreline master program approved pursuant to
19 RCW 90.58.090, where the shoreline master program was previously
20 subjected to environmental review pursuant to this chapter;

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

24 (A) Increased protections for critical areas such as enhanced
25 buffers or setbacks;

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

28 (C) Increased vegetation retention or decreased impervious surface
29 areas in critical areas;

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

33 (A) Building codes required by chapter 19.27 RCW;

34 (B) Energy codes required by chapter 19.27A RCW; and

35 (C) Electrical codes required by chapter 19.28 RCW.

36 (b) The following are project actions:

37 (i) The construction or location of single-family residential
38 developments of twenty-five dwelling units or fewer;

1 (ii) Excluding feed lots, the construction of a barn, loafing shed,
2 farm equipment storage building, produce storage or packing structure,
3 or similar agricultural structure, covering up to fifty thousand square
4 feet, and to be used only by the property owner or the property owner's
5 agent in the conduct of farming the property;

6 (iii) The construction of an office, school, commercial,
7 recreational, service, or storage building with fifteen thousand or
8 fewer square feet of gross floor area, and with associated parking
9 facilities designed for fifty automobiles or fewer; and

10 (iv) Any landfill or excavation of one thousand cubic yards or
11 fewer of disturbed area throughout the total lifetime of the fill or
12 excavation.

13 **Sec. 311.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to
14 read as follows:

15 (1) The growth management hearings board shall hear and determine
16 only those petitions alleging either:

17 (a) That, except as provided otherwise by this subsection, a state
18 agency, county, or city planning under this chapter is not in
19 compliance with the requirements of this chapter, chapter 90.58 RCW as
20 it relates to the adoption of shoreline master programs or amendments
21 thereto, or chapter 43.21C RCW as it relates to plans, development
22 regulations, or amendments, adopted under RCW 36.70A.040 or chapter
23 90.58 RCW(~~(. Nothing in this subsection authorizes the board to hear~~
24 ~~petitions alleging noncompliance with RCW 36.70A.5801))~~);

25 (b) That the twenty-year growth management planning population
26 projections adopted by the office of financial management pursuant to
27 RCW 43.62.035 should be adjusted;

28 (c) That the approval of a work plan adopted under RCW
29 36.70A.735(1)(a) is not in compliance with the requirements of the
30 program established under RCW 36.70A.710;

31 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not
32 regionally applicable and cannot be adopted, wholly or partially, by
33 another jurisdiction; or

34 (e) That a department certification under RCW 36.70A.735(1)(c) is
35 erroneous.

36 (2) A petition may be filed only by: (a) The state, or a county or
37 city that plans under this chapter; (b) (~~a person who has participated~~

1 orally or in writing before the county or city regarding the matter on
2 which a review is being requested; ~~(c))~~) a person who is certified by
3 the governor within sixty days of filing the request with the board; or
4 ~~((d))~~) (c) a person qualified pursuant to RCW 34.05.530.

5 (3) For purposes of this section "person" means any individual,
6 partnership, corporation, association, state agency, governmental
7 subdivision or unit thereof, or public or private organization or
8 entity of any character.

9 ~~(4) ((To establish participation standing under subsection (2)(b)
10 of this section, a person must show that his or her participation
11 before the county or city was reasonably related to the person's issue
12 as presented to the board.~~

13 ~~(5))~~) When considering a possible adjustment to a growth management
14 planning population projection prepared by the office of financial
15 management, the board shall consider the implications of any such
16 adjustment to the population forecast for the entire state.

17 The rationale for any adjustment that is adopted by the board must
18 be documented and filed with the office of financial management within
19 ten working days after adoption.

20 If adjusted by the board, a county growth management planning
21 population projection shall only be used for the planning purposes set
22 forth in this chapter and shall be known as the "board adjusted
23 population projection." None of these changes shall affect the
24 official state and county population forecasts prepared by the office
25 of financial management, which shall continue to be used for state
26 budget and planning purposes.

27 NEW SECTION. **Sec. 312.** A new section is added to chapter 36.70B
28 RCW to read as follows:

29 (1)(a) Where the local government has a reasonable basis for
30 determining significant adverse environmental impacts from the project
31 are unlikely, the intent of this process is:

32 (i) To combine the environmental review process, both procedural
33 and substantive, with the procedure for review and action on project
34 permits;

35 (ii) To ensure that interested parties can provide informed comment
36 or raise questions on a proposed development project early in the

1 review process, thereby allowing cost-effective avoidance or mitigation
2 of impacts through project design and other measures; and

3 (iii) To provide for no more than one formal comment period, one
4 open record hearing, and one closed record appeal, except as provided
5 in subsection (4) of this section.

6 (b) If a lead agency is a project proponent or is funding a
7 project, it may conduct its review under chapter 43.21C RCW or allow
8 appeals of procedural determinations prior to submitting a project
9 permit application.

10 (2)(a) It is the intent of this section to improve the local permit
11 review process and facilitate complete and well-informed decision
12 making. If an open record predecision hearing is required for the
13 requested project permits, notice must be provided at least fifteen
14 days prior to the open record hearing. The notice of application must
15 include the following in whatever sequence or format the local
16 government deems appropriate:

17 (i) The date of application and the date of the notice;

18 (ii) If the application is complete, the completeness date;

19 (iii) A description of the proposed project action and a list of
20 the project permits and reviews included in the application and, if
21 applicable, a list of any studies; or other information submitted with
22 the application;

23 (iv) The identification of other permits required but not included
24 in the application to the extent known by the local government;

25 (v) The location where the application and related information can
26 be reviewed;

27 (vi) A statement of the opportunity for public comment including:

28 (A) Identification of the comment period, which may be not less
29 than fourteen nor more than thirty days following the date of notice;

30 (B) Statements of the right of any person to comment on the
31 application, receive notice of and participate in any hearings, request
32 a copy of the decision once made, and any appeal rights;

33 (C) A local government may accept public comments at any time prior
34 to the closing of the record of an open record predecision hearing, if
35 any, or, if no open record predecision hearing is provided, prior to
36 the decision on the project permit;

37 (vii) The date, time, place, and type of meeting or hearing, if
38 applicable, and scheduled at the date of notice of the application;

1 (viii) A statement of the preliminary determination, if one has
2 been made at the time of notice, of:

3 (A) Those development regulations that will be used for project
4 mitigation;

5 (B) Regulations of other agencies that will be relied upon for
6 project mitigation; and

7 (C) A description of impacts that may be addressed through the
8 authority of chapter 43.21C RCW; and

9 (ix) Any other information determined appropriate by the local
10 government.

11 (b) The provisions of this section do not preclude requesting
12 additional information from the applicant as a result of project
13 review.

14 (c) No local government may make a final decision during the public
15 comment period.

16 (3) A local government shall provide notice to the public and
17 agencies with jurisdiction. A local government may use its existing
18 notice procedures and may provide different types of notice for
19 different categories of project permits or types of project actions.
20 At a minimum, the following methods must be used to provide a summary
21 description of the proposal and identify means to access the full
22 notice and the complete application for review:

23 (a) Posting the property for site-specific proposals;

24 (b) Publishing a summary notice in the newspaper of general
25 circulation in the general area where the proposal is located or in a
26 local land use bulletin published by the local government;

27 (c) Providing notice to affected agencies and tribes, public or
28 private groups with known interest in a certain proposal or in the type
29 of proposal being considered, and when required by local ordinance,
30 notice to neighboring property owners. This notice must be provided by
31 one of the following:

32 (i) Electronic mail notice where parties have provided electronic
33 addresses; or

34 (ii) Mailed paper notice where electronic addresses are not
35 available;

36 (d) Other methods established in local ordinances.

37 (4) A local government shall integrate the permit procedures in

1 this section with environmental review under chapter 43.21C RCW as
2 follows:

3 (a) A single integrated comment period must be used to obtain
4 comments on the proposal and the expected threshold determination for
5 the proposal.

6 (b) Except for a determination of significance, the local
7 government may not issue its threshold determination until the
8 expiration of the public comment period.

9 (c) If a local government has made a determination of significance,
10 the scoping notice may be issued prior to the notice of application.

11 (d) If an open record predecision hearing is required, the local
12 government shall issue its threshold determination and any required
13 recommendation at least fifteen days prior to the open record
14 predecision hearing. A staff report must identify all mitigation
15 required or proposed under development regulations, and mitigation
16 required or proposed under the agency's authority under RCW 43.21C.060.

17 (e) If an open record predecision hearing is not required, the
18 local government shall issue the threshold determination in conjunction
19 with any related land use decisions.

20 (i) If no discretionary land use decisions are required, such as
21 when decisions such as a building permit are the trigger for review
22 under chapter 43.21C RCW, the local government may issue a use
23 approval, which is considered an underlying action for purposes of any
24 allowed appeal of the threshold determination.

25 (ii) In cases where the local government is exercising the
26 substantive authority of chapter 43.21C RCW to impose conditions or
27 mitigate environmental impacts of the proposed project, those
28 conditions must be explicitly identified in writing and made available
29 with the notice of decision.

30 (f) The responsible official may determine that an additional
31 fourteen day comment period is necessary when information received
32 during the comment period in (a) of this subsection has resulted in
33 substantial changes to the project or the conditions of approval.

34 (5)(a) A local government may decide whether to provide
35 administrative appeals for decisions made pursuant to their development
36 and environmental review codes. When an administrative appeal is
37 provided, unless otherwise set forth or limited in local ordinance, the

1 applicant for a project permit and any party who provided comment on a
2 project permit application prior to the date a decision is issued have
3 standing to file an administrative appeal.

4 (b) Appeal of the project decision or use approval and of any
5 environmental determination issued at the same time as the project
6 decision or use approval must be commenced within the time periods as
7 set forth in (d) of this subsection.

8 (c) Where an open record predecision hearing is provided prior to
9 the decision on a project permit, and where the threshold determination
10 has been made as required in subsection (4) of this section, the open
11 record predecision hearing officer shall make a final procedural
12 decision on any appeal of the threshold determination. If an appeal of
13 the project decision from the hearing officer is allowed, a single
14 closed record appeal must be provided before one decision-making body
15 or officer. The appropriate use or lack of use of substantive
16 authority under chapter 43.21C RCW may be considered during the closed
17 record appeal.

18 (d) An administrative appeal of the project decision and of any
19 environmental determination issued at the same time as the project
20 decision must be filed within fourteen days after the notice of the
21 decision or after other notice that the decision has been made and is
22 appealable, except when a thirty day notice is required pursuant to
23 chapter 90.58 RCW.

24 (i) If the responsible official has provided for an additional
25 fourteen day comment period under subsection (4)(f) of this section, an
26 administrative appeal must be filed within fourteen days after the
27 conclusion of that comment period.

28 (ii) If the applicant is the only party with standing to file an
29 administrative appeal, the applicant may waive the right of appeal in
30 writing and the appeal period will be curtailed and the project review
31 process will be concluded.

32 **Sec. 313.** RCW 43.21C.010 and 2009 c 549 s 5095 are each amended to
33 read as follows:

34 The purposes of this chapter are to: (1) (~~to~~) Declare a state
35 policy which will encourage productive and enjoyable harmony between
36 humankind and the environment; (2) (~~to~~) promote efforts which will
37 prevent or eliminate damage to the environment and biosphere; (3) (~~and~~

1 ~~(to))~~ stimulate the health and welfare of human beings; and (4) ~~((to))~~
2 enrich the understanding of the ecological systems and natural
3 resources important to the state and nation.

4 **Sec. 314.** RCW 43.21C.030 and 2010 c 8 s 7002 are each amended to
5 read as follows:

6 The legislature authorizes and directs that, to the fullest extent
7 possible: (1) The policies, regulations, and laws of the state of
8 Washington shall be interpreted and administered in accordance with the
9 policies set forth in this chapter, and (2) all branches of government
10 of this state, including state agencies, municipal and public
11 corporations, and counties shall:

12 (a) Utilize a systematic, interdisciplinary approach which will
13 ~~((insure))~~ ensure the integrated use of the natural and social sciences
14 and the environmental design arts in planning and in decision making
15 which may have an impact on the environment;

16 (b) Identify and develop methods and procedures, in consultation
17 with the department of ecology and the ~~((ecological—commission))~~
18 council on environmental policy, which will ~~((insure))~~ ensure that
19 presently unquantified environmental amenities and values will be given
20 appropriate consideration in decision making along with economic and
21 technical considerations;

22 (c) Include in every recommendation or report on proposals for
23 legislation and other major actions significantly affecting the quality
24 of the environment, a detailed statement by the responsible official
25 on:

26 (i) The environmental impact of the proposed action;

27 (ii) Any adverse environmental effects which cannot be avoided
28 should the proposal be implemented;

29 (iii) Alternatives to the proposed action;

30 (iv) The relationship between local short-term uses of the
31 environment and the maintenance and enhancement of long-term
32 productivity; and

33 (v) Any irreversible and irretrievable commitments of resources
34 which would be involved in the proposed action should it be
35 implemented;

36 (d) Prior to making any detailed statement, the responsible
37 official shall consult with and obtain the comments of any public

1 agency which has jurisdiction by law or special expertise with respect
2 to any environmental impact involved. Copies of such statement and the
3 comments and views of the appropriate federal, province, state, and
4 local agencies, which are authorized to develop and enforce
5 environmental standards, shall be made available to the governor, the
6 department of ecology, the ((~~ecological commission~~)) council on
7 environmental policy, and the public, and shall accompany the proposal
8 through the existing agency review processes;

9 (e) Study, develop, and describe appropriate alternatives to
10 recommended courses of action in any proposal which involves unresolved
11 conflicts concerning alternative uses of available resources;

12 (f) Recognize the worldwide and long-range character of
13 environmental problems and, where consistent with state policy, lend
14 appropriate support to initiatives, resolutions, and programs designed
15 to maximize international cooperation in anticipating and preventing a
16 decline in the quality of the world environment;

17 (g) Make available to the federal government, other states,
18 provinces of Canada, municipalities, institutions, and individuals,
19 advice and information useful in restoring, maintaining, and enhancing
20 the quality of the environment;

21 (h) Initiate and utilize ecological information in the planning and
22 development of natural resource-oriented projects.

23 **Sec. 315.** RCW 43.21C.033 and 1995 c 347 s 422 are each amended to
24 read as follows:

25 (1) Except as provided in subsection (2) of this section, the
26 responsible official shall make a threshold determination on a
27 completed application within ninety days after the application and
28 supporting documentation are complete. The applicant may request an
29 additional thirty days for the threshold determination. The
30 governmental entity responsible for making the threshold determination
31 shall by rule, resolution, or ordinance adopt standards, consistent
32 with rules adopted by the ((~~department~~)) council on environmental
33 policy to implement this chapter, for determining when an application
34 and supporting documentation are complete.

35 (2) This section shall not apply to a city, town, or county that:

36 (a) By ordinance adopted prior to April 1, 1992, has adopted

1 procedures to integrate permit and land use decisions with the
2 requirements of this chapter; or

3 (b) Is planning under RCW 36.70A.040 and is subject to the
4 requirements of RCW 36.70B.090.

5 **Sec. 316.** RCW 43.21C.036 and 1994 c 257 s 21 are each amended to
6 read as follows:

7 In conducting a remedial action at a facility pursuant to a consent
8 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
9 or if conducted by the department of ecology, the (~~department of~~
10 ~~ecology~~) council on environmental policy to the maximum extent
11 practicable shall integrate the procedural requirements and documents
12 of this chapter with the procedures and documents under chapter 70.105D
13 RCW. Such integration shall at a minimum include the public
14 participation procedures of chapter 70.105D RCW and the public notice
15 and review requirements of this chapter.

16 **Sec. 317.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to
17 read as follows:

18 Decisions pertaining to watershed restoration projects as defined
19 in RCW 89.08.460 are not subject to the requirements of RCW
20 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
21 projects meeting the criteria of (~~RCW 77.55.290(1) and being reviewed~~
22 ~~and approved according to the provisions of RCW 77.55.290~~) and
23 approved under RCW 77.55.181 are not subject to the requirements of RCW
24 43.21C.030(2)(c).

25 **Sec. 318.** RCW 43.21C.0383 and 2008 c 37 s 2 are each amended to
26 read as follows:

27 The following waste discharge permit actions are not subject to the
28 requirements of RCW 43.21C.030(2)(c):

29 (1) For existing discharges, the issuance, reissuance, or
30 modification of a waste discharge permit that contains conditions no
31 less stringent than federal effluent limitations and state rules;

32 (2) The issuance of a construction storm water general permit under
33 chapter 90.48 RCW for a proposal disturbing less than five acres. The
34 exemption in this subsection does not apply if, under rules adopted by

1 the (~~department of ecology~~) council on environmental policy, the
2 proposal would otherwise be subject to the requirements of RCW
3 43.21C.030(2)(c).

4 **Sec. 319.** RCW 43.21C.0384 and 1996 c 323 s 2 are each amended to
5 read as follows:

6 (1) Decisions pertaining to applications to site personal wireless
7 service facilities are not subject to the requirements of RCW
8 43.21C.030(2)(c), if those facilities meet the following requirements:

9 (a)(i) The facility to be sited is a microcell and is to be
10 attached to an existing structure that is not a residence or school and
11 does not contain a residence or a school; or (ii) the facility includes
12 personal wireless service antennas, other than a microcell, and is to
13 be attached to an existing structure (that may be an existing tower)
14 that is not a residence or school and does not contain a residence or
15 a school, and the existing structure to which it is to be attached is
16 located in a commercial, industrial, manufacturing, forest, or
17 agricultural zone; or (iii) the siting project involves constructing a
18 personal wireless service tower less than sixty feet in height that is
19 located in a commercial, industrial, manufacturing, forest, or
20 agricultural zone; and

21 (b) The project is not in a designated environmentally sensitive
22 area; and

23 (c) The project does not consist of a series of actions: (i) Some
24 of which are not categorically exempt; or (ii) that together may have
25 a probable significant adverse environmental impact.

26 (2) The (~~department of ecology~~) council on environmental policy
27 shall adopt rules to create a categorical exemption for microcells and
28 other personal wireless service facilities that meet the conditions set
29 forth in subsection (1) of this section.

30 (3) For the purposes of this section:

31 (a) "Personal wireless services" means commercial mobile services,
32 unlicensed wireless services, and common carrier wireless exchange
33 access services, as defined by federal laws and regulations.

34 (b) "Personal wireless service facilities" means facilities for the
35 provision of personal wireless services.

36 (c) "Microcell" means a wireless communication facility consisting
37 of an antenna that is either: (i) Four feet in height and with an area

1 of not more than five hundred eighty square inches; or (ii) if a
2 tubular antenna, no more than four inches in diameter and no more than
3 six feet in length.

4 **Sec. 320.** RCW 43.21C.060 and 1983 c 117 s 3 are each amended to
5 read as follows:

6 (1) The policies and goals set forth in this chapter are
7 supplementary to those set forth in existing authorizations of all
8 branches of government of this state, including state agencies,
9 municipal and public corporations, and counties.

10 (2) Any governmental action may be conditioned or denied pursuant
11 to this chapter(~~(+PROVIDED, That)~~). Such conditions or denials shall
12 be based upon policies identified by the appropriate governmental
13 authority and incorporated into regulations, plans, or codes which are
14 formally designated by the agency, ~~(+)~~ or appropriate legislative
15 body, in the case of local government(~~(+)~~), as possible bases for the
16 exercise of authority pursuant to this chapter. Such designation shall
17 occur at the time specified by RCW 43.21C.120. Such action may be
18 conditioned only to mitigate specific adverse environmental impacts
19 which are identified in the environmental documents prepared under this
20 chapter. These conditions shall be stated in writing by the decision
21 maker. Mitigation measures shall be reasonable and capable of being
22 accomplished.

23 (3) In order to deny a proposal under this chapter, an agency must
24 find that: ~~((+1))~~ (a) The proposal would result in significant
25 adverse impacts identified in a final or supplemental environmental
26 impact statement prepared under this chapter; and ~~((+2))~~ (b)
27 reasonable mitigation measures are insufficient to mitigate the
28 identified impact.

29 (4) Except for permits and variances issued pursuant to chapter
30 90.58 RCW, when such a governmental action, not requiring a legislative
31 decision, is conditioned or denied by a nonelected official of a local
32 governmental agency, the decision shall be appealable to the
33 legislative authority of the acting local governmental agency unless
34 that legislative authority formally eliminates such appeals. Such
35 appeals shall be in accordance with procedures established for such
36 appeals by the legislative authority of the acting local governmental
37 agency.

1 **Sec. 321.** RCW 43.21C.120 and 1983 c 117 s 8 are each amended to
2 read as follows:

3 (1) All agencies of government of this state are directed,
4 consistent with rules and guidelines adopted under RCW 43.21C.110,
5 including any revisions, to adopt rules pertaining to the integration
6 of the policies and procedures of this chapter (the state environmental
7 policy act of 1971), into the various programs under their jurisdiction
8 for implementation. Designation of (~~polices~~~~[policies]~~) policies
9 under RCW 43.21C.060 and adoption of rules required under this section
10 shall take place not later than one hundred eighty days after the
11 effective date of rules and guidelines adopted pursuant to RCW
12 43.21C.110, or after the establishment of an agency, whichever shall
13 occur later.

14 (2) Rules adopted by state agencies under subsection (1) of this
15 section shall be adopted in accordance with the provisions of chapter
16 34.05 RCW (~~and shall be subject to the review procedures of RCW~~
17 ~~34.05.538 and 34.05.240~~)).

18 (3) All public and municipal corporations, political subdivisions,
19 and counties of this state are directed, consistent with rules and
20 guidelines adopted under RCW 43.21C.110, including any revisions, to
21 adopt rules, ordinances, or resolutions pertaining to the integration
22 of the policies and procedures of this chapter (the state environmental
23 policy act of 1971), into the various programs under their jurisdiction
24 for implementation. Designation of policies under RCW 43.21C.060 and
25 adoption of the rules required under this section shall take place not
26 later than one hundred eighty days after the effective date of rules
27 and guidelines adopted pursuant to RCW 43.21C.110, or after the
28 establishment of the governmental entity, whichever shall occur later.

29 (4) Ordinances or regulations adopted prior to the effective date
30 of rules and guidelines adopted pursuant to RCW 43.21C.110 shall
31 continue to be effective until the adoptions of any new or revised
32 ordinances or regulations which may be required(~~(:—PROVIDED, That)~~) as
33 long as revisions required by this section as a result of rule changes
34 under RCW 43.21C.110 are made within the time limits specified by this
35 section.

36 **Sec. 322.** RCW 43.21C.130 and 1974 ex.s. c 179 s 10 are each
37 amended to read as follows:

1 The (~~department of ecology~~) council on environmental policy, in
2 consultation with concerned state agencies, shall with the assistance
3 of the associations of county prosecutors and city attorneys, the
4 association of county elected officials, the Washington state
5 association of counties, and the association of cities, draft model
6 ordinances for use by counties, cities and towns in drafting their
7 ordinances under this chapter.

8 **Sec. 323.** RCW 43.21C.135 and 1975-'76 2nd ex.s. c 99 s 1 are each
9 amended to read as follows:

10 (1) All public and municipal corporations, political subdivisions,
11 and counties of the state are authorized to adopt rules, ordinances,
12 and resolutions which incorporate any of the following by reference to
13 the appropriate sections of the Washington Administrative Code:

14 (a) Rules and guidelines adopted under RCW 43.21C.110(1) in
15 accordance with the administrative procedure act, chapter 34.05 RCW;

16 (b) Model ordinances adopted by the (~~department of ecology~~)
17 council on environmental policy under RCW 43.21C.130 in accordance with
18 the administrative procedure act, chapter 34.05 RCW.

19 (2) If any rule, ordinance, or resolution is adopted by reference
20 pursuant to subsection (1) of this section, any publication of such
21 rule, ordinance, or resolution shall be accompanied by a summary of the
22 contents of the sections of the Washington Administrative Code referred
23 to. Such summaries shall be provided to the adopting units of local
24 government by the department of ecology(~~:-PROVIDED, That~~). Any
25 proposal for a rule, ordinance, or resolution which would adopt by
26 reference rules and guidelines or model ordinances pursuant to this
27 section shall be accompanied by the full text of the material to be
28 adopted which need not be published but shall be maintained on file for
29 public use and examination.

30 (3) Whenever any rule, ordinance, or resolution is adopted by
31 reference pursuant to subsection (1) of this section, the corporation,
32 political subdivision, or county of the state adopting the rule,
33 ordinance, or resolution shall maintain on file for public use and
34 examination not less than three copies of the sections of the
35 Washington Administrative Code referred to.

1 **Sec. 324.** RCW 43.21C.240 and 2003 c 298 s 2 are each amended to
2 read as follows:

3 (1) If the requirements of subsection (2) of this section are
4 satisfied, a county, city, or town reviewing a project action shall
5 determine that the requirements for environmental analysis, protection,
6 and mitigation measures in the county, city, or town's development
7 regulations and comprehensive plans adopted under chapter 36.70A RCW,
8 and in other applicable local, state, or federal laws and rules provide
9 adequate analysis of and mitigation for the specific adverse
10 environmental impacts of the project action to which the requirements
11 apply. Rules adopted (~~by the department according to~~) under RCW
12 43.21C.110 regarding project specific impacts that may not have been
13 adequately addressed apply to any determination made under this
14 section. In these situations, in which all adverse environmental
15 impacts will be mitigated below the level of significance as a result
16 of mitigation measures included by changing, clarifying, or
17 conditioning of the proposed action and/or regulatory requirements of
18 development regulations adopted under chapter 36.70A RCW or other
19 local, state, or federal laws, a determination of nonsignificance or a
20 mitigated determination of nonsignificance is the proper threshold
21 determination.

22 (2) A county, city, or town shall make the determination provided
23 for in subsection (1) of this section if:

24 (a) In the course of project review, including any required
25 environmental analysis, the local government considers the specific
26 probable adverse environmental impacts of the proposed action and
27 determines that these specific impacts are adequately addressed by the
28 development regulations or other applicable requirements of the
29 comprehensive plan, subarea plan element of the comprehensive plan, or
30 other local, state, or federal rules or laws; and

31 (b) The local government bases or conditions its approval on
32 compliance with these requirements or mitigation measures.

33 (3) If a county, city, or town's comprehensive plans, subarea
34 plans, and development regulations adequately address a project's
35 probable specific adverse environmental impacts, as determined under
36 subsections (1) and (2) of this section, the county, city, or town
37 shall not impose additional mitigation under this chapter during

1 project review. Project review shall be integrated with environmental
2 analysis under this chapter.

3 (4) A comprehensive plan, subarea plan, or development regulation
4 shall be considered to adequately address an impact if the county,
5 city, or town, through the planning and environmental review process
6 under chapter 36.70A RCW and this chapter, has identified the specific
7 adverse environmental impacts and:

8 (a) The impacts have been avoided or otherwise mitigated; or

9 (b) The legislative body of the county, city, or town has
10 designated as acceptable certain levels of service, land use
11 designations, development standards, or other land use planning
12 required or allowed by chapter 36.70A RCW.

13 (5) In deciding whether a specific adverse environmental impact has
14 been addressed by an existing rule or law of another agency with
15 jurisdiction with environmental expertise with regard to a specific
16 environmental impact, the county, city, or town shall consult orally or
17 in writing with that agency and may expressly defer to that agency. In
18 making this deferral, the county, city, or town shall base or condition
19 its project approval on compliance with these other existing rules or
20 laws.

21 (6) Nothing in this section limits the authority of an agency in
22 its review or mitigation of a project to adopt or otherwise rely on
23 environmental analyses and requirements under other laws, as provided
24 by this chapter.

25 (7) This section shall apply only to a county, city, or town
26 planning under RCW 36.70A.040.

27 **Sec. 325.** RCW 43.21C.300 and 1983 c 117 s 9 are each amended to
28 read as follows:

29 The department of ecology shall conduct annual statewide workshops
30 and publish, upon approval of the council on environmental policy, an
31 annual state environmental policy act handbook or supplement to assist
32 persons in complying with the provisions of this chapter and the
33 implementing rules. The workshops and handbook shall include, but not
34 be limited to, measures to assist in preparation, processing, and
35 review of environmental documents, relevant court decisions affecting
36 this chapter or rules adopted under this chapter, legislative changes

1 to this chapter, administrative changes to the rules, and any other
2 information which will assist in orderly implementation of this chapter
3 and rules.

4 The department shall develop the handbook and conduct the workshops
5 in cooperation with, but not limited to, state agencies, the
6 association of Washington cities, the Washington association of
7 counties, educational institutions, and other groups or associations
8 interested in the state environmental policy act.

9 NEW SECTION. **Sec. 326.** The following acts or parts of acts are
10 each repealed:

11 (1) RCW 36.70B.110 (Notice of application--Required elements--
12 Integration with other review procedures--Administrative appeals) and
13 1997 c 429 s 48, 1997 c 396 s 1, & 1995 c 347 s 415;

14 (2) RCW 43.21C.175 (Council on environmental policy--Personnel) and
15 1974 ex.s. c 179 s 5;

16 (3) RCW 43.21C.160 (Utilization of statement prepared under RCW
17 43.21C.030 to implement chapter 90.62 RCW--Utilization of chapter 90.62
18 RCW procedures to satisfy RCW 43.21C.030(2)(c)) and 1974 ex.s. c 179 s
19 13; and

20 (4) RCW 43.21C.040 (Examination of laws, regulations, policies by
21 state agencies and local authorities--Report of deficiencies and
22 corrective measures) and 1971 ex.s. c 109 s 4.

23 NEW SECTION. **Sec. 327.** The following sections are decodified from
24 the Revised Code of Washington:

25 (1) RCW 43.21C.910;

26 (2) RCW 43.21C.911;

27 (3) RCW 43.21C.912;

28 (4) RCW 43.21C.913; and

29 (5) RCW 43.21C.914.

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