

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

Chapter 1, Laws of 2012

(partial veto)

62nd Legislature
2012 1st Special Session

NATURAL RESOURCE MANAGEMENT

EFFECTIVE DATE: 07/10/12

Passed by the Senate April 10, 2012
YEAS 34 NAYS 13

BRAD OWEN

President of the Senate

Passed by the House April 10, 2012
YEAS 75 NAYS 23

FRANK CHOPP

Speaker of the House of Representatives

Approved May 2, 2012, 1:36 p.m., with
the exception of Sections 305 and 306
which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 2, 2012

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

AS AMENDED BY THE HOUSE

Passed Legislature - 2012 1st Special Session

State of Washington 62nd Legislature 2012 1st Special Session

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

READ FIRST TIME 02/03/12.

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

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

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

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

4 **PART ONE**

5 **Hydraulic Project Approvals**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) General plans for the overall project;

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) The applicant requests a delay; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) Pamphlet hydraulic projects;

31 (d) Mineral prospecting and mining activities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) After receiving an application under RCW 76.09.050 that
32 includes a forest practices hydraulic project involving one or more
33 water crossing structures meeting the criteria of (b) of this
34 subsection, the department shall provide all necessary information
35 provided by the applicant to the department of fish and wildlife for
36 concurrence review consistent with section 201(3) of this act. The

1 required information must be transmitted by the department to the
2 department of fish and wildlife as soon as practicable following the
3 receipt of a complete application.

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

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

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

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

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

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

21 (i) Establish minimum standards for forest practices;

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

27 (iii) Set forth necessary administrative provisions;

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

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

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

36 (c) Forest practices rules shall be administered and enforced by
37 either the department or the local governmental entity as provided in

1 this chapter. Such rules shall be adopted and administered so as to
2 give consideration to all purposes and policies set forth in RCW
3 76.09.010.

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

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

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

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

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

34 (b) Thereafter, the board shall incorporate into the forest
35 practices rules any changes to those fish protection standards in the
36 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent
37 with section 201 of this act; and (ii) applicable to activities
38 regulated under the forest practices rules. If fish protection

1 standards are incorporated by reference, the board shall minimize
2 administrative processes by utilizing the exception from the
3 administrative procedures controlling significant legislative rules
4 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted
5 by other state agencies.

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

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

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

37 (i) For conveyances of a conservation easement in which the
38 landowner conveys an interest in the trees only, the compensation must

1 include the timber value component, as determined by the cruised volume
2 of any timber located within the channel migration zone or critical
3 habitat for threatened or endangered species as designated by the
4 board, multiplied by the appropriate quality code stumpage value for
5 timber of the same species shown on the appropriate table used for
6 timber harvest excise tax purposes under RCW 84.33.091;

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

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

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

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

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

37 (1) The department and the department of natural resources shall

1 enter into and maintain a memorandum of agreement between the two
2 agencies that describes how to implement integration of hydraulic
3 project approvals into forest practices applications consistent with
4 this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (b) Within thirty days of the completion of the concurrence review
21 by the department of fish and wildlife if the application is subject to
22 concurrence review by the department of fish and wildlife under section
23 202 of this act;

24 Class IV: Forest practices other than those contained in Class I
25 or II:

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

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

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

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

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

4 (d) Which have a potential for a substantial impact on the
5 environment and therefore require an evaluation by the department as to
6 whether or not a detailed statement must be prepared pursuant to the
7 state environmental policy act, chapter 43.21C RCW. Such evaluation
8 shall be made within ~~((ten days from the date the department receives
9 the application: PROVIDED, That))~~ the timelines established in RCW
10 43.21C.037; however, nothing herein shall be construed to prevent any
11 local or regional governmental entity from determining that a detailed
12 statement must be prepared for an action pursuant to a Class IV forest
13 practice taken by that governmental entity concerning the land on which
14 forest practices will be conducted. Unless the application is subject
15 to concurrence review by the department of fish and wildlife under
16 section 202 of this act, a Class IV application must be approved or
17 disapproved by the department within thirty calendar days from the date
18 the department receives the application(~~(7 unless the department~~
19 ~~determines that a detailed statement must be made, in which case the~~
20 ~~application must be approved or disapproved by the department within~~
21 ~~sixty calendar days from the date the department receives the~~
22 ~~application, unless the commissioner of public lands, through the~~
23 ~~promulgation of a formal order, determines that the process cannot be~~
24 ~~completed within such period)).~~ If a Class IV application is subject
25 to concurrence review by the department of fish and wildlife under
26 section 202 of this act, then the application must be approved or
27 disapproved by the department within thirty calendar days from the
28 completion of the concurrence review by the department of fish and
29 wildlife. However, the department may extend the timelines applicable
30 to the approval or disapproval of the application an additional thirty
31 calendar days if the department determines that a detailed statement
32 must be made, unless the commissioner of public lands, through the
33 promulgation of a formal order, determines that the process cannot be
34 completed within such a period. However, the applicant may not begin
35 work on that forest practice until all forest practice fees required
36 under RCW 76.09.065 have been received by the department.

37 Forest practices under Classes I, II, and III are exempt from the

1 requirements for preparation of a detailed statement under the state
2 environmental policy act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) The department shall prescribe the form and contents of the
35 notification and application. The forest practices rules shall specify
36 by whom and under what conditions the notification and application
37 shall be signed or otherwise certified as acceptable. Activities

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

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

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

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

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

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

23 (f) For an application or notification submitted on or after the
24 effective date of section 202 of this act that includes a forest
25 practices hydraulic project, plans and specifications for the forest
26 practices hydraulic project to ensure the proper protection of fish
27 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) Except as provided elsewhere in this section, if the landowner
23 harvests without an approved application or notification or the
24 landowner does not state that any land covered by the application or
25 notification will be or is intended to be converted, and the department
26 or the county, city, town, or regional governmental entity becomes
27 aware of conversion activities to a use other than commercial timber
28 operations, as that term is defined in RCW 76.09.020, then the
29 department shall send to the department of ecology and the appropriate
30 county, city, town, and regional governmental entities the following
31 documents:

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

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

35 (iii) Copies of any applicable outstanding final orders or
36 decisions issued by the department related to the forest practices
37 application or notification.

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

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

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

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

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

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

33 (5) Before the operator commences any forest practice in a manner
34 or to an extent significantly different from that described in a
35 previously approved application or notification, there shall be
36 submitted to the department a new application or notification form in
37 the manner set forth in this section.

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

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

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

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

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

37 (8) Forest practices applications or notifications are not required
38 for forest practices conducted to control exotic forest insect or

1 disease outbreaks, when conducted by or under the direction of the
2 department of agriculture in carrying out an order of the governor or
3 director of the department of agriculture to implement pest control
4 measures as authorized under chapter 17.24 RCW, and are not required
5 when conducted by or under the direction of the department in carrying
6 out emergency measures under a forest health emergency declaration by
7 the commissioner of public lands as provided in RCW 76.06.130.

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

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

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

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

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

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

32 (g) The exemption from obtaining approved forest practices
33 applications or notifications does not apply to forest practices
34 conducted after the governor, the director of the department of
35 agriculture, or the commissioner of public lands have declared that an
36 emergency no longer exists because control objectives have been met,
37 that there is no longer an imminent threat, or that there is no longer
38 a good likelihood of control.

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

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

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

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

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

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

26 (4) In connection with any watershed analysis, any review of a
27 pending application by an identification team appointed by the
28 department, any compliance studies, any effectiveness monitoring, or
29 other research that has been agreed to by a landowner, the department
30 may invite representatives of other agencies, tribes, and interest
31 groups to accompany a department representative and, at the landowner's
32 election, the landowner, on any such inspections. Reasonable efforts
33 shall be made by the department to notify the landowner of the persons
34 being invited onto the property and the purposes for which they are
35 being invited.

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

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

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

12 (3) The department must obtain the written permission of an
13 applicant before making publicly available that applicant's application
14 or approval under this section and must work cooperatively with the
15 applicant to ensure that no personal or proprietary information is made
16 available.

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

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

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

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

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

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

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

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

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

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

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

9 (ii) If the board has not incorporated fish protection standards
10 adopted under chapter 77.55 RCW into the forest practices rules and
11 approved technical guidance as required under RCW 76.09.040 by December
12 31, 2013, the fee for applications and notifications submitted to the
13 department shall be as provided under (a) of this subsection until the
14 rules are adopted and technical guidance approved.

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

21 ~~((3))~~ (4) For applications submitted to ((the)) a local
22 governmental entity as provided in this chapter, the fee shall be
23 ~~((five hundred dollars for class IV forest practices on lands being~~
24 ~~converted to other uses or lands that are contained within "urban~~
25 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~
26 ~~otherwise provided in this section, unless a different fee is otherwise~~
27 ~~provided))~~ determined, collected, and retained by the local
28 governmental entity.

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

30 ~~(5) An application fee under subsection (2) of this section shall~~
31 ~~be refunded or credited to the applicant if either the application or~~
32 ~~notification is disapproved by the department or the application or~~
33 ~~notification is withdrawn by the applicant due to restrictions imposed~~
34 ~~by the department.))~~

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

37 (1) If a landowner who did not state an intent to convert his or

1 her land to a nonforestry use decides to convert his or her land to a
2 nonforestry use within six years of receiving an approved forest
3 practices application or notification under this chapter, the landowner
4 must:

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

7 (b) Contact the department of ecology and the applicable county,
8 city, town, or regional governmental entity to begin the permitting
9 process; and

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

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

20 (a) Notify the department and request from the department the
21 status of any applicable forest practices applications, notifications,
22 or final orders or decisions; and

23 (b) Complete the following activities:

24 (i) Require that the landowner be in full compliance with chapter
25 43.21C RCW, if applicable;

26 (ii) Receive notification from the department that the landowner
27 has resolved any outstanding final orders or decisions issued by the
28 department; and

29 (iii) Make a determination as to whether or not the condition of
30 the land in question is in full compliance with local ordinances and
31 regulations. If full compliance is not found, a mitigation plan to
32 address violations of local ordinances or regulations must be required
33 for the parcel in question by the county, city, town, or regional
34 governmental entity. Required mitigation plans must be prepared by the
35 landowner and approved by the county, city, town, or regional
36 governmental entity. Once approved, the mitigation plan must be
37 implemented by the landowner. Mitigation measures that may be required
38 include, but are not limited to, revegetation requirements to plant and

1 maintain trees of sufficient maturity and appropriate species
2 composition to restore critical area and buffer function or to be in
3 compliance with applicable local government regulations.

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

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

9 (a) The commissioner of public lands or the commissioner's
10 designee;

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

13 (c) The director of the department of agriculture or the director's
14 designee;

15 (d) The director of the department of ecology or the director's
16 designee;

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

19 (f) An elected member of a county legislative authority appointed
20 by the governor(~~;~~ ~~PROVIDED, That such~~)). However, the county
21 member's service on the board shall be conditioned on the member's
22 continued service as an elected county official;

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

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

31 (2) (~~The director of the department of fish and wildlife's service~~
32 ~~on the board may be terminated two years after August 18, 1999, if the~~
33 ~~legislature finds that after two years the department has not made~~
34 ~~substantial progress toward integrating the laws, rules, and programs~~
35 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~
36 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~
37 ~~finding shall be based solely on whether the department of fish and~~

1 ~~wildlife makes substantial progress as defined in this subsection, and~~
2 ~~will not be based on other actions taken as a member of the board.~~
3 ~~Substantial progress shall include recommendations to the legislature~~
4 ~~for closer integration of the existing rule-making authorities of the~~
5 ~~board and the department of fish and wildlife, and closer integration~~
6 ~~of the forest practices and hydraulics permitting processes, including~~
7 ~~exploring the potential for a consolidated permitting process.—These~~
8 ~~recommendations shall be designed to resolve problems currently~~
9 ~~associated with the existing dual regulatory and permitting processes.~~

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

21 ((4)) (3) The board shall meet at such times and places as shall
22 be designated by the chair or upon the written request of the majority
23 of the board. The principal office of the board shall be at the state
24 capital.

25 ((5)) (4) Members of the board, except public employees and
26 elected officials, shall be compensated in accordance with RCW
27 43.03.250. Each member shall be entitled to reimbursement for travel
28 expenses incurred in the performance of their duties as provided in RCW
29 43.03.050 and 43.03.060.

30 ((6)) (5) The board may employ such clerical help and staff
31 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

34 The definitions in this section apply throughout this chapter
35 unless the context clearly requires otherwise.

36 (1) "Adaptive management" means reliance on scientific methods to

1 test the results of actions taken so that the management and related
2 policy can be changed promptly and appropriately.

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

5 (3) "Application" means the application required pursuant to RCW
6 76.09.050.

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

15 (5) "Board" means the forest practices board created in RCW
16 76.09.030.

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

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

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

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

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

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

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

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

35 (14) "Forest land" means all land which is capable of supporting a
36 merchantable stand of timber and is not being actively used for a use
37 which is incompatible with timber growing. Forest land does not
38 include agricultural land that is or was enrolled in the conservation

1 reserve enhancement program by contract if such agricultural land was
2 historically used for agricultural purposes and the landowner intends
3 to continue to use the land for agricultural purposes in the future.
4 As it applies to the operation of the road maintenance and abandonment
5 plan element of the forest practices rules on small forest landowners,
6 the term "forest land" excludes:

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

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

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

- 24 (a) Road and trail construction, including forest practices
25 hydraulic projects that include water crossing structures, and
26 associated activities and maintenance;
- 27 (b) Harvesting, final and intermediate;
- 28 (c) Precommercial thinning;
- 29 (d) Reforestation;
- 30 (e) Fertilization;
- 31 (f) Prevention and suppression of diseases and insects;
- 32 (g) Salvage of trees; and
- 33 (h) Brush control.

34 "Forest practice" shall not include preparatory work such as tree
35 marking, surveying and road flagging, and removal or harvesting of
36 incidental vegetation from forest lands such as berries, ferns,
37 greenery, mistletoe, herbs, mushrooms, and other products which cannot

1 normally be expected to result in damage to forest soils, timber, or
2 public resources.

3 (17) "Forest practices rules" means any rules adopted pursuant to
4 RCW 76.09.040.

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

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

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

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

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

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

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

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

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

37 (27) "Unconfined channel migration zone" means the area within
38 which the active channel of an unconfined stream is prone to move and

1 where the movement would result in a potential near-term loss of
2 riparian forest adjacent to the stream. Sizeable islands with
3 productive timber may exist within the zone.

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

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

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

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

18 The incorporation of fish protection standards adopted under
19 chapter 77.55 RCW into the forest practices rules as required under RCW
20 76.09.040(3) is exempt from compliance with this chapter.

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

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

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

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

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

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

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

5 NEW SECTION. **Sec. 215.** Sections 202 and 205 of this act take
6 effect on the date the forest practices board incorporates fish
7 protection standards adopted under chapter 77.55 RCW into the forest
8 practices rules and approves technical guidance as required under RCW
9 76.09.040. The department of natural resources must provide written
10 notice of the effective date of these sections to affected parties, the
11 chief clerk of the house of representatives, the secretary of the
12 senate, the office of the code reviser, and others as deemed
13 appropriate by the department of natural resources.

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

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

23 NEW SECTION. **Sec. 218.** Nothing in this act affects the
24 jurisdiction or other authority of a federally recognized Indian tribe
25 within the boundary of its reservation or on other tribally owned
26 lands.

27 NEW SECTION. **Sec. 219.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 **PART THREE**

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

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

10 (2) By December 31, 2012, the department of ecology shall increase
11 the rule-based categorical exemptions to chapter 43.21C RCW found in
12 WAC 197-11-800 and update the environmental checklist found in WAC 197-
13 11-960. In updating the categorical exemptions, the department of
14 ecology must:

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

17 (i) The construction or location of single-family residential
18 developments;

19 (ii) The construction or location of multifamily residential
20 developments;

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

25 (iv) The construction of the following, including any associated
26 parking areas or facilities: An office, a school, a commercial
27 building, a recreational building, a service building, or a storage
28 building;

29 (v) Landfilling or excavation activities; and

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

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

34 (i) An incorporated city;

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

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

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

3 (c) In updating the environmental checklist found in WAC 197-11-
4 960, the department of ecology shall:

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

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

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

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

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

19 (ii) Propose methods for integrating the state environmental policy
20 act process with provisions of the growth management act, chapter
21 36.70A RCW, including consideration of ways to revise WAC 197-11-210
22 through 197-11-232 to further the goals of RCW 43.21C.240; and

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

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

29 (4)(a) The department of ecology shall convene an advisory
30 committee consisting of members representing, at minimum, cities,
31 counties, business interests, environmental interests, agricultural
32 interests, cultural resources interests, state agencies, and tribal
33 governments to:

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

37 (ii) Ensure that state agencies and other interested parties can

1 receive notice about projects of interest through notice under chapter
2 43.21C RCW and means other than chapter 43.21C RCW; and

3 (iii) Ensure that federally recognized tribes receive notice about
4 projects that impact tribal interests through notice under chapter
5 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

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

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

1 applicable, in those sections of an environmental impact statement
2 where the responsible official decides they logically belong.

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

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

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

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

14 ~~(iv) Are located within an urban growth area, as defined in RCW
15 36.70A.030;~~

16 ~~(v) Are not essential public facilities, as defined in RCW
17 36.70A.200; and~~

18 ~~(vi) Are consistent with a comprehensive plan adopted under chapter
19 36.70A RCW.~~

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

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

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

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

33 (b) Have had the significant impacts adequately addressed in an
34 environmental impact statement under the requirements of this chapter
35 in conjunction with, or to implement, a comprehensive plan or subarea
36 plan adopted under chapter 36.70A RCW, or a fully contained community,

1 a master planned resort, a master planned development, or a phased
2 project;

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

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

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

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

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

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

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

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

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

32 (b) A county, city, or town is not required to make a threshold
33 determination and may not require additional environmental review, for
34 a proposal that is determined to be consistent with the development or
35 redevelopment described in the planned action ordinance, except for
36 impacts that are specifically deferred to the project level at the time
37 of the planned action ordinance's adoption. At least one community
38 meeting must be held before the notice is issued for the planned action

1 ordinance. Notice for the planned action and notice of the community
2 meeting required by this subsection (3)(b) must be mailed or otherwise
3 verifiably provided to: (i) All affected federally recognized tribal
4 governments; and (ii) agencies with jurisdiction over the future
5 development anticipated for the planned action. The determination of
6 consistency, and the adequacy of any environmental review that was
7 specifically deferred, are subject to the type of administrative appeal
8 that the county, city, or town provides for the proposal itself
9 consistent with RCW 36.70B.060.

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

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

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

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

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

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

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

37 (i) Residential development;

1 (ii) Mixed-use development; or
2 (iii) Commercial development up to sixty-five thousand square feet,
3 excluding retail development;

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

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

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

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

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

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

27 ***A county, city, or town may recover its reasonable expenses of***
28 ***preparation of a nonproject environmental impact statement prepared***
29 ***under RCW 43.21C.229 and section 303 of this act:***

30 ***(1) Through access to financial assistance under RCW 36.70A.490;***
31 ***and***

32 ***(2) With funding from private sources.***

**Sec. 305 was vetoed. See message at end of chapter.*

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

35 ***Except only as expressly provided in chapters 67.28, 81.104, and***
36 ***82.14 RCW, the state preempts the field of imposing retail sales and***

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

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

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

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

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

36 No county, city, town, or other municipal corporation shall require
37 any payment as part of such a voluntary agreement which the county,

1 city, town, or other municipal corporation cannot establish is
2 reasonably necessary as a direct result of the proposed development or
3 plat.

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

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

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

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

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

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

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

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

*Sec. 306 was vetoed. See message at end of chapter.

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

3 The following nonproject actions are categorically exempt from the
4 requirements of this chapter:

5 (1) Amendments to development regulations that are required to
6 ensure consistency with an adopted comprehensive plan pursuant to RCW
7 36.70A.040, where the comprehensive plan was previously subjected to
8 environmental review pursuant to this chapter and the impacts
9 associated with the proposed regulation were specifically addressed in
10 the prior environmental review;

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

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

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

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

24 (c) Increased vegetation retention or decreased impervious surface
25 areas in critical areas;

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

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

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

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

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

34 (1) The lead agency for an environmental review under this chapter
35 utilizing an environmental checklist developed by the department of
36 ecology pursuant to RCW 43.21C.110 may identify within the checklist

1 provided to applicants instances where questions on the checklist are
2 adequately covered by a locally adopted ordinance, development
3 regulation, land use plan, or other legal authority.

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

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

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

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

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

23 (7) Nothing in this section affects the appeal provisions provided
24 in this chapter.

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

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

32 The growth management planning and environmental review fund is
33 hereby established in the state treasury. Moneys may be placed in the
34 fund from the proceeds of bond sales, tax revenues, budget transfers,
35 federal appropriations, gifts, or any other lawful source. Moneys in
36 the fund may be spent only after appropriation. Moneys in the fund
37 shall be used to make grants or loans to local governments for the

1 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any
2 payment of either principal or interest, or both, derived from loans
3 made from this fund must be deposited into the fund.

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

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

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

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

26 (b) Encourages use of plans and information developed for purposes
27 of complying with this chapter to satisfy requirements of other state
28 programs.

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

31 (a) Demonstrate that it will prepare an environmental analysis
32 pursuant to chapter 43.21C RCW and subsection (2) of this section that
33 is integrated with a comprehensive plan, subarea plan, plan element,
34 countywide planning policy, development regulations, monitoring
35 program, or other planning activity adopted under or implementing this
36 chapter;

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

5 (c) Demonstrate that procedures for review of development permit
6 applications will be based on the integrated plans and environmental
7 analysis;

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

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

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

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

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

23 (b) Identification and monitoring of system capacities for elements
24 of the built environment, and to the extent appropriate, of the natural
25 environment;

26 (c) Coordination with state, federal, and tribal governments in
27 project review;

28 (d) Furtherance of important state objectives related to economic
29 development, protection of areas of statewide significance, and siting
30 of essential public facilities;

31 (e) Programs to improve the efficiency and effectiveness of the
32 permitting process by greater reliance on integrated plans and
33 prospective environmental analysis;

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

37 (g) Programs to identify environmental impacts and establish

1 mitigation measures that provide effective means to satisfy concurrency
2 requirements and establish project consistency with the plans; or

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

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

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

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

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

17 (1) To adopt and amend (~~(thereafter)~~) rules of interpretation and
18 implementation of this chapter, subject to the requirements of chapter
19 34.05 RCW, for the purpose of providing uniform rules and guidelines to
20 all branches of government including state agencies, political
21 subdivisions, public and municipal corporations, and counties. The
22 proposed rules shall be subject to full public hearings requirements
23 associated with rule (~~(promulgation)~~) adoption. Suggestions for
24 modifications of the proposed rules shall be considered on their
25 merits, and the department shall have the authority and responsibility
26 for full and appropriate independent (~~(promulgation and)~~) adoption of
27 rules, assuring consistency with this chapter as amended and with the
28 preservation of protections afforded by this chapter. The rule-making
29 powers authorized in this section shall include, but shall not be
30 limited to, the following phases of interpretation and implementation
31 of this chapter:

32 (a) Categories of governmental actions which are not to be
33 considered as potential major actions significantly affecting the
34 quality of the environment, including categories pertaining to
35 applications for water right permits pursuant to chapters 90.03 and
36 90.44 RCW. The types of actions included as categorical exemptions in
37 the rules shall be limited to those types which are not major actions

1 significantly affecting the quality of the environment. The rules
2 shall provide for certain circumstances where actions which potentially
3 are categorically exempt require environmental review. An action that
4 is categorically exempt under the rules adopted by the department may
5 not be conditioned or denied under this chapter.

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

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

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

22 (e) Rules and procedures for public notification of actions taken
23 and documents prepared.

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

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

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

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

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

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

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

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

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

36 (a) Consult with the state agencies and with representatives of
37 science, industry, agriculture, labor, conservation organizations,

1 state and local governments, and other groups, as it deems advisable;
2 and

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

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

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

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

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

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

1 feeding operation rules, permits, programs, and directives will achieve
2 compliance with all federal and state water pollution control laws.
3 The powers granted herein include, among others, and notwithstanding
4 any other provisions of this chapter (~~(90.48 RCW)~~) or otherwise, the
5 following:

6 (a) Complete authority to establish and administer a comprehensive
7 state point source waste discharge or pollution discharge elimination
8 permit program which will enable the department to qualify for full
9 participation in any national waste discharge or pollution discharge
10 elimination permit system and will allow the department to be the sole
11 agency issuing permits required by such national system operating in
12 the state of Washington subject to the provisions of RCW 90.48.262(2).
13 Program elements authorized herein may include, but are not limited to:

- 14 (i) Effluent treatment and limitation requirements together with timing
- 15 requirements related thereto; (ii) applicable receiving water quality
- 16 standards requirements; (iii) requirements of standards of performance
- 17 for new sources; (iv) pretreatment requirements; (v) termination and
- 18 modification of permits for cause; (vi) requirements for public notices
- 19 and opportunities for public hearings; (vii) appropriate relationships
- 20 with the secretary of the army in the administration of his or her
- 21 responsibilities which relate to anchorage and navigation, with the
- 22 administrator of the environmental protection agency in the performance
- 23 of his or her duties, and with other governmental officials under the
- 24 federal clean water act; (viii) requirements for inspection,
- 25 monitoring, entry, and reporting; (ix) enforcement of the program
- 26 through penalties, emergency powers, and criminal sanctions; (x) a
- 27 continuing planning process; and (xi) user charges.

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

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

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

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

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

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

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

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

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

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

33 (b) Issue an updated national pollutant discharge elimination
34 system municipal storm water general permit for any permit first issued
35 on January 17, 2007, applicable to eastern Washington municipalities.
36 An updated permit issued under this subsection becomes effective August

1 1, 2014.

Passed by the Senate April 10, 2012.

Passed by the House April 10, 2012.

Approved by the Governor May 2, 2012, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 2, 2012.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 305 and 306, Second Engrossed Substitute Senate Bill 6406 entitled:

"AN ACT Relating to modifying programs that provide for protection of the state's natural resources."

This bill streamlines regulatory programs for managing and protecting the state's natural environment while increasing the sustainability of program funding and maintaining current levels of natural resource protection.

Section 301 of the bill requires the Department of Ecology to prepare rules to update the categorical exemptions for environmental review under the State Environmental Policy Act (SEPA), revise the SEPA environmental checklist, and improve integration of SEPA with the provisions of the Growth Management Act. In updating the checklist, Section 301(2)(c) of the bill directs the Department of Ecology to "not include any new subjects into the scope of the checklist, including climate change and greenhouse gases."

I have been assured that the intent of this language is confined to its plain meaning: This subsection addresses only how the Department of Ecology may modify the environmental checklist in its update of WAC 197-11-960. This language does not impact in any way the scope of the environmental analysis required at the threshold determination stage of the SEPA process or the scope of the environmental analysis required in an environmental impact statement. Letters I have received from legislators involved in the drafting of this language confirm that the Legislature's intent was to address only the scope of the environmental checklist and not to amend any substantive SEPA requirements.

This understanding and interpretation of the bill are set forth in letters to me from legislators directly involved in passage of the legislation, including an April 23, 2012, letter from Senator Sharon Nelson and Representative Dave Upthegrove, respective chairs of the Senate and House Environment Committees; an April 26, 2012, letter from Representatives Richard DeBolt, Joel Kretz, Bruce Chandler, Shelly Short, David Taylor, J.T. Wilcox, and Ed Orcutt; and an April 27, 2012, letter from Senators Jim Honeyford and Mark Schoesler.

This is also the understanding and interpretation set forth in an April 19, 2012, letter to me from Representative Joe Fitzgibbon, the prime sponsor of House Bill 2253, where this language first appeared.

I have also received letters from stakeholders who participated in legislative proceedings related to this provision. These stakeholders include the Association of Washington Cities, Washington State Association of Counties, Futurewise, Association of Washington Business, and the Washington Chapter of the American Planning Association. These letters affirm that the intent of Section 301 was to eliminate existing duplication between state natural resource programs, and not to amend any substantive SEPA requirements. An April 20, 2012, joint letter from representatives of four environmental organizations notes that ESSB 6406 was the product of "a

long and ultimately constructive negotiation amongst a diverse set of stakeholders," including their organizations: People for Puget Sound, Washington Conservation Voters, the Washington Environmental Council, and Climate Solutions. This letter quotes the language of Section 301 (2)(c)(ii) and states: "Throughout the bill negotiations, there was agreement amongst all parties that the intent of this subsection was to ensure simply that no new line items were added to the SEPA checklist in the process of the checklist update directed by section 301." However, the letter indicates that after the passage of this bill by the Senate and House, advisers to these organizations raised concerns that the language could be read to make broader changes in SEPA law.

After careful review, I have concluded that these assurances that the Legislature did not intend to limit the scope of SEPA review of adverse effects of climate change and greenhouse gases are fully supported. Section 1 of the bill expresses the Legislature's intent to maintain current levels of natural resource protection. Additionally, Section 301(2)(c) specifically references the environmental checklist found in WAC 197-11-960. The Legislature did not reference other steps in the SEPA process such as the threshold determination addressed in different sections of chapter 197-11 WAC. Nothing in the letters I have received or in the legislative discussions of this provision negates this understanding.

My action in approving Section 301 is taken with the intent that it will operate only to prohibit inclusion of any new subjects in the scope of the checklist, and that the subjects of climate change and greenhouse gases will be considered in the environmental analysis required at the threshold determination stage of the SEPA process and in the environmental analysis required in a SEPA environmental impact statement. After consulting legal advisers, it is my understanding that this is the proper reading of this section of the bill and that this understanding will be considered by the courts when ascertaining legislative intent, as outlined in *Lynch v. State*, 19 Wn.2d 802 (1944). Without this understanding, I would have vetoed Section 301.

Concern has also been raised that there is a need for a meaningful civil enforcement capacity to support the state's Hydraulic Project Approval (HPA) program. I share this concern and have asked the Washington Department of Fish and Wildlife to clarify the current enforcement mechanisms through rule revision within the ongoing HPA rule update, and to implement an effectiveness survey to measure results.

I am also asking the Department to deliver the survey results to the Office of Financial Management, the Governor's Office, and the Legislature, with the intent to inform actions needed to create a more effective civil enforcement HPA program.

Amendments to the bill in the final day of the 2012 1st Special Session removed the explicit authority for local governments to collect a fee to recover their costs for a SEPA environmental impact statement prepared in support of certain land use plans. However, remnants of the original fee proposal that are no longer meaningful were left in the bill. Section 305 allows local governments to recover the costs of a SEPA environmental impact statement for certain land use plans from either state funds or private donations. Local governments are already authorized to accept funding from these sources. Section 306 refers to fees that are no longer authorized in Section 305. These two sections of the bill have the potential to create confusion with the existing authorities of local governments.

For these reasons, I have vetoed Sections 305 and 306 of Second Engrossed Substitute Senate Bill 6406.

With the exception of Sections 305 and 306, Second Engrossed Substitute Senate Bill 6406 is approved."