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**SUBSTITUTE SENATE BILL 5390**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Housing & Local Government (originally sponsored by Senators Lias, Gildon, Nguyen, and Saldaña)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to increasing housing supply through the growth  
2 management act and housing density tax incentives for local  
3 governments; amending RCW 82.45.060; reenacting and amending RCW  
4 36.70A.070; and adding a new section to chapter 36.70A RCW.

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

6 **Sec. 1.** RCW 36.70A.070 and 2017 3rd sp.s. c 18 s 4 and 2017 3rd  
7 sp.s. c 16 s 4 are each reenacted and amended to read as follows:

8 The comprehensive plan of a county or city that is required or  
9 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
10 and descriptive text covering objectives, principles, and standards  
11 used to develop the comprehensive plan. The plan shall be an  
12 internally consistent document and all elements shall be consistent  
13 with the future land use map. A comprehensive plan shall be adopted  
14 and amended with public participation as provided in RCW 36.70A.140.  
15 Each comprehensive plan shall include a plan, scheme, or design for  
16 each of the following:

17 (1) A land use element designating the proposed general  
18 distribution and general location and extent of the uses of land,  
19 where appropriate, for agriculture, timber production, housing,  
20 commerce, industry, recreation, open spaces, general aviation  
21 airports, public utilities, public facilities, and other land uses.

1 The land use element shall include population densities, building  
2 intensities to ensure that provisions for housing within subsection  
3 (2) of this section are properly planned for and housing targets are  
4 implemented for those subject to the requirements, and estimates of  
5 future population growth. The land use element shall provide for  
6 protection of the quality and quantity of groundwater used for public  
7 water supplies. Wherever possible, the land use element should  
8 consider utilizing urban planning approaches that promote physical  
9 activity. Where applicable, the land use element shall review  
10 drainage, flooding, and stormwater runoff in the area and nearby  
11 jurisdictions and provide guidance for corrective actions to mitigate  
12 or cleanse those discharges that pollute waters of the state,  
13 including Puget Sound or waters entering Puget Sound.

14 (2) A housing element ensuring the vitality and character of  
15 established residential neighborhoods that: (a) Includes an inventory  
16 and analysis of existing and projected housing needs that identifies  
17 the number of housing units necessary to manage projected growth; (b)  
18 includes a statement of goals, policies, objectives, and mandatory  
19 provisions for the preservation, improvement, and development of  
20 housing, including ~~((single-family residences))~~ all housing types  
21 identified in (c) of this subsection; (c) identifies sufficient land  
22 for housing~~((r))~~ including, but not limited to, government-assisted  
23 housing, housing for low-income families, manufactured housing,  
24 multifamily housing, ~~((and))~~ group homes and foster care facilities,  
25 and single-family detached dwellings, duplexes, triplexes,  
26 fourplexes, townhomes, accessory dwelling units, and courtyard  
27 apartments; ~~((and))~~ (d) makes adequate provisions for existing and  
28 projected needs of all economic segments of the community, including  
29 consideration of housing locations in relation to employment  
30 locations; and (e) implements the requirements of RCW 36.70A.110 and  
31 countywide planning policies pursuant to RCW 36.70A.210. In counties  
32 and cities subject to the review and evaluation requirements of RCW  
33 36.70A.215, any revision to the housing element shall include  
34 consideration of prior review and evaluation reports and any  
35 reasonable measures identified.

36 (3) A capital facilities plan element consisting of: (a) An  
37 inventory of existing capital facilities owned by public entities,  
38 showing the locations and capacities of the capital facilities; (b) a  
39 forecast of the future needs for such capital facilities; (c) the  
40 proposed locations and capacities of expanded or new capital

1 facilities; (d) at least a six-year plan that will finance such  
2 capital facilities within projected funding capacities and clearly  
3 identifies sources of public money for such purposes; and (e) a  
4 requirement to reassess the land use element if probable funding  
5 falls short of meeting existing needs and to ensure that the land use  
6 element, capital facilities plan element, and financing plan within  
7 the capital facilities plan element are coordinated and consistent.  
8 Park and recreation facilities shall be included in the capital  
9 facilities plan element.

10 (4) A utilities element consisting of the general location,  
11 proposed location, and capacity of all existing and proposed  
12 utilities, including, but not limited to, electrical lines,  
13 telecommunication lines, and natural gas lines.

14 (5) Rural element. Counties shall include a rural element  
15 including lands that are not designated for urban growth,  
16 agriculture, forest, or mineral resources. The following provisions  
17 shall apply to the rural element:

18 (a) Growth management act goals and local circumstances. Because  
19 circumstances vary from county to county, in establishing patterns of  
20 rural densities and uses, a county may consider local circumstances,  
21 but shall develop a written record explaining how the rural element  
22 harmonizes the planning goals in RCW 36.70A.020 and meets the  
23 requirements of this chapter.

24 (b) Rural development. The rural element shall permit rural  
25 development, forestry, and agriculture in rural areas. The rural  
26 element shall provide for a variety of rural densities, uses,  
27 essential public facilities, and rural governmental services needed  
28 to serve the permitted densities and uses. To achieve a variety of  
29 rural densities and uses, counties may provide for clustering,  
30 density transfer, design guidelines, conservation easements, and  
31 other innovative techniques that will accommodate appropriate rural  
32 economic advancement, densities, and uses that are not characterized  
33 by urban growth and that are consistent with rural character.

34 (c) Measures governing rural development. The rural element shall  
35 include measures that apply to rural development and protect the  
36 rural character of the area, as established by the county, by:

- 37 (i) Containing or otherwise controlling rural development;  
38 (ii) Assuring visual compatibility of rural development with the  
39 surrounding rural area;

1 (iii) Reducing the inappropriate conversion of undeveloped land  
2 into sprawling, low-density development in the rural area;

3 (iv) Protecting critical areas, as provided in RCW 36.70A.060,  
4 and surface water and groundwater resources; and

5 (v) Protecting against conflicts with the use of agricultural,  
6 forest, and mineral resource lands designated under RCW 36.70A.170.

7 (d) Limited areas of more intensive rural development. Subject to  
8 the requirements of this subsection and except as otherwise  
9 specifically provided in this subsection (5)(d), the rural element  
10 may allow for limited areas of more intensive rural development,  
11 including necessary public facilities and public services to serve  
12 the limited area as follows:

13 (i) Rural development consisting of the infill, development, or  
14 redevelopment of existing commercial, industrial, residential, or  
15 mixed-use areas, whether characterized as shoreline development,  
16 villages, hamlets, rural activity centers, or crossroads  
17 developments.

18 (A) A commercial, industrial, residential, shoreline, or mixed-  
19 use area are subject to the requirements of (d)(iv) of this  
20 subsection, but are not subject to the requirements of (c)(ii) and  
21 (iii) of this subsection.

22 (B) Any development or redevelopment other than an industrial  
23 area or an industrial use within a mixed-use area or an industrial  
24 area under this subsection (5)(d)(i) must be principally designed to  
25 serve the existing and projected rural population.

26 (C) Any development or redevelopment in terms of building size,  
27 scale, use, or intensity shall be consistent with the character of  
28 the existing areas. Development and redevelopment may include changes  
29 in use from vacant land or a previously existing use so long as the  
30 new use conforms to the requirements of this subsection (5);

31 (ii) The intensification of development on lots containing, or  
32 new development of, small-scale recreational or tourist uses,  
33 including commercial facilities to serve those recreational or  
34 tourist uses, that rely on a rural location and setting, but that do  
35 not include new residential development. A small-scale recreation or  
36 tourist use is not required to be principally designed to serve the  
37 existing and projected rural population. Public services and public  
38 facilities shall be limited to those necessary to serve the  
39 recreation or tourist use and shall be provided in a manner that does  
40 not permit low-density sprawl;

1 (iii) The intensification of development on lots containing  
2 isolated nonresidential uses or new development of isolated cottage  
3 industries and isolated small-scale businesses that are not  
4 principally designed to serve the existing and projected rural  
5 population and nonresidential uses, but do provide job opportunities  
6 for rural residents. Rural counties may allow the expansion of small-  
7 scale businesses as long as those small-scale businesses conform with  
8 the rural character of the area as defined by the local government  
9 according to RCW 36.70A.030(~~((+16+))~~) (20). Rural counties may also  
10 allow new small-scale businesses to utilize a site previously  
11 occupied by an existing business as long as the new small-scale  
12 business conforms to the rural character of the area as defined by  
13 the local government according to RCW 36.70A.030(~~((+16+))~~) (20). Public  
14 services and public facilities shall be limited to those necessary to  
15 serve the isolated nonresidential use and shall be provided in a  
16 manner that does not permit low-density sprawl;

17 (iv) A county shall adopt measures to minimize and contain the  
18 existing areas or uses of more intensive rural development, as  
19 appropriate, authorized under this subsection. Lands included in such  
20 existing areas or uses shall not extend beyond the logical outer  
21 boundary of the existing area or use, thereby allowing a new pattern  
22 of low-density sprawl. Existing areas are those that are clearly  
23 identifiable and contained and where there is a logical boundary  
24 delineated predominately by the built environment, but that may also  
25 include undeveloped lands if limited as provided in this subsection.  
26 The county shall establish the logical outer boundary of an area of  
27 more intensive rural development. In establishing the logical outer  
28 boundary, the county shall address (A) the need to preserve the  
29 character of existing natural neighborhoods and communities, (B)  
30 physical boundaries, such as bodies of water, streets and highways,  
31 and land forms and contours, (C) the prevention of abnormally  
32 irregular boundaries, and (D) the ability to provide public  
33 facilities and public services in a manner that does not permit low-  
34 density sprawl;

35 (v) For purposes of (d) of this subsection, an existing area or  
36 existing use is one that was in existence:

37 (A) On July 1, 1990, in a county that was initially required to  
38 plan under all of the provisions of this chapter;

1 (B) On the date the county adopted a resolution under RCW  
2 36.70A.040(2), in a county that is planning under all of the  
3 provisions of this chapter under RCW 36.70A.040(2); or

4 (C) On the date the office of financial management certifies the  
5 county's population as provided in RCW 36.70A.040(5), in a county  
6 that is planning under all of the provisions of this chapter pursuant  
7 to RCW 36.70A.040(5).

8 (e) Exception. This subsection shall not be interpreted to permit  
9 in the rural area a major industrial development or a master planned  
10 resort unless otherwise specifically permitted under RCW 36.70A.360  
11 and 36.70A.365.

12 (6) A transportation element that implements, and is consistent  
13 with, the land use element.

14 (a) The transportation element shall include the following  
15 subelements:

16 (i) Land use assumptions used in estimating travel;

17 (ii) Estimated traffic impacts to state-owned transportation  
18 facilities resulting from land use assumptions to assist the  
19 department of transportation in monitoring the performance of state  
20 facilities, to plan improvements for the facilities, and to assess  
21 the impact of land-use decisions on state-owned transportation  
22 facilities;

23 (iii) Facilities and services needs, including:

24 (A) An inventory of air, water, and ground transportation  
25 facilities and services, including transit alignments and general  
26 aviation airport facilities, to define existing capital facilities  
27 and travel levels as a basis for future planning. This inventory must  
28 include state-owned transportation facilities within the city or  
29 county's jurisdictional boundaries;

30 (B) Level of service standards for all locally owned arterials  
31 and transit routes to serve as a gauge to judge performance of the  
32 system. These standards should be regionally coordinated;

33 (C) For state-owned transportation facilities, level of service  
34 standards for highways, as prescribed in chapters 47.06 and 47.80  
35 RCW, to gauge the performance of the system. The purposes of  
36 reflecting level of service standards for state highways in the local  
37 comprehensive plan are to monitor the performance of the system, to  
38 evaluate improvement strategies, and to facilitate coordination  
39 between the county's or city's six-year street, road, or transit  
40 program and the office of financial management's ten-year investment

1 program. The concurrency requirements of (b) of this subsection do  
2 not apply to transportation facilities and services of statewide  
3 significance except for counties consisting of islands whose only  
4 connection to the mainland are state highways or ferry routes. In  
5 these island counties, state highways and ferry route capacity must  
6 be a factor in meeting the concurrency requirements in (b) of this  
7 subsection;

8 (D) Specific actions and requirements for bringing into  
9 compliance locally owned transportation facilities or services that  
10 are below an established level of service standard;

11 (E) Forecasts of traffic for at least ten years based on the  
12 adopted land use plan to provide information on the location, timing,  
13 and capacity needs of future growth;

14 (F) Identification of state and local system needs to meet  
15 current and future demands. Identified needs on state-owned  
16 transportation facilities must be consistent with the statewide  
17 multimodal transportation plan required under chapter 47.06 RCW;

18 (iv) Finance, including:

19 (A) An analysis of funding capability to judge needs against  
20 probable funding resources;

21 (B) A multiyear financing plan based on the needs identified in  
22 the comprehensive plan, the appropriate parts of which shall serve as  
23 the basis for the six-year street, road, or transit program required  
24 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
25 35.58.2795 for public transportation systems. The multiyear financing  
26 plan should be coordinated with the ten-year investment program  
27 developed by the office of financial management as required by RCW  
28 47.05.030;

29 (C) If probable funding falls short of meeting identified needs,  
30 a discussion of how additional funding will be raised, or how land  
31 use assumptions will be reassessed to ensure that level of service  
32 standards will be met;

33 (v) Intergovernmental coordination efforts, including an  
34 assessment of the impacts of the transportation plan and land use  
35 assumptions on the transportation systems of adjacent jurisdictions;

36 (vi) Demand-management strategies;

37 (vii) Pedestrian and bicycle component to include collaborative  
38 efforts to identify and designate planned improvements for pedestrian  
39 and bicycle facilities and corridors that address and encourage  
40 enhanced community access and promote healthy lifestyles.

1 (b) After adoption of the comprehensive plan by jurisdictions  
2 required to plan or who choose to plan under RCW 36.70A.040, local  
3 jurisdictions must adopt and enforce ordinances which prohibit  
4 development approval if the development causes the level of service  
5 on a locally owned transportation facility to decline below the  
6 standards adopted in the transportation element of the comprehensive  
7 plan, unless transportation improvements or strategies to accommodate  
8 the impacts of development are made concurrent with the development.  
9 These strategies may include increased public transportation service,  
10 ride-sharing programs, demand management, and other transportation  
11 systems management strategies. For the purposes of this subsection  
12 (6), "concurrent with the development" means that improvements or  
13 strategies are in place at the time of development, or that a  
14 financial commitment is in place to complete the improvements or  
15 strategies within six years. If the collection of impact fees is  
16 delayed under RCW 82.02.050(3), the six-year period required by this  
17 subsection (6)(b) must begin after full payment of all impact fees is  
18 due to the county or city.

19 (c) The transportation element described in this subsection (6),  
20 the six-year plans required by RCW 35.77.010 for cities, RCW  
21 36.81.121 for counties, and RCW 35.58.2795 for public transportation  
22 systems, and the ten-year investment program required by RCW  
23 47.05.030 for the state, must be consistent.

24 (7) An economic development element establishing local goals,  
25 policies, objectives, and provisions for economic growth and vitality  
26 and a high quality of life. A city that has chosen to be a  
27 residential community is exempt from the economic development element  
28 requirement of this subsection.

29 (8) A park and recreation element that implements, and is  
30 consistent with, the capital facilities plan element as it relates to  
31 park and recreation facilities. The element shall include: (a)  
32 Estimates of park and recreation demand for at least a ten-year  
33 period; (b) an evaluation of facilities and service needs; and (c) an  
34 evaluation of intergovernmental coordination opportunities to provide  
35 regional approaches for meeting park and recreational demand.

36 (9) It is the intent that new or amended elements required after  
37 January 1, 2002, be adopted concurrent with the scheduled update  
38 provided in RCW 36.70A.130. Requirements to incorporate any such new  
39 or amended elements shall be null and void until funds sufficient to  
40 cover applicable local government costs are appropriated and



1 distributed by the state at least two years before local government  
2 must update comprehensive plans as required in RCW 36.70A.130.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A  
4 RCW to read as follows:

5 (1) Cities within counties planning under RCW 36.70A.215 and  
6 those counties may establish one or more real estate excise tax  
7 density incentive zones. A real estate excise tax density incentive  
8 zone is an area within an urban growth area where the city or county  
9 adopts zoning and development regulations to increase housing supply  
10 by allowing construction of additional housing types as outright  
11 permitted uses. Creation of a real estate excise tax density  
12 incentive zone enables the local government to receive a portion of  
13 the tax imposed under chapter 82.45 RCW for sales of qualified  
14 residential dwelling units within the zone.

15 (2) A real estate excise tax density incentive zone may only be  
16 located within a designated urban growth area, and must allow the  
17 following housing types: Single-family detached dwellings at a net  
18 density of at least six dwelling units per acre, duplexes, triplexes,  
19 fourplexes, townhomes, accessory dwelling units, and courtyard  
20 apartments.

21 (3) A real estate excise tax density incentive zone may also  
22 allow as outright permitted uses housing types and densities that  
23 exceed the minimum requirements in subsection (2) of this section.

24 (4)(a) For the purposes of this section, a "qualified residential  
25 dwelling" is either an individual residential dwelling unit or a  
26 residential building of two or more dwelling units constructed within  
27 a real estate excise tax density incentive zone that achieves a net  
28 increase in the total number of residential dwelling units compared  
29 to the maximum number of residential dwelling units that could have  
30 been built prior to the adoption of zoning and development  
31 regulations creating the real estate excise tax density incentive  
32 zone.

33 (b) If the qualified residential dwelling has two or more  
34 dwelling units, the amount distributed to the local government under  
35 RCW 82.45.060(4)(c) shall be reduced by the percent attributable to  
36 the number of new dwelling units within the building that could have  
37 been built under the zoning and development regulations that existed  
38 prior to the creation of the local real estate excise tax density  
39 incentive zone.

1 (5) A sale that does not involve a net increase above the maximum  
2 number of residential dwelling units that could have been constructed  
3 as an outright permitted use, prior to the creation of the real  
4 estate excise tax density incentive zone, is not a sale of a  
5 qualified residential dwelling unit.

6 (6) A real estate excise tax density incentive zone may be  
7 established for areas where a city or county previously enacted  
8 zoning and development regulations meeting the minimum requirements  
9 in this section, but not prior to January 1, 2017. A real estate  
10 excise tax density incentive zone may not be established later than  
11 one year after the date by which a city or county is required to  
12 update its growth management comprehensive plan under RCW 36.70A.130.  
13 Once a real estate excise tax density incentive zone is established  
14 in compliance with this section, a qualified residential dwelling  
15 unit may be constructed at any time.

16 **Sec. 3.** RCW 82.45.060 and 2019 c 424 s 1 are each amended to  
17 read as follows:

18 (1) There is imposed an excise tax upon each sale of real  
19 property.

20 (a) Through December 31, 2019, the rate of the tax imposed under  
21 this section is 1.28 percent of the selling price.

22 (b) Beginning January 1, 2020, except as provided in (c) of this  
23 subsection, the rate of the tax imposed under this section is as  
24 follows:

25 (i) 1.1 percent of the portion of the selling price that is less  
26 than or equal to five hundred thousand dollars;

27 (ii) 1.28 percent of the portion of the selling price that is  
28 greater than five hundred thousand dollars and equal to or less than  
29 one million five hundred thousand dollars;

30 (iii) 2.75 percent of the portion of the selling price that is  
31 greater than one million five hundred thousand dollars and equal to  
32 or less than three million dollars;

33 (iv) Three percent of the portion of the selling price that is  
34 greater than three million dollars.

35 (c) The sale of real property that is classified as timberland or  
36 agricultural land is subject to the tax imposed under this section at  
37 a rate of 1.28 percent of the selling price.

38 (2) Beginning July 1, 2022, and every fourth year thereafter:

1 (a) The department must adjust the selling price threshold in  
2 subsection (1)(b)(i) of this section to reflect the lesser of the  
3 growth of the consumer price index for shelter or five percent. If  
4 the growth is equal to or less than zero percent, the current selling  
5 price threshold continues to apply.

6 (b) The department must adjust the selling price thresholds in  
7 subsection (1)(b)(ii) through (iv) of this section by the dollar  
8 amount of any increase in the selling price threshold in subsection  
9 (1)(b)(i) of this section.

10 (c) The department must publish updated selling price thresholds  
11 by September 1, 2022, and September 1st of every fourth year  
12 thereafter. Updated selling price thresholds will apply beginning  
13 January 1, 2023, and January 1st every fourth year thereafter.  
14 Adjusted selling price thresholds must be rounded to the nearest one  
15 thousand dollars. No changes may be made to adjusted selling price  
16 thresholds once such adjustments take effect.

17 (d) The most recent selling price threshold becomes the base for  
18 subsequent adjustments.

19 (e) The department must report adjustments to the selling price  
20 thresholds to the fiscal committees of the legislature, beginning  
21 December 1, 2022, and December 1st every fourth year thereafter.

22 (3)(a) The department must publish guidance to assist sellers in  
23 properly classifying real property on the real estate excise tax  
24 affidavit for purposes of determining the proper amount of tax due  
25 under this section. Real property with multiple uses must be  
26 classified according to the property's predominant use. The  
27 department's guidance must include factors for use in determining the  
28 predominant use of real property.

29 (b) County treasurers are not responsible for verifying that the  
30 seller has properly classified real property reported on a real  
31 estate excise tax affidavit. The department is solely responsible for  
32 such verification as part of its audit responsibilities under RCW  
33 82.45.150.

34 (4)(a) Beginning July 1, 2013, and ending December 31, 2019, an  
35 amount equal to two percent of the proceeds of this tax must be  
36 deposited in the public works assistance account created in RCW  
37 43.155.050, an amount equal to four and one-tenth percent must be  
38 deposited in the education legacy trust account created in RCW  
39 83.100.230, an amount equal to one and six-tenths percent must be

1 deposited in the city-county assistance account created in RCW  
2 43.08.290, and the remainder must be deposited in the general fund.

3 (b) Beginning January 1, 2020, amounts collected from the tax  
4 imposed under this section must be deposited as provided in RCW  
5 82.45.230 less any amount distributed to a city or county pursuant to  
6 (c) of this subsection (4).

7 (c) Beginning July 1, 2023, the amounts collected on the sale of  
8 a qualified residential dwelling constructed within a real estate  
9 excise tax density incentive zone created under section 2 of this act  
10 shall be distributed to a city or county as follows:

11 (i) For a qualified residential dwelling unit located more  
12 than .5 miles from a mass transit stop as defined in RCW  
13 43.21C.420(3), 50 percent of the amounts collected to the city or  
14 county where the dwelling is located;

15 (ii) For a qualified residential dwelling unit located less than  
16 or equal to .5 miles from a mass transit stop as defined in RCW  
17 43.21C.420(3), 25 percent of the amounts collected to the city or  
18 county where the dwelling is located.

19 (d) The distribution to a city or county under (c) of this  
20 subsection applies to both the initial and all subsequent sales of a  
21 qualified residential dwelling unit. The amounts distributed to a  
22 city and county may be used solely for:

23 (i) Costs associated with adoption or amendment of plans under  
24 chapter 36.70A RCW;

25 (ii) Preparation of the review and evaluation report pursuant to  
26 RCW 36.70A.215;

27 (iii) Long-term planning;

28 (iv) Code and development regulation amendments for the purpose  
29 of increasing housing supply; or

30 (v) Code and development regulation amendments that decrease the  
31 amount of time necessary to obtain permits for housing.

32 (5) The definitions in this subsection apply throughout this  
33 section unless the context clearly requires otherwise.

34 (a) "Agricultural land" means farm and agricultural land and farm  
35 and agricultural conservation land, as those terms are defined in RCW  
36 84.34.020, including any structures on such land.

37 (b) "Consumer price index for shelter" means the most current  
38 seasonally adjusted index for the shelter expenditure category of the  
39 consumer price index for all urban consumers (CPI-U) as published by

1 July 31st by the bureau of labor statistics of the United States  
2 department of labor.

3 (c) "Growth of the consumer price index for shelter" means the  
4 percentage increase in the consumer price index for shelter as  
5 measured from data published by the bureau of labor statistics of the  
6 United States department of labor by July 31st for the most recent  
7 three-year period for the selling price threshold adjustment in 2022,  
8 and the most recent four-year period for subsequent selling price  
9 threshold adjustments.

10 (d) "Timberland" means land classified under chapter 84.34 RCW or  
11 designated under chapter 84.33 RCW, including any structures and  
12 standing timber on such land, and standing timber sold apart from the  
13 land upon which it sits.

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