

**EFFECT OF P2SSB 6406:**

- Removes language specifying circumstances in which an HPA is required;
- Removes provisions authorizing a memorandum of understanding process with local governments regarding HPA permitting;
- Generally reduces and makes uniform HPA fees and limits their applicability to projects located at or below the ordinary high water line;
- Requires a study of certain regulatory programs regarding regulation of work outside of the ordinary high water line and the protection of fish life;
- Removes language modifying civil and criminal enforcement authority regarding HPAs, as well as enforcement-related provisions;
- Removes language establishing an HPA related reporting requirement;
- Moves the deadline for integrating HPAs for forestry activities into the associated FPA from July 1, 2013, to December 31, 2013;
- Modifies the SEPA related rulemaking in 2012 and 2013 including expanding its scope and provisions relating to the advisory body;
- Modifies provisions relating to categorical exemptions including directing a new categorical exemption for certain wildlife and fishery habitat restoration projects to be established by rule, expanding the infill exemption to include certain commercial development, and providing additional statutory categorical exemptions for specified development regulations;
- Removes the ability of local governments to charge fees on development activity in order to cover the cost of certain nonproject environmental review; and
- Establishes certain notice requirements to affected tribes upon a lead agency's receipt of an environmental checklist.

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, 43.21C.420, 36.70A.490,  
5 36.70A.500, 43.21C.110, 43.21C.095, and 36.70A.280; 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; adding a new section to chapter 82.02 RCW; creating new  
10 sections; prescribing penalties; providing a contingent effective date;  
11 and providing expiration dates.

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

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

1 to update provisions relating to natural resource management and  
2 regulatory programs including the hydraulic project approval program,  
3 forest practices act, and state environmental policy act, in order to  
4 achieve these opportunities.

5 **PART ONE**

6 **Hydraulic Project Approvals**

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

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

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

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

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

19 (4) "Date of receipt" has the same meaning as defined in RCW  
20 43.21B.001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (21) "Expedited permit" means a hydraulic project approval issued  
38 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 under chapter 76.09 RCW.

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

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

12       (25) "Pamphlet hydraulic project" means a hydraulic project for the  
13 removal or control of aquatic noxious weeds conducted under the aquatic  
14 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral  
15 prospecting and mining conducted under the gold and fish pamphlet  
16 authorized by RCW 77.55.091.

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

20       (27) "Repair or maintenance" means the care and upkeep of existing  
21 structures.

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

24       (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~  
25 77.55.041, and section 201 of this act, in the event that any person or  
26 government agency desires to undertake a hydraulic project, the person  
27 or government agency shall, before commencing work thereon, secure the  
28 approval of the department in the form of a permit as to the adequacy  
29 of the means proposed for the protection of fish life.

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

32       (a) General plans for the overall project;

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

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

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

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

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

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

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

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

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

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

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

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

35 (iii) The applicant requests a delay; or

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

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

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

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

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

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

23        ~~((5))~~ (9)(a) The permittee must demonstrate substantial progress  
24 on construction of that portion of the project relating to the permit  
25 within two years of the date of issuance.

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

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

1           ~~((+6))~~ (10) The department may, after consultation with the  
2 permittee, modify a permit due to changed conditions. A modification  
3 under this subsection is not subject to the fees provided under section  
4 103 of this act. The modification is appealable as provided in  
5 subsection ~~((+4))~~ (8) of this section. For a hydraulic project~~((s))~~  
6 that diverts water for agricultural irrigation or stock watering  
7 purposes, ~~((e))~~ when the hydraulic project or other work is associated  
8 with streambank stabilization to protect farm and agricultural land as  
9 defined in RCW 84.34.020, the burden is on the department to show that  
10 changed conditions warrant the modification in order to protect fish  
11 life.

12           ~~((+7))~~ (11) A permittee may request modification of a permit due  
13 to changed conditions. The request must be processed within forty-five  
14 calendar days of receipt of the written request and payment of  
15 applicable fees under section 103 of this act. A decision by the  
16 department is appealable as provided in subsection ~~((+4))~~ (8) of this  
17 section. For a hydraulic project~~((s))~~ that diverts water for  
18 agricultural irrigation or stock watering purposes, ~~((e))~~ when the  
19 hydraulic project or other work is associated with streambank  
20 stabilization to protect farm and agricultural land as defined in RCW  
21 84.34.020, the burden is on the permittee to show that changed  
22 conditions warrant the requested modification and that such a  
23 modification will not impair fish life.

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

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

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

4 ~~((+9))~~ (d) The department may not charge a person requesting an  
5 emergency permit any of the fees authorized by section 103 of this act  
6 until after the emergency permit is issued and reduced to writing.

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

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

28 ~~((+11))~~ (15)(a) For any property, except for property located on  
29 a marine shoreline, that has experienced at least two consecutive years  
30 of flooding or erosion that has damaged or has threatened to damage a  
31 major structure, water supply system, septic system, or access to any  
32 road or highway, the county legislative authority may determine that a  
33 chronic danger exists. The county legislative authority shall notify  
34 the department, in writing, when it determines that a chronic danger  
35 exists. In cases of chronic danger, the department shall issue a  
36 permit, upon request, for work necessary to abate the chronic danger by  
37 removing any obstructions, repairing existing structures, restoring

1 banks, restoring road or highway access, protecting fish resources, or  
2 protecting property. Permit requests must be made and processed in  
3 accordance with subsections (2) and (~~(3)~~) (7) of this section.

4 (b) Any projects proposed to address a chronic danger identified  
5 under (a) of this subsection that satisfies the project description  
6 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
7 of the state environmental policy act, chapter 43.21C RCW. However,  
8 the project is subject to the review process established in RCW  
9 77.55.181(3) as if it were a fish habitat improvement project.

10 (~~(12)~~) (16) The department may issue an expedited written permit  
11 in those instances where normal permit processing would result in  
12 significant hardship for the applicant or unacceptable damage to the  
13 environment. Expedited permit requests require a complete written  
14 application as provided in subsection (2) of this section and must be  
15 issued within fifteen calendar days of the receipt of a complete  
16 written application. Approval of an expedited permit is valid for up  
17 to sixty days from the date of issuance. The department may not  
18 require the provisions of the state environmental policy act, chapter  
19 43.21C RCW, to be met as a condition of issuing a permit under this  
20 subsection.

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

23 (1) The department shall charge an application fee of one hundred  
24 fifty dollars for a hydraulic project permit or permit modification  
25 issued under RCW 77.55.021 where the project is located at or below the  
26 ordinary high water line.

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

29 (a) Hydraulic projects approved under applicant-funded contracts  
30 with the department that pay for the costs of processing those  
31 projects;

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

34 (c) Pamphlet hydraulic projects; and

35 (d) Mineral prospecting and mining activities.

36 (3) All fees collected under this section must be deposited in the  
37 hydraulic project approval account created in section 105 of this act.

1 (4) The application fee established under subsection (1) of this  
2 section is reduced to fifty dollars if: (a) Section 104 of this act is  
3 not enacted into law by June 30, 2012; or (b) the report required under  
4 section 104 of this act is not submitted to the appropriate standing  
5 committees of the legislature by the date required in that section,  
6 although the fee may be charged as established in subsection (1) of  
7 this section after the report is submitted.

8 (5) The fee provisions contained in this section are prospective  
9 only. The department of fish and wildlife may not charge fees for  
10 hydraulic project permits issued under this title prior to the  
11 effective date of this section.

12 NEW SECTION. **Sec. 104.** (1) The University of Washington, through  
13 colleges and schools with relevant subject matter expertise, shall  
14 conduct a review of state, federal, and local natural resources and  
15 environmental regulatory programs to:

16 (a) Identify programs that regulate construction or the performance  
17 of work conducted above the ordinary high water line;

18 (b) Identify construction activities or the performance of work  
19 conducted above the ordinary high water line that potentially use,  
20 divert, or change the natural flow or bed of any of the salt or  
21 freshwaters of the state;

22 (c) Analyze the degree to which the programs identified in (a) of  
23 this subsection provide for the protection of fish life for those  
24 activities identified in (b) of this subsection;

25 (d) Identify any regulatory gaps that exist in providing for the  
26 protection of fish life for activities identified in (b) of this  
27 subsection; and

28 (e) Identify the scale of the potential risk to fish life from any  
29 regulatory gaps identified in (d) of this subsection.

30 (2) The University of Washington shall conduct the review in  
31 consultation with appropriate federal and state agencies, local  
32 governments, tribal governments, and business and environmental  
33 interests. The University of Washington shall consult with and solicit  
34 input from these entities both: (a) Through a forum gathering the  
35 stakeholders together at the onset of the review to discuss matters  
36 including the scope and timeline of the study; and (b) throughout the

1 review process. The University of Washington shall include a summary  
2 of their comments on the outcomes of the review process in the report  
3 required under subsection (3) of this section.

4 (3) The University of Washington shall submit a report detailing  
5 the review to the appropriate standing committees of the senate and  
6 house of representatives consistent with RCW 43.01.036 by September 1,  
7 2014.

8 (4) This section expires January 1, 2015.

9 NEW SECTION. **Sec. 105.** A new section is added to chapter 77.55  
10 RCW to read as follows:

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

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

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

21 **Sec. 106.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to  
22 read as follows:

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

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

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

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

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

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

9       (b) Maintenance or repair of an existing overwater structure within  
10 the existing footprint;

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

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

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

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

15       (g) Maintenance or repair of wetland, riparian, or estuarine  
16 habitat; and

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

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

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

23       **Sec. 107.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to  
24 read as follows:

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

30       (2) The permit must contain provisions allowing for minor  
31 modifications to the plans and specifications without requiring  
32 reissuance of the permit.

33       (3) The permit must contain provisions that allow for minor  
34 modifications to the required work timing without requiring the  
35 reissuance of the permit. "Minor modifications to the required work  
36 timing" means a minor deviation from the timing window set forth in the

1 permit when there are no spawning or incubating fish present within the  
2 vicinity of the project.

3 NEW SECTION. **Sec. 108.** A new section is added to chapter 77.55  
4 RCW to read as follows:

5 The department shall prepare and distribute technical and  
6 educational information to the general public to assist the public in  
7 complying with the requirements of this chapter, including the changes  
8 resulting from this act.

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

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

15 NEW SECTION. **Sec. 110.** The director of fish and wildlife shall  
16 adopt any rules required or deemed necessary to implement RCW  
17 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103 through  
18 105, 108, and 109 of this act.

19 **PART TWO**  
20 **Hydraulic Project**  
21 **Approval and Forest Practices Integration**

22 NEW SECTION. **Sec. 201.** A new section is added to chapter 77.55  
23 RCW to read as follows:

24 (1) The requirements of this chapter do not apply to any forest  
25 practices hydraulic project, or to any activities that are associated  
26 with such a project, upon incorporation of fish protection standards  
27 adopted under this chapter into the forest practices rules and approval  
28 of technical guidance as required under RCW 76.09.040, at which time  
29 these projects are regulated under chapter 76.09 RCW.

30 (2) The department must continue to conduct regulatory and  
31 enforcement activities under this chapter for forest practices  
32 hydraulic projects until the forest practices board incorporates fish

1 protection standards adopted under this chapter into the forest  
2 practices rules and approves technical guidance as required under RCW  
3 76.09.040.

4 (3) By December 31, 2013, the department shall adopt rules  
5 establishing the form and procedures for the concurrence review process  
6 consistent with section 202 of this act. The concurrence review  
7 process must allow the department up to thirty days to review forest  
8 practices hydraulic projects meeting the criteria under section 202(2)  
9 (a) and (b) of this act for consistency with fish protection standards.

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

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

17 (6) The department may review and provide comments on any forest  
18 practices application. Prior to commenting and whenever reasonably  
19 practicable, the department shall communicate with the applicant  
20 regarding the substance of the project.

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

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

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

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

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

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

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

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

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

11 (c) When submitting an application to the department under RCW  
12 76.09.050, the applicant shall attach the following to the application:

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

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

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

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

24 (i) Establish minimum standards for forest practices;

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

30 (iii) Set forth necessary administrative provisions;

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

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

34 (b) Forest practices rules pertaining to water quality protection  
35 shall be adopted by the board after reaching agreement with the  
36 director of the department of ecology or the director's designee on the

1 board with respect ~~((thereto))~~ to these rules. All other forest  
2 practices rules shall be adopted by the board.

3 (c) Forest practices rules shall be administered and enforced by  
4 either the department or the local governmental entity as provided in  
5 this chapter. Such rules shall be adopted and administered so as to  
6 give consideration to all purposes and policies set forth in RCW  
7 76.09.010.

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

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

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

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

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

1       (b) Thereafter, the board shall incorporate into the forest  
2 practices rules any changes to those fish protection standards in the  
3 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent  
4 with section 201 of this act; and (ii) applicable to activities  
5 regulated under the forest practices rules. If fish protection  
6 standards are incorporated by reference, the board shall minimize  
7 administrative processes by utilizing the exception from the  
8 administrative procedures controlling significant legislative rules  
9 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted  
10 by other state agencies.

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

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

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

1 shall provide for the management of the lands for ecological protection  
2 or fisheries enhancement. For the purposes of conservation easements  
3 entered into under this section, the following apply:

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

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

25 (b) Subject to appropriations sufficient to cover the cost of such  
26 an acquisition program and the related costs of administering the  
27 program, the department must establish a conservation easement in land  
28 that an owner tenders for purchase; provided that such lands have been  
29 taxed as forest lands and are located within an unconfined channel  
30 migration zone or contain critical habitat for threatened or endangered  
31 species as designated by the board. Lands acquired under this section  
32 shall become riparian or habitat open space. These acquisitions shall  
33 not be deemed to trigger the compensating tax of chapters 84.33 and  
34 84.34 RCW.

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

37 (d) Any acquired interest in qualifying lands by the state under

1 this section shall be managed as riparian open space or critical  
2 habitat.

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

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

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

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

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

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

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

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

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

1       ~~(e)~~) Within "shorelines of the state" as defined in RCW 90.58.030;  
2       ~~((d))~~ (c) Excluded from Class II by the board; or  
3       ~~((e))~~ (d) Including timber harvesting or road construction within  
4 "urban growth areas," designated pursuant to chapter 36.70A RCW, which  
5 are Class IV;

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

12       Class IV: Forest practices other than those contained in Class I  
13 or II:

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

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

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

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

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

30       (d) Which have a potential for a substantial impact on the  
31 environment and therefore require an evaluation by the department as to  
32 whether or not a detailed statement must be prepared pursuant to the  
33 state environmental policy act, chapter 43.21C RCW. Such evaluation  
34 shall be made within ten days from the date the department receives the  
35 application: PROVIDED, That nothing herein shall be construed to  
36 prevent any local or regional governmental entity from determining that  
37 a detailed statement must be prepared for an action pursuant to a Class  
38 IV forest practice taken by that governmental entity concerning the

1 land on which forest practices will be conducted. A Class IV  
2 application must be approved or disapproved by the department within  
3 thirty calendar days from the date the department receives the  
4 application, (~~unless the department determines that a detailed~~  
5 ~~statement must be made, in which case the application must be approved~~  
6 ~~or disapproved by the department within sixty calendar days from the~~  
7 ~~date the department receives the application, unless the commissioner~~  
8 ~~of public lands, through the promulgation of a formal order, determines~~  
9 ~~that the process cannot be completed within such period)) except that  
10 the department must: Approve or disapprove an application within sixty  
11 calendar days from the date the department receives the application if  
12 the department determines that a detailed statement must be made,  
13 unless the commissioner of public lands, through the promulgation of a  
14 formal order, determines that the process cannot be completed within  
15 such a period. However, the applicant may not begin work on that  
16 forest practice until all forest practice fees required under RCW  
17 76.09.065 have been received by the department.~~

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

21 (2) Except for those forest practices being regulated by local  
22 governmental entities as provided elsewhere in this chapter, no Class  
23 II, Class III, or Class IV forest practice shall be commenced or  
24 continued after January 1, 1975, unless the department has received a  
25 notification with regard to a Class II forest practice or approved an  
26 application with regard to a Class III or Class IV forest practice  
27 containing all information required by RCW 76.09.060 as now or  
28 hereafter amended. However, in the event forest practices regulations  
29 necessary for the scheduled implementation of this chapter and RCW  
30 90.48.420 have not been adopted in time to meet such schedules, the  
31 department shall have the authority to regulate forest practices and  
32 approve applications on such terms and conditions consistent with this  
33 chapter and RCW 90.48.420 and the purposes and policies of RCW  
34 76.09.010 until applicable forest practices regulations are in effect.

35 (3) Except for those forest practices being regulated by local  
36 governmental entities as provided elsewhere in this chapter, if a  
37 notification or application is delivered in person to the department by

1 the operator or the operator's agent, the department shall immediately  
2 provide a dated receipt thereof. In all other cases, the department  
3 shall immediately mail a dated receipt to the operator.

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

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

35 (6) For those forest practices regulated by the board and the  
36 department, if the county, city, or town believes that an application  
37 is inconsistent with this chapter, the forest practices regulations, or

1 any local authority consistent with RCW 76.09.240 as now or hereafter  
2 amended, it may so notify the department and the applicant, specifying  
3 its objections.

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

7 (a) The department receives written notice from the county, city,  
8 or town of such objections within fourteen business days from the time  
9 of transmittal of the application to the county, city, or town, or one  
10 day before the department acts on the application, whichever is later;  
11 and

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

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

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

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

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

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

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

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

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

30 (a) Name and address of the forest landowner, timber owner, and  
31 operator;

32 (b) Description of the proposed forest practice or practices to be  
33 conducted;

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

36 (d) Planimetric and topographic maps showing location and size of

1 all lakes and streams and other public waters in and immediately  
2 adjacent to the operating area and showing all existing and proposed  
3 roads and major tractor roads;

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

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

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

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

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

18 ~~((i))~~ (j) Provisions for continuing maintenance of roads and  
19 other construction or other measures necessary to afford protection to  
20 public resources;

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

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

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

26 (3) The application for a forest practice or the notification of a  
27 forest practice is subject to the reforestation requirement of RCW  
28 76.09.070.

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

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

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

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

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

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

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

17 (iii) Copies of any applicable outstanding final orders or  
18 decisions issued by the department related to the forest practices  
19 application or notification.

20 (c) Failure to comply with the reforestation requirements contained  
21 in any final order or decision shall constitute a removal of  
22 designation under the provisions of RCW 84.33.140, and a change of use  
23 under the provisions of RCW 84.34.080, and, if applicable, shall  
24 subject such lands to the payments and/or penalties resulting from such  
25 removals or changes.

26 (d) Conversion to a use other than commercial forest product  
27 operations within six years after approval of the forest practices  
28 application or notification without the consent of the county, city, or  
29 town shall constitute a violation of each of the county, municipal  
30 city, town, and regional authorities to which the forest practice  
31 operations would have been subject if the application had stated an  
32 intent to convert.

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

37 (f) Landowners who have not stated an intent to convert the land  
38 covered by an application or notification and who decide to convert the

1 land to a nonforestry use within six years of receiving an approved  
2 application or notification must do so in a manner consistent with RCW  
3 76.09.470.

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

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

14 (5) Before the operator commences any forest practice in a manner  
15 or to an extent significantly different from that described in a  
16 previously approved application or notification, there shall be  
17 submitted to the department a new application or notification form in  
18 the manner set forth in this section.

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

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

33 (c) At the option of the applicant, an application or notification  
34 may be submitted to cover a single forest practice or a number of  
35 forest practices within reasonable geographic or political boundaries  
36 as specified by the department. An application or notification that  
37 covers more than one forest practice may have an effective term of more  
38 than ~~((two))~~ three years.

1        (d) The board shall adopt rules that establish standards and  
2 procedures for approving an application or notification that has an  
3 effective term of more than ~~((two))~~ three years. Such rules shall  
4 include extended time periods for application or notification approval  
5 or disapproval. ~~((On an approved application with a term of more than  
6 two years, the applicant shall inform the department before commencing  
7 operations))~~ The department may require the applicant to provide  
8 advance notice before commencing operations on an approved application  
9 or notification.

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

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

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

28        (b) In order to minimize adverse impacts to public resources,  
29 control measures must be based on integrated pest management, as  
30 defined in RCW 17.15.010, and must follow forest practices rules  
31 relating to road construction and maintenance, timber harvest, and  
32 forest chemicals, to the extent possible without compromising control  
33 objectives.

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

1 (d) When the appropriate regulatory staff of the department are  
2 notified under (c) of this subsection, they must consult with the  
3 landowner, interested agencies, and affected tribes, and assist the  
4 notifying agencies in the development of integrated pest management  
5 plans that comply with forest practices rules as required under (b) of  
6 this subsection.

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

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

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

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

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

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

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

36 (a) The department has attempted an inspection of forest lands  
37 under this chapter to ensure compliance with this chapter and the

1 forest practices rules or to ensure that no potential or actual  
2 material damage occurs to the natural resources of this state, and  
3 access to all or part of the forest lands has been actually or  
4 constructively denied; or

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

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

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

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

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

31 (3) The department must obtain the written permission of an  
32 applicant before making publicly available that applicant's application  
33 or approval under this section and must work cooperatively with the  
34 applicant to ensure that no personal or proprietary information is made  
35 available.

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

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

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

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

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

28       **(b)(i)** If sections 201 through 203 and 206 of this act are enacted  
29 into law by June 30, 2012, then the fee for applications and  
30 notifications submitted to the department shall be one hundred fifty  
31 dollars for class II applications and notifications, class III  
32 applications, and class IV forest practices that have a potential for  
33 a substantial impact on the environment and therefore require an  
34 evaluation by the department as to whether or not a detailed statement  
35 must be prepared pursuant to the state environmental policy act,  
36 chapter 43.21C RCW. The fee shall be one thousand five hundred dollars  
37 for class IV forest practices applications on lands being converted to  
38 other uses or on lands that are not to be reforested because of the

1 likelihood of future conversion to urban development or on lands that  
2 are contained within urban growth areas, designated pursuant to chapter  
3 36.70A RCW, except the fee shall be the same as for a class III forest  
4 practices application where the forest landowner provides:

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

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

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

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

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

33 ((+4) Recording fees shall be as provided in chapter 36.18 RCW.

34 (+5) An application fee under subsection (2) of this section shall  
35 be refunded or credited to the applicant if either the application or  
36 notification is disapproved by the department or the application or  
37 notification is withdrawn by the applicant due to restrictions imposed  
38 by the department.))

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

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

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

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

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

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

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

26           (b) Complete the following activities:

27           (i) Require that the landowner be in full compliance with chapter  
28 43.21C RCW, if applicable;

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

32           (iii) Make a determination as to whether or not the condition of  
33 the land in question is in full compliance with local ordinances and  
34 regulations. If full compliance is not found, a mitigation plan to  
35 address violations of local ordinances or regulations must be required  
36 for the parcel in question by the county, city, town, or regional  
37 governmental entity. Required mitigation plans must be prepared by the  
38 landowner and approved by the county, city, town, or regional

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

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

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

12 (a) The commissioner of public lands or the commissioner's  
13 designee;

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

16 (c) The director of the department of agriculture or the director's  
17 designee;

18 (d) The director of the department of ecology or the director's  
19 designee;

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

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

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

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

34 (2) (~~The director of the department of fish and wildlife's service~~  
35 ~~on the board may be terminated two years after August 18, 1999, if the~~  
36 ~~legislature finds that after two years the department has not made~~  
37 ~~substantial progress toward integrating the laws, rules, and programs~~

1 governing forest practices, chapter 76.09 RCW, and the laws, rules, and  
2 programs governing hydraulic projects, chapter 77.55 RCW. Such a  
3 finding shall be based solely on whether the department of fish and  
4 wildlife makes substantial progress as defined in this subsection, and  
5 will not be based on other actions taken as a member of the board.  
6 Substantial progress shall include recommendations to the legislature  
7 for closer integration of the existing rule-making authorities of the  
8 board and the department of fish and wildlife, and closer integration  
9 of the forest practices and hydraulics permitting processes, including  
10 exploring the potential for a consolidated permitting process. These  
11 recommendations shall be designed to resolve problems currently  
12 associated with the existing dual regulatory and permitting processes.

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

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

28 ((5)) (4) Members of the board, except public employees and  
29 elected officials, shall be compensated in accordance with RCW  
30 43.03.250. Each member shall be entitled to reimbursement for travel  
31 expenses incurred in the performance of their duties as provided in RCW  
32 43.03.050 and 43.03.060.

33 ((6)) (5) The board may employ such clerical help and staff  
34 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

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

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

8 (3) "Application" means the application required pursuant to RCW  
9 76.09.050.

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

18 (5) "Board" means the forest practices board created in RCW  
19 76.09.030.

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

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

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

27 (9) "Date of receipt" has the same meaning as defined in RCW  
28 43.21B.001.

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

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

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

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

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

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

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

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

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

38 "Forest practice" shall not include preparatory work such as tree

1 marking, surveying and road flagging, and removal or harvesting of  
2 incidental vegetation from forest lands such as berries, ferns,  
3 greenery, mistletoe, herbs, mushrooms, and other products which cannot  
4 normally be expected to result in damage to forest soils, timber, or  
5 public resources.

6 (17) "Forest practices rules" means any rules adopted pursuant to  
7 RCW 76.09.040.

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

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

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

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

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

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

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

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

37 (26) "Timber owner" means any person having all or any part of the

1 legal interest in timber. Where such timber is subject to a contract  
2 of sale, "timber owner" shall mean the contract purchaser.

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

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

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

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

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

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

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

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

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

35 (c) The process for and outcomes from review of forest practices

1 applications that include forest practices hydraulic projects by the  
2 department of fish and wildlife; and

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

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

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

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

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

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

28 NEW SECTION. **Sec. 218.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 **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 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) Create a categorical exemption for projects designed to  
20 restore natural wildlife or fishery habitats or serve as environmental  
21 mitigation for other projects; and

22 (iii) Propose methods for integrating the state environmental  
23 policy act process with provisions of the growth management act,  
24 chapter 36.70A RCW, including consideration of ways to revise WAC 197-  
25 11-210 through 197-11-232 to further the goals of RCW 43.21C.240.

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; and

37 (ii) Consider opportunities to ensure that state agencies, tribes,

1 and other interested parties can receive notice about projects of  
2 interest through a means other than through notice under chapter 43.21C  
3 RCW.

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

6 (5) This section expires July 31, 2013.

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

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

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

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

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

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

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

12       ~~(iv) Are located within an urban growth area, as defined in RCW~~  
13 ~~36.70A.030;~~

14       ~~(v) Are not essential public facilities, as defined in RCW~~  
15 ~~36.70A.200; and~~

16       ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
17 ~~36.70A RCW.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) Except for impacts that are specifically deferred, at the time  
31 of planned action ordinance adoption, for consideration at the project  
32 level, 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. The  
36 determination of consistency, and the adequacy of any environmental  
37 review that was specifically deferred, are subject to the type of

1 administrative appeal that the county, city, or town provides for the  
2 proposal itself consistent with RCW 36.70B.060.

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

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

10 (b) All affected federally recognized tribal governments whose  
11 ceded area is within one-half mile of the jurisdictional boundaries of  
12 the county, city, or town, and to agencies with jurisdiction over the  
13 future development anticipated for the planned action.

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

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

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

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

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

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

3 (c)(i) The city or county's applicable comprehensive plan was  
4 previously subjected to environmental analysis through an environmental  
5 impact statement under the requirements of this chapter prior to  
6 adoption; or

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

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

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

16 (1) The legislature recognizes that a county, city, or town that  
17 prepares a nonproject environmental review under RCW 43.21C.030(2),  
18 including reviews necessary for compliance with RCW 43.21C.420, must  
19 endure a substantial financial burden.

20 (2) A county, city, or town may recover reasonable expenses  
21 incurred in the preparation of a nonproject environmental impact  
22 statement prepared under RCW 43.21C.030(2):

23 (a) Through access to financial assistance under RCW 36.70A.490;  
24 and

25 (b) With funding from private sources.

26 **Sec. 306.** RCW 43.21C.420 and 2010 c 153 s 2 are each amended to  
27 read as follows:

28 (1) Cities with a population greater than five thousand, in  
29 accordance with their existing comprehensive planning and development  
30 regulation authority under chapter 36.70A RCW, and in accordance with  
31 this section, may adopt optional elements of their comprehensive plans  
32 and optional development regulations that apply within specified  
33 subareas of the cities, that are either:

34 (a) Areas designated as mixed-use or urban centers in a land use or  
35 transportation plan adopted by a regional transportation planning  
36 organization; or

1 (b) Areas within one-half mile of a major transit stop that are  
2 zoned to have an average minimum density of fifteen dwelling units or  
3 more per gross acre.

4 (2) Cities located on the east side of the Cascade mountains and  
5 located in a county with a population of two hundred thirty thousand or  
6 less, in accordance with their existing comprehensive planning and  
7 development regulation authority under chapter 36.70A RCW, and in  
8 accordance with this section, may adopt optional elements of their  
9 comprehensive plans and optional development regulations that apply  
10 within the mixed-use or urban centers. The optional elements of their  
11 comprehensive plans and optional development regulations must enhance  
12 pedestrian, bicycle, transit, or other nonvehicular transportation  
13 methods.

14 (3) A major transit stop is defined as:

15 (a) A stop on a high capacity transportation service funded or  
16 expanded under the provisions of chapter 81.104 RCW;

17 (b) Commuter rail stops;

18 (c) Stops on rail or fixed guideway systems, including transitways;

19 (d) Stops on bus rapid transit routes or routes that run on high  
20 occupancy vehicle lanes; or

21 (e) Stops for a bus or other transit mode providing fixed route  
22 service at intervals of at least thirty minutes during the peak hours  
23 of operation.

24 (4)(a) A city that elects to adopt such an optional comprehensive  
25 plan element and optional development regulations shall prepare a  
26 nonproject environmental impact statement, pursuant to RCW 43.21C.030,  
27 assessing and disclosing the probable significant adverse environmental  
28 impacts of the optional comprehensive plan element and development  
29 regulations and of future development that is consistent with the plan  
30 and regulations.

31 (b) At least one community meeting must be held on the proposed  
32 subarea plan before the scoping notice for such a nonproject  
33 environmental impact statement is issued. Notice of scoping for such  
34 a nonproject environmental impact statement and notice of the community  
35 meeting required by this section must be mailed to all property owners  
36 of record within the subarea to be studied, to all property owners  
37 within one hundred fifty feet of the boundaries of such a subarea, to  
38 all affected federally recognized tribal governments whose ceded area

1 is within one-half mile of the boundaries of the subarea, and to  
2 agencies with jurisdiction over the future development or its impacts  
3 anticipated within the subarea.

4 (c) In cities with over five hundred thousand residents, notice of  
5 scoping for such a nonproject environmental impact statement and notice  
6 of the community meeting required by this section must be mailed to all  
7 small businesses as defined in RCW 19.85.020, and to all community  
8 preservation and development authorities established under chapter  
9 43.167 RCW, located within the subarea to be studied or within one  
10 hundred fifty feet of the boundaries of such subarea. The process for  
11 community involvement must have the goal of fair treatment and  
12 meaningful involvement of all people with respect to the development  
13 and implementation of the subarea planning process.

14 (d) The notice of the community meeting must include general  
15 illustrations and descriptions of buildings generally representative of  
16 the maximum building envelope that will be allowed under the proposed  
17 plan and indicate that future appeals of proposed developments that are  
18 consistent with the plan will be limited. Notice of the community  
19 meeting must include signs located on major travel routes in the  
20 subarea. If the building envelope increases during the process,  
21 another notice complying with the requirements of this section must be  
22 issued before the next public involvement opportunity.

23 (e) Any person that has standing to appeal the adoption of this  
24 subarea plan or the implementing regulations under RCW 36.70A.280 has  
25 standing to bring an appeal of the nonproject environmental impact  
26 statement required by this subsection.

27 (f) Cities with over five hundred thousand residents shall prepare  
28 a study that accompanies or is appended to the nonproject environmental  
29 impact statement, but must not be part of that statement, that analyzes  
30 the extent to which the proposed subarea plan may result in the  
31 displacement or fragmentation of existing businesses, existing  
32 residents, including people living with poverty, families with  
33 children, and intergenerational households, or cultural groups within  
34 the proposed subarea plan. The city shall also discuss the results of  
35 the analysis at the community meeting.

36 (g) As an incentive for development authorized under this section,  
37 a city shall consider establishing a transfer of development rights  
38 program in consultation with the county where the city is located, that

1 conserves county-designated agricultural and forest land of long-term  
2 commercial significance. If the city decides not to establish a  
3 transfer of development rights program, the city must state in the  
4 record the reasons for not adopting the program. The city's decision  
5 not to establish a transfer of development rights program is not  
6 subject to appeal. Nothing in this subsection (4)(g) may be used as a  
7 basis to challenge the optional comprehensive plan or subarea plan  
8 policies authorized under this section.

9 (5)(a) Until July 1, 2018, a proposed development that is  
10 consistent with the optional comprehensive plan or subarea plan  
11 policies and development regulations adopted under subsection (1) or  
12 (2) of this section and that is environmentally reviewed under  
13 subsection (4) of this section may not be challenged in administrative  
14 or judicial appeals for noncompliance with this chapter as long as a  
15 complete application for such a development that vests the application  
16 or would later lead to vested status under city or state law is  
17 submitted to the city within a time frame established by the city, but  
18 not to exceed ten years from the date of issuance of the final  
19 environmental impact statement.

20 (b) After July 1, 2018, the immunity from appeals under this  
21 chapter of any application that vests or will vest under this  
22 subsection or the ability to vest under this subsection is still valid,  
23 provided that the final subarea environmental impact statement is  
24 issued by July 1, 2018. (~~After July 1, 2018, a city may continue to~~  
25 ~~collect reimbursement fees under subsection (6) of this section for the~~  
26 ~~proportionate share of a subarea environmental impact statement issued~~  
27 ~~prior to July 1, 2018.))~~

28 (~~It is recognized that a city that prepares a nonproject~~  
29 ~~environmental impact statement under subsection (4) of this section~~  
30 ~~must endure a substantial financial burden. A city may recover its~~  
31 ~~reasonable expenses of preparation of a nonproject environmental impact~~  
32 ~~statement prepared under subsection (4) of this section through access~~  
33 ~~to financial assistance under RCW 36.70A.490 or funding from private~~  
34 ~~sources. In addition, a city is authorized to recover a portion of its~~  
35 ~~reasonable expenses of preparation of such a nonproject environmental~~  
36 ~~impact statement by the assessment of reasonable and proportionate fees~~  
37 ~~upon subsequent development that is consistent with the plan and~~  
38 ~~development regulations adopted under subsection (5) of this section,~~

1 ~~as long as the development makes use of and benefits [from], as~~  
2 ~~described in subsection (5) of this section, from the nonproject~~  
3 ~~environmental impact statement prepared by the city. Any assessment~~  
4 ~~fees collected from subsequent development may be used to reimburse~~  
5 ~~funding received from private sources. In order to collect such fees,~~  
6 ~~the city must enact an ordinance that sets forth objective standards~~  
7 ~~for determining how the fees to be imposed upon each development will~~  
8 ~~be proportionate to the impacts of each development and to the benefits~~  
9 ~~accruing to each development from the nonproject environmental impact~~  
10 ~~statement. Any disagreement about the reasonableness or amount of the~~  
11 ~~fees imposed upon a development may not be the basis for delay in~~  
12 ~~issuance of a project permit for that development. The fee assessed by~~  
13 ~~the city may be paid with the written stipulation "paid under protest"~~  
14 ~~and if the city provides for an administrative appeal of its decision~~  
15 ~~on the project for which the fees are imposed, any dispute about the~~  
16 ~~amount of the fees must be resolved in the same administrative appeal~~  
17 ~~process.~~

18 (7)) If a proposed development is inconsistent with the optional  
19 comprehensive plan or subarea plan policies and development regulations  
20 adopted under subsection (1) of this section, the city shall require  
21 additional environmental review in accordance with this chapter.

22 NEW SECTION. Sec. 307. A new section is added to chapter 43.21C  
23 RCW to read as follows:

24 The following nonproject actions are categorically exempt from the  
25 requirements of this chapter:

26 (1) Amendments to development regulations that are required to  
27 ensure consistency with an adopted comprehensive plan pursuant to RCW  
28 36.70A.040, where the comprehensive plan was previously subjected to  
29 environmental review pursuant to this chapter;

30 (2) Amendments to development regulations that are required to  
31 ensure consistency with a shoreline master program approved pursuant to  
32 RCW 90.58.090, where the shoreline master program was previously  
33 subjected to environmental review pursuant to this chapter;

34 (3) Amendments to development regulations that do not change  
35 regulations applicable to any of the following: Allowed uses or  
36 activities, intensity, density, building height, lot coverage,  
37 impervious surface limits, vegetation retention requirements,

1 regulations for critical areas as defined in RCW 36.70A.030, cultural  
2 resource regulations, regulations for the protection of the  
3 environment, human health, and human safety, protections for other uses  
4 and activities, regulations for billboards and freestanding signs,  
5 requirements for public facilities or services, or uses, activities,  
6 developments, or structures that would have a probable adverse impact  
7 on the human or natural environment;

8 (4) Amendments to development regulations that, upon implementation  
9 of a project action, will provide increased environmental protection,  
10 limited to the following:

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

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

15 (c) Increased vegetation retention or decreased impervious surface  
16 areas in critical areas;

17 (5) Amendments to technical codes adopted by a county, city, or  
18 town to ensure consistency with minimum standards contained in state  
19 law, including the following:

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

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

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

23 **Sec. 308.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
24 read as follows:

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

34 **Sec. 309.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to  
35 read as follows:

36 (1) The department of (~~community, trade, and economic~~

1 development)) commerce shall provide management services for the growth  
2 management planning and environmental review fund created by RCW  
3 36.70A.490. The department shall establish procedures for fund  
4 management. The department shall encourage participation in the grant  
5 or loan program by other public agencies. The department shall develop  
6 the grant or loan criteria, monitor the grant or loan program, and  
7 select grant or loan recipients in consultation with state agencies  
8 participating in the grant or loan program through the provision of  
9 grant or loan funds or technical assistance.

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

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

20 (b) Encourages use of plans and information developed for purposes  
21 of complying with this chapter to satisfy requirements of other state  
22 programs.

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

25 (a) Demonstrate that it will prepare an environmental analysis  
26 pursuant to chapter 43.21C RCW and subsection (2) of this section that  
27 is integrated with a comprehensive plan, subarea plan, plan element,  
28 countywide planning policy, development regulations, monitoring  
29 program, or other planning activity adopted under or implementing this  
30 chapter;

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

35 (c) Demonstrate that procedures for review of development permit  
36 applications will be based on the integrated plans and environmental  
37 analysis;

1 (d) Include mechanisms to monitor the consequences of growth as it  
2 occurs in the plan area and to use the resulting data to update the  
3 plan, policy, or implementing mechanisms and associated environmental  
4 analysis;

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

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

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

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

16 (b) Identification and monitoring of system capacities for elements  
17 of the built environment, and to the extent appropriate, of the natural  
18 environment;

19 (c) Coordination with state, federal, and tribal governments in  
20 project review;

21 (d) Furtherance of important state objectives related to economic  
22 development, protection of areas of statewide significance, and siting  
23 of essential public facilities;

24 (e) Programs to improve the efficiency and effectiveness of the  
25 permitting process by greater reliance on integrated plans and  
26 prospective environmental analysis;

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

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

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

37 (5) If the local funding includes funding provided by other state

1 functional planning programs, including open space planning and  
2 watershed or basin planning, the functional plan shall be integrated  
3 into and be consistent with the comprehensive plan.

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

7 NEW SECTION. **Sec. 310.** A new section is added to chapter 82.02  
8 RCW to read as follows:

9 The legislature finds that:

10 (1) Detailed environmental analysis integrated with comprehensive  
11 plans, subarea plans, and development regulations will facilitate  
12 planning for and managing growth, allow greater protection of the  
13 environment, and benefit both the general public and private property  
14 owners;

15 (2) Development in urban growth areas, or transfer of development  
16 rights programs, will assist in the conservation of rural,  
17 agricultural, and forest land by redirecting growth from this land to  
18 areas designated for urban development or receiving areas in cities and  
19 towns where growth should occur;

20 (3) Cities and towns planning for increased growth in receiving  
21 areas under chapter 43.362 RCW must comply with chapter 43.21C RCW;

22 (4) Planning for urban or increased growth in urban growth areas,  
23 or receiving areas under chapter 43.362 RCW in compliance with chapter  
24 43.21C RCW, presents a financial burden on cities and towns;

25 (5) Planning for urban or increased growth in urban growth areas,  
26 or receiving areas under chapter 43.362 RCW in compliance with chapter  
27 43.21C RCW, should be encouraged to ensure that the quality of life in  
28 receiving neighborhoods and the protection of environmental values over  
29 time are maintained by providing financial assistance through the  
30 growth management planning and environmental review fund created in RCW  
31 36.70A.490; and

32 (6) Access to financial assistance through the growth management  
33 planning and environmental review fund created in RCW 36.70A.490 may be  
34 increased by allowing the fund to become a revolving loan program  
35 rather than only a grant program.

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

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

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

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

30           (b) Rules for criteria and procedures applicable to the  
31 determination of when an act of a branch of government is a major  
32 action significantly affecting the quality of the environment for which  
33 a detailed statement is required to be prepared pursuant to RCW  
34 43.21C.030.

35           (c) Rules and procedures applicable to the preparation of detailed  
36 statements and other environmental documents, including but not limited  
37 to rules for timing of environmental review, obtaining comments, data

1 and other information, and providing for and determining areas of  
2 public participation which shall include the scope and review of draft  
3 environmental impact statements.

4 (d) Scope of coverage and contents of detailed statements assuring  
5 that such statements are simple, uniform, and as short as practicable;  
6 statements are required to analyze only reasonable alternatives and  
7 probable adverse environmental impacts which are significant, and may  
8 analyze beneficial impacts.

9 (e) Rules and procedures for public notification of actions taken  
10 and documents prepared.

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

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

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

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

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

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

37 (l) Rules relating to the use of environmental documents in

1 planning and decision making and the implementation of the substantive  
2 policies and requirements of this chapter, including procedures for  
3 appeals under this chapter.

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

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

24 (a) Consult with the state agencies and with representatives of  
25 science, industry, agriculture, labor, conservation organizations,  
26 state and local governments, and other groups, as it deems advisable;  
27 and

28 (b) Utilize, to the fullest extent possible, the services,  
29 facilities, and information (including statistical information) of  
30 public and private agencies, organizations, and individuals, in order  
31 to avoid duplication of effort and expense, overlap, or conflict with  
32 similar activities authorized by law and performed by established  
33 agencies.

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

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

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

3 NEW SECTION. **Sec. 313.** A new section is added to chapter 43.21C  
4 RCW to read as follows:

5 Upon receiving a completed environmental checklist, the lead agency  
6 shall provide the checklist and other submitted documents to the  
7 federally recognized tribe or tribes affected by the proposed project.  
8 The lead agency shall provide notice of the proposed project by mail  
9 and electronic mail to the applicable tribal chair and natural resource  
10 manager.

11 **Sec. 314.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to  
12 read as follows:

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

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

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

26 (c) That the approval of a work plan adopted under RCW  
27 36.70A.735(1)(a) is not in compliance with the requirements of the  
28 program established under RCW 36.70A.710;

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

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

34 (2) A petition may be filed only by: (a) The state, or a county or  
35 city that plans under this chapter; (b) (~~(a person who has participated~~  
36 ~~orally or in writing before the county or city regarding the matter on~~

1 ~~which a review is being requested; (c))~~ a person who is certified by  
2 the governor within sixty days of filing the request with the board; or  
3 ~~((d))~~ (c) a person qualified pursuant to RCW 34.05.530.

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

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

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

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

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

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