

1 the forest practices appeals board by transferring their duties to the
2 pollution control hearings board. The legislature further intends to
3 eliminate certain preliminary informal appeals heard internally by
4 agencies. The legislature also intends to consolidate administratively
5 and physically collocate the growth management hearings boards into the
6 environmental and land use hearings office by July 1, 2011.

7 **Sec. 2.** RCW 43.21B.001 and 2004 c 204 s 1 are each amended to read
8 as follows:

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

11 (1) "Business days" means Monday through Friday exclusive of any
12 state or federal holiday.

13 (2) "Date of receipt" means:

14 (a) Five business days after the date of mailing; or

15 (b) The date of actual receipt, when the actual receipt date can be
16 proven by a preponderance of the evidence. The recipient's sworn
17 affidavit or declaration indicating the date of receipt, which is
18 unchallenged by the agency, shall constitute sufficient evidence of
19 actual receipt. The date of actual receipt, however, may not exceed
20 forty-five days from the date of mailing.

21 (3) "Department" means the department of ecology.

22 (4) "Director" means the director of ecology.

23 (5) "Environmental boards" means the pollution control hearings
24 board created in RCW 43.21B.010 and the shorelines hearings board
25 created in RCW 90.58.170.

26 (6) "Land use board" means the growth management hearings board
27 created in RCW 36.70A.250.

28 **Sec. 3.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are
29 each reenacted and amended to read as follows:

30 (1) There is created an environmental hearings office of the state
31 of Washington. The environmental hearings office (~~(shall)~~) consists of
32 the pollution control hearings board created in RCW 43.21B.010, (~~the~~
33 ~~forest practices appeals board created in RCW 76.09.210,~~) and the
34 shorelines hearings board created in RCW 90.58.170, and the
35 environmental and land use hearings board created in chapter 43.21L
36 RCW(~~(, and the hydraulic appeals board created in RCW 77.55.170)~~). The

1 chair of the pollution control hearings board shall be the chief
2 executive officer of the environmental hearings office. Membership,
3 powers, functions, and duties of the pollution control hearings
4 board(~~(, the forest practices appeals board,)~~) and the shorelines
5 hearings board(~~(, and the hydraulic appeals board)~~) shall be as
6 provided by law.

7 (2) The chief executive officer of the environmental hearings
8 office may appoint an administrative appeals judge who shall possess
9 the powers and duties conferred by the administrative procedure act,
10 chapter 34.05 RCW, in cases before the boards comprising the office.
11 The administrative appeals judge shall have a demonstrated knowledge of
12 environmental law, and shall be admitted to the practice of law in the
13 state of Washington. Additional administrative appeals judges may also
14 be appointed by the chief executive officer on the same terms.
15 Administrative appeals judges shall not be subject to chapter 41.06
16 RCW.

17 (3) The administrative appeals judges appointed under subsection
18 (2) of this section are subject to discipline and termination, for
19 cause, by the chief executive officer. Upon written request by the
20 person so disciplined or terminated, the chief executive officer shall
21 state the reasons for such action in writing. The person affected has
22 a right of review by the superior court of Thurston county on petition
23 for reinstatement or other remedy filed within thirty days of receipt
24 of such written reasons.

25 (4) The chief executive officer may appoint, discharge, and fix the
26 compensation of such administrative or clerical staff as may be
27 necessary.

28 (5) The chief executive officer may also contract for required
29 services.

30 **Sec. 4.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are
31 each reenacted and amended to read as follows:

32 (1) There is created an environmental and land use hearings office
33 of the state of Washington. The environmental and land use hearings
34 office (~~(shall)~~) consists of the pollution control hearings board
35 created in RCW 43.21B.010, (~~(the forest practices appeals board created~~
36 ~~in RCW 76.09.210,)~~) the shorelines hearings board created in RCW
37 90.58.170, (~~(the environmental and land use hearings board created in~~

1 ~~chapter 43.21L RCW, and the hydraulic appeals board created in RCW~~
2 ~~77.55.170. The chair of the pollution control hearings board shall be~~
3 ~~the chief executive officer of the environmental hearings office)) and~~
4 the growth management hearings board created in RCW 36.70A.250. The
5 governor shall designate one of the members of the pollution control
6 hearings board or growth management hearings board to be the director
7 of the environmental and land use hearings office during the term of
8 the governor. Membership, powers, functions, and duties of the
9 pollution control hearings board, (~~the forest practices appeals~~
10 ~~board,~~) the shorelines hearings board, and the (~~hydraulic appeals~~)
11 growth management hearings board shall be as provided by law.

12 (2) The (~~chief executive officer~~) director of the environmental
13 and land use hearings office may appoint ((an)) one or more
14 administrative appeals judges ((who shall possess the powers and duties
15 conferred by the administrative procedure act, chapter 34.05 RCW,)) in
16 cases before the environmental boards and, with the consent of the
17 chair of the growth management hearings board, one or more hearing
18 examiners in cases before the land use board comprising the office.
19 The administrative appeals judges shall possess the powers and duties
20 conferred by the administrative procedure act, chapter 34.05 RCW, have
21 a demonstrated knowledge of environmental law, and shall be admitted to
22 the practice of law in the state of Washington. ((Additional
23 administrative appeals judges may also be appointed by the chief
24 executive officer on the same terms. Administrative appeals judges
25 shall not be subject to chapter 41.06 RCW.)) The hearing examiners
26 possess the powers and duties provided for in RCW 36.70A.270.

27 (3) Administrative appeals judges are not subject to chapter 41.06
28 RCW. The administrative appeals judges appointed under subsection (2)
29 of this section are subject to discipline and termination, for cause,
30 by the (~~chief executive officer~~) director of the environmental and
31 land use hearings office. Upon written request by the person so
32 disciplined or terminated, the (~~chief executive officer~~) director of
33 the environmental and land use hearings office shall state the reasons
34 for such action in writing. The person affected has a right of review
35 by the superior court of Thurston county on petition for reinstatement
36 or other remedy filed within thirty days of receipt of such written
37 reasons.

1 (4) The (~~chief executive officer~~) director of the environmental
2 and land use hearings office may appoint, discharge, and fix the
3 compensation of such administrative or clerical staff as may be
4 necessary.

5 (5) The (~~chief executive officer~~) director of the environmental
6 and land use hearings office may also contract for required services.

7 **Sec. 5.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to
8 read as follows:

9 There is hereby created within the environmental hearings office a
10 pollution control hearings board of the state of Washington.

11 The purpose of the pollution control hearings board is to provide
12 for a more expeditious and efficient disposition of designated
13 environmental appeals (~~(with respect to the decisions and orders of the~~
14 ~~department and director and with respect to all decisions of air~~
15 ~~pollution control boards or authorities established pursuant to chapter~~
16 ~~70.94 RCW)~~) as provided for in RCW 43.21B.110.

17 **Sec. 6.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to
18 read as follows:

19 There is hereby created within the environmental and land use
20 hearings office a pollution control hearings board of the state of
21 Washington.

22 The purpose of the pollution control hearings board is to provide
23 for a more expeditious and efficient disposition of designated
24 environmental appeals (~~(with respect to the decisions and orders of the~~
25 ~~department and director and with respect to all decisions of air~~
26 ~~pollution control boards or authorities established pursuant to chapter~~
27 ~~70.94 RCW)~~) as provided for in RCW 43.21B.110.

28 **Sec. 7.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and
29 2009 c 183 s 17 are each reenacted and amended to read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, local conservation districts, (~~and~~) the air pollution
33 control boards or authorities as established pursuant to chapter 70.94
34 RCW, (~~or~~) local health departments, the department of natural

1 resources, the department of fish and wildlife, and the parks and
2 recreation commission:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
4 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
5 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

6 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
7 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
8 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

9 (c) A final decision by the department or director made under
10 chapter 183, Laws of 2009.

11 (d) Except as provided in RCW 90.03.210(2), the issuance,
12 modification, or termination of any permit, certificate, or license by
13 the department or any air authority in the exercise of its
14 jurisdiction, including the issuance or termination of a waste disposal
15 permit, the denial of an application for a waste disposal permit, the
16 modification of the conditions or the terms of a waste disposal permit,
17 or a decision to approve or deny an application for a solid waste
18 permit exemption under RCW 70.95.300.

19 (e) Decisions of local health departments regarding the grant or
20 denial of solid waste permits pursuant to chapter 70.95 RCW.

21 (f) Decisions of local health departments regarding the issuance
22 and enforcement of permits to use or dispose of biosolids under RCW
23 70.95J.080.

24 (g) Decisions of the department regarding waste-derived fertilizer
25 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
26 department regarding waste-derived soil amendments under RCW 70.95.205.

27 (h) Decisions of local conservation districts related to the denial
28 of approval or denial of certification of a dairy nutrient management
29 plan; conditions contained in a plan; application of any dairy nutrient
30 management practices, standards, methods, and technologies to a
31 particular dairy farm; and failure to adhere to the plan review and
32 approval timelines in RCW 90.64.026.

33 (i) Any other decision by the department or an air authority which
34 pursuant to law must be decided as an adjudicative proceeding under
35 chapter 34.05 RCW.

36 (j) Decisions of the department of natural resources, the
37 department of fish and wildlife, and the department that are reviewable

1 under chapter 76.09 RCW, and the department of natural resources'
2 appeals of county, city, or town objections under RCW 76.09.050(7).

3 (k) Forest health hazard orders issued by the commissioner of
4 public lands under RCW 76.06.180.

5 (l) Decisions of the department of fish and wildlife to issue,
6 deny, condition, or modify a hydraulic project approval permit under
7 chapter 77.55 RCW.

8 (m) Decisions of the department of natural resources that are
9 reviewable under RCW 78.44.270.

10 (n) Decisions of a state agency that is an authorized public entity
11 under RCW 79.100.010 to take temporary possession of a vessel or to
12 contest the amount of reimbursement owed that are reviewable under RCW
13 79.100.120.

14 (2) The following hearings shall not be conducted by the hearings
15 board:

16 (a) Hearings required by law to be conducted by the shorelines
17 hearings board pursuant to chapter 90.58 RCW.

18 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
19 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

20 (c) Appeals of decisions by the department under RCW 90.03.110 and
21 90.44.220.

22 (d) Hearings conducted by the department to adopt, modify, or
23 repeal rules.

24 (e) Appeals of decisions by the department as provided in chapter
25 43.21L RCW.

26 (3) Review of rules and regulations adopted by the hearings board
27 shall be subject to review in accordance with the provisions of the
28 administrative procedure act, chapter 34.05 RCW.

29 **Sec. 8.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are
30 each reenacted and amended to read as follows:

31 (1) The hearings board shall only have jurisdiction to hear and
32 decide appeals from the following decisions of the department, the
33 director, local conservation districts, (~~and~~) the air pollution
34 control boards or authorities as established pursuant to chapter 70.94
35 RCW, (~~or~~) local health departments, the department of natural
36 resources, the department of fish and wildlife, and the parks and
37 recreation commission:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
3 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
6 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

7 (c) Except as provided in RCW 90.03.210(2), the issuance,
8 modification, or termination of any permit, certificate, or license by
9 the department or any air authority in the exercise of its
10 jurisdiction, including the issuance or termination of a waste disposal
11 permit, the denial of an application for a waste disposal permit, the
12 modification of the conditions or the terms of a waste disposal permit,
13 or a decision to approve or deny an application for a solid waste
14 permit exemption under RCW 70.95.300.

15 (d) Decisions of local health departments regarding the grant or
16 denial of solid waste permits pursuant to chapter 70.95 RCW.

17 (e) Decisions of local health departments regarding the issuance
18 and enforcement of permits to use or dispose of biosolids under RCW
19 70.95J.080.

20 (f) Decisions of the department regarding waste-derived fertilizer
21 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
22 department regarding waste-derived soil amendments under RCW 70.95.205.

23 (g) Decisions of local conservation districts related to the denial
24 of approval or denial of certification of a dairy nutrient management
25 plan; conditions contained in a plan; application of any dairy nutrient
26 management practices, standards, methods, and technologies to a
27 particular dairy farm; and failure to adhere to the plan review and
28 approval timelines in RCW 90.64.026.

29 (h) Any other decision by the department or an air authority which
30 pursuant to law must be decided as an adjudicative proceeding under
31 chapter 34.05 RCW.

32 (i) Decisions of the department of natural resources, the
33 department of fish and wildlife, and the department that are reviewable
34 under chapter 76.09 RCW, and the department of natural resources'
35 appeals of county, city, or town objections under RCW 76.09.050(7).

36 (j) Forest health hazard orders issued by the commissioner of
37 public lands under RCW 76.06.180.

1 (k) Decisions of the department of fish and wildlife to issue,
2 deny, condition, or modify a hydraulic project approval permit under
3 chapter 77.55 RCW.

4 (l) Decisions of the department of natural resources that are
5 reviewable under RCW 78.44.270.

6 (m) Decisions of a state agency that is an authorized public entity
7 under RCW 79.100.010 to take temporary possession of a vessel or to
8 contest the amount of reimbursement owed that are reviewable under RCW
9 79.100.120.

10 (2) The following hearings shall not be conducted by the hearings
11 board:

12 (a) Hearings required by law to be conducted by the shorelines
13 hearings board pursuant to chapter 90.58 RCW.

14 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
15 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

16 (c) Appeals of decisions by the department under RCW 90.03.110 and
17 90.44.220.

18 (d) Hearings conducted by the department to adopt, modify, or
19 repeal rules.

20 (e) Appeals of decisions by the department as provided in chapter
21 43.21L RCW.

22 (3) Review of rules and regulations adopted by the hearings board
23 shall be subject to review in accordance with the provisions of the
24 administrative procedure act, chapter 34.05 RCW.

25 NEW SECTION. Sec. 9. A new section is added to chapter 43.21B RCW
26 to read as follows:

27 In all appeals, upon request of one or more parties and with the
28 consent of all parties, the environmental hearings boards may schedule
29 a conference for the purpose of attempting to mediate the case.
30 Mediation must be conducted by an administrative appeals judge or other
31 duly authorized agent of the board who has received training in dispute
32 resolution techniques or has a demonstrated history of successfully
33 resolving disputes, as determined by the board. A person who mediates
34 in a particular appeal may not participate in a hearing on that appeal
35 and may not write the decision and order in the appeal. The mediator
36 may not communicate with board members regarding the mediation other
37 than to inform them of the pendency of the mediation and whether the

1 case settled. Mediation provided by the environmental hearings boards
2 must be conducted pursuant to the provisions of the uniform mediation
3 act, chapter 7.07 RCW.

4 **Sec. 10.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to
5 read as follows:

6 ~~((Judicial review of))~~ Any party aggrieved by a final decision and
7 order of the pollution control hearings board may ~~((be obtained only~~
8 obtain judicial review of the final decision and order as
9 provided in RCW 34.05.510 through 34.05.598. ~~The ((director))~~ state or
10 local agency that issued the decision appealed to the board shall have
11 the same right of review from a decision made pursuant to RCW
12 43.21B.110 as does any person.

13 **Sec. 11.** RCW 43.21B.230 and 2004 c 204 s 3 are each amended to
14 read as follows:

15 ~~((Consistent with RCW 43.21B.110, any person having received notice~~
16 ~~of denial of a petition, a notice of determination, or notice of an~~
17 ~~order made by the department may appeal to the hearings board, within~~
18 ~~thirty days from the date of receipt of the notice of such denial,~~
19 ~~order, or determination by the appealing party.))~~ (1) Unless otherwise
20 provided by law, any person with standing may commence an appeal to the
21 pollution control hearings board by filing a notice of appeal with the
22 board within thirty days from the date of receipt of the decision being
23 appealed.

24 (2) The appeal ~~((shall be perfected by serving a copy of the notice~~
25 ~~of appeal upon the department or air pollution authority established~~
26 ~~pursuant to chapter 70.94 RCW, as the case may be, within the time~~
27 ~~specified herein and by filing the original thereof with))~~ is timely if
28 it is filed with the board and served upon the state or local agency
29 whose action is being appealed within the same thirty-day period.
30 Proof of service must be filed with the clerk of the hearings board to
31 perfect the appeal.

32 (3) The appeal must contain the following in accordance with the
33 rules of the hearings board:

- 34 (a) The appellant's name and address;
- 35 (b) The date and docket number of the order, permit, license, or
36 decision appealed;

1 (c) A copy of the order, permit, license, or decision that is the
2 subject of the appeal;

3 (d) A clear, separate, and concise statement of every error alleged
4 to have been committed;

5 (e) A clear and concise statement of facts upon which the requester
6 relies to sustain his or her statements of error; and

7 (f) A statement setting forth the relief sought.

8 **Sec. 12.** RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are
9 each reenacted and amended to read as follows:

10 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
11 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
12 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be
13 imposed by a notice in writing, either by certified mail with return
14 receipt requested or by personal service, to the person incurring the
15 penalty from the department or the local air authority, describing the
16 violation with reasonable particularity. For penalties issued by local
17 air authorities, within thirty days after the notice is received, the
18 person incurring the penalty may apply in writing to ((the department
19 or)) the authority for the remission or mitigation of the penalty.
20 Upon receipt of the application, the ((department or)) authority may
21 remit or mitigate the penalty upon whatever terms ((the department or))
22 the authority in its discretion deems proper. The ((department or
23 the)) authority may ascertain the facts regarding all such applications
24 in such reasonable manner and under such rules as it may deem proper
25 and shall remit or mitigate the penalty only upon a demonstration of
26 extraordinary circumstances such as the presence of information or
27 factors not considered in setting the original penalty.

28 (2) Any penalty imposed under this section may be appealed to the
29 pollution control hearings board in accordance with this chapter if the
30 appeal is filed with the hearings board and served on the department or
31 authority thirty days after the date of receipt by the person penalized
32 of the notice imposing the penalty or thirty days after the date of
33 receipt of the notice of disposition by a local air authority of the
34 application for relief from penalty.

35 (3) A penalty shall become due and payable on the later of:

36 (a) Thirty days after receipt of the notice imposing the penalty;

1 (b) Thirty days after receipt of the notice of disposition by a
2 local air authority on application for relief from penalty, if such an
3 application is made; or

4 (c) Thirty days after receipt of the notice of decision of the
5 hearings board if the penalty is appealed.

6 (4) If the amount of any penalty is not paid to the department
7 within thirty days after it becomes due and payable, the attorney
8 general, upon request of the department, shall bring an action in the
9 name of the state of Washington in the superior court of Thurston
10 county, or of any county in which the violator does business, to
11 recover the penalty. If the amount of the penalty is not paid to the
12 authority within thirty days after it becomes due and payable, the
13 authority may bring an action to recover the penalty in the superior
14 court of the county of the authority's main office or of any county in
15 which the violator does business. In these actions, the procedures and
16 rules of evidence shall be the same as in an ordinary civil action.

17 (5) All penalties recovered shall be paid into the state treasury
18 and credited to the general fund except those penalties imposed
19 pursuant to RCW 18.104.155, which shall be credited to the reclamation
20 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
21 disposition of which shall be governed by that provision, RCW
22 70.105.080, which shall be credited to the hazardous waste control and
23 elimination account created by RCW 70.105.180, RCW 90.56.330, which
24 shall be credited to the coastal protection fund created by RCW
25 90.48.390, and RCW 90.76.080, which shall be credited to the
26 underground storage tank account created by RCW 90.76.100.

27 **Sec. 13.** RCW 43.21B.310 and 2009 c 456 s 18 and 2009 c 178 s 3 are
28 each reenacted and amended to read as follows:

29 ~~(1) ((Except as provided in RCW 90.03.210(2), any order issued by~~
30 ~~the department or local air authority pursuant to RCW 43.27A.190,~~
31 ~~70.94.211, 70.94.332, 70.95.315, 70.105.095, 86.16.020, 88.46.070,~~
32 ~~90.46.250, or 90.48.120(2) or any provision enacted after July 26,~~
33 ~~1987, or any permit, certificate, or license issued by the department~~
34 ~~may be appealed to the pollution control hearings board if the appeal~~
35 ~~is filed with the board and served on the department or authority~~
36 ~~within thirty days after the date of receipt of the order. Except as~~

1 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the
2 exclusive means of appeal of such an order.

3 ~~(2) The department or the authority)~~ The issuing agency in its
4 discretion may stay the effectiveness of ~~((an))~~ any order that has been
5 appealed to the board during the pendency of such an appeal.

6 ~~((3))~~ (2) At any time during the pendency of an appeal of such an
7 order to the board, the appellant may apply pursuant to RCW 43.21B.320
8 to the hearings board for a stay of the order or for the removal
9 thereof.

10 ~~((4) Any appeal must contain the following in accordance with the~~
11 ~~rules of the hearings board:~~

12 ~~(a) The appellant's name and address;~~

13 ~~(b) The date and docket number of the order, permit, or license~~
14 ~~appealed;~~

15 ~~(c) A description of the substance of the order, permit, or license~~
16 ~~that is the subject of the appeal;~~

17 ~~(d) A clear, separate, and concise statement of every error alleged~~
18 ~~to have been committed;~~

19 ~~(e) A clear and concise statement of facts upon which the requester~~
20 ~~relies to sustain his or her statements of error; and~~

21 ~~(f) A statement setting forth the relief sought.~~

22 ~~(5))~~ (3) Upon failure to comply with any final order of the
23 department, the attorney general, on request of the department, may
24 bring an action in the superior court of the county where the violation
25 occurred or the potential violation is about to occur to obtain such
26 relief as necessary, including injunctive relief, to ~~((insure))~~ ensure
27 compliance with the order. The air authorities may bring similar
28 actions to enforce their orders.

29 ~~((6))~~ (4) An appealable decision or order shall be identified as
30 such and shall contain a conspicuous notice to the recipient that it
31 may be appealed only by filing an appeal with the hearings board and
32 serving it on the ~~((department))~~ issuing agency within thirty days of
33 the date of receipt.

34 **Sec. 14.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to
35 read as follows:

36 (1) A person appealing to the hearings board an order ~~((of the~~

1 ~~department or an authority~~)), not stayed by the issuing agency, may
2 obtain a stay of the effectiveness of that order only as set forth in
3 this section.

4 (2) An appealing party may request a stay by including such a
5 request in the appeal document, in a subsequent motion, or by such
6 other means as the rules of the hearings board shall prescribe. The
7 request must be accompanied by a statement of grounds for the stay and
8 evidence setting forth the factual basis upon which request is based.
9 The hearings board shall hear the request for a stay as soon as
10 possible. The hearing on the request for stay may be consolidated with
11 the hearing on the merits.

12 (3) The applicant may make a prima facie case for stay if the
13 applicant demonstrates either a likelihood of success on the merits of
14 the appeal or irreparable harm. Upon such a showing, the hearings
15 board shall grant the stay unless the (~~department or authority~~)
16 issuing agency demonstrates either (a) a substantial probability of
17 success on the merits or (b) likelihood of success on the merits and an
18 overriding public interest which justifies denial of the stay.

19 (4) Unless otherwise stipulated by the parties, the hearings board,
20 after granting or denying an application for a stay, shall expedite the
21 hearing and decision on the merits.

22 (5) Any party or other person aggrieved by the grant or denial of
23 a stay by the hearings board may petition the superior court for
24 Thurston county for review of that decision pursuant to chapter 34.05
25 RCW pending the appeal on the merits before the board. The superior
26 court shall expedite its review of the decision of the hearings board.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 36.70A
28 RCW to read as follows:

29 (1) On July 1, 2011, the growth management hearings board is
30 administratively consolidated into the environmental and land use
31 hearings office created in RCW 43.21B.005.

32 (2) Not later than July 1, 2012, the growth management hearings
33 board consists of six members qualified by experience or training in
34 matters pertaining to land use law or land use planning, except that
35 the governor may determine to continue the board with seven members if
36 warranted by the board's caseload. All six board members must be
37 appointed by the governor, two each residing respectively in the

1 central Puget Sound, eastern Washington, and western Washington
2 regions. The reduction from seven board members to six board members
3 must be made through attrition, voluntary resignation, or retirement.

4 **Sec. 16.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to
5 read as follows:

6 Each growth management hearings board shall be governed by the
7 following rules on conduct and procedure:

8 (1) Any board member may be removed for inefficiency, malfeasance,
9 and misfeasance in office, under specific written charges filed by the
10 governor. The governor shall transmit such written charges to the
11 member accused and the chief justice of the supreme court. The chief
12 justice shall thereupon designate a tribunal composed of three judges
13 of the superior court to hear and adjudicate the charges. Removal of
14 any member of a board by the tribunal shall disqualify such member for
15 reappointment.

16 (2) Each board member shall receive reimbursement for travel
17 expenses incurred in the discharge of his or her duties in accordance
18 with RCW 43.03.050 and 43.03.060. If it is determined that the review
19 boards shall operate on a full-time basis, each member shall receive an
20 annual salary to be determined by the governor pursuant to RCW
21 43.03.040. If it is determined that a review board shall operate on a
22 part-time basis, each member shall receive compensation pursuant to RCW
23 43.03.250, provided such amount shall not exceed the amount that would
24 be set if they were a full-time board member. The principal office of
25 each board shall be located by the governor within the jurisdictional
26 boundaries of each board. The boards shall operate on either a part-
27 time or full-time basis, as determined by the governor.

28 (3) Each board member shall not: (a) Be a candidate for or hold
29 any other public office or trust; (b) engage in any occupation or
30 business interfering with or inconsistent with his or her duty as a
31 board member; and (c) for a period of one year after the termination of
32 his or her board membership, act in a representative capacity before
33 the board on any matter.

34 (4) A majority of each board shall constitute a quorum for making
35 orders or decisions, adopting rules necessary for the conduct of its
36 powers and duties, or transacting other official business, and may act
37 even though one position of the board is vacant. One or more members

1 may hold hearings and take testimony to be reported for action by the
2 board when authorized by rule or order of the board. The board shall
3 perform all the powers and duties specified in this chapter or as
4 otherwise provided by law.

5 (5) The board may (~~appoint~~) use one or more hearing examiners to
6 assist the board in its hearing function, to make conclusions of law
7 and findings of fact and, if requested by the board, to make
8 recommendations to the board for decisions in cases before the board.
9 Such hearing examiners must have demonstrated knowledge of land use
10 planning and law. The boards shall specify in their joint rules of
11 practice and procedure, as required by subsection (7) of this section,
12 the procedure and criteria to be employed for designating hearing
13 examiners as a presiding officer. Hearing examiners (~~selected~~) used
14 by a board shall meet the requirements of subsection (3) of this
15 section. The findings and conclusions of the hearing examiner shall
16 not become final until they have been formally approved by the board.
17 This authorization to use hearing examiners does not waive the
18 requirement of RCW 36.70A.300 that final orders be issued within one
19 hundred eighty days of board receipt of a petition.

20 (6) Each board shall make findings of fact and prepare a written
21 decision in each case decided by it, and such findings and decision
22 shall be effective upon being signed by two or more members of the
23 board and upon being filed at the board's principal office, and shall
24 be open for public inspection at all reasonable times.

25 (7) All proceedings before the board, any of its members, or a
26 hearing examiner appointed by the board shall be conducted in
27 accordance with such administrative rules of practice and procedure as
28 the boards jointly prescribe. All three boards shall jointly meet to
29 develop and adopt joint rules of practice and procedure, including
30 rules regarding expeditious and summary disposition of appeals. The
31 boards shall publish such rules and decisions they render and arrange
32 for the reasonable distribution of the rules and decisions. Except as
33 it conflicts with specific provisions of this chapter, the
34 administrative procedure act, chapter 34.05 RCW, and specifically
35 including the provisions of RCW 34.05.455 governing ex parte
36 communications, shall govern the practice and procedure of the boards.

37 (8) A board member or hearing examiner is subject to
38 disqualification under chapter 34.05 RCW. The joint rules of practice

1 of the boards shall establish procedures by which a party to a hearing
2 conducted before the board may file with the board a motion to
3 disqualify, with supporting affidavit, against a board member or
4 hearing examiner assigned to preside at the hearing.

5 (9) The members of the boards shall meet jointly on at least an
6 annual basis with the objective of sharing information that promotes
7 the goals and purposes of this chapter.

8 **Sec. 17.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
9 read as follows:

10 (1) All requests for review to a growth management hearings board
11 shall be initiated by filing a petition that includes a detailed
12 statement of issues presented for resolution by the board. The board
13 shall render written decisions articulating the basis for its holdings.
14 The board shall not issue advisory opinions on issues not presented to
15 the board in the statement of issues, as modified by any prehearing
16 order.

17 (2) All petitions relating to whether or not an adopted
18 comprehensive plan, development regulation, or permanent amendment
19 thereto, is in compliance with the goals and requirements of this
20 chapter or chapter 90.58 or 43.21C RCW must be filed within (~~sixty~~)
21 thirty days after publication by the legislative bodies of the county
22 or city.

23 (a) Except as provided in (c) of this subsection, the date of
24 publication for a city shall be the date the city publishes the
25 ordinance, or summary of the ordinance, adopting the comprehensive plan
26 or development regulations, or amendment thereto, as is required to be
27 published.

28 (b) Promptly after adoption, a county shall publish a notice that
29 it has adopted the comprehensive plan or development regulations, or
30 amendment thereto.

31 Except as provided in (c) of this subsection, for purposes of this
32 section the date of publication for a county shall be the date the
33 county publishes the notice that it has adopted the comprehensive plan
34 or development regulations, or amendment thereto.

35 (c) For local governments planning under RCW 36.70A.040, promptly
36 after approval or disapproval of a local government's shoreline master
37 program or amendment thereto by the department of ecology as provided

1 in RCW 90.58.090, the local government shall publish a notice that the
2 shoreline master program or amendment thereto has been approved or
3 disapproved by the department of ecology. For purposes of this
4 section, the date of publication for the adoption or amendment of a
5 shoreline master program is the date the local government publishes
6 notice that the shoreline master program or amendment thereto has been
7 approved or disapproved by the department of ecology.

8 (3) Unless the board dismisses the petition as frivolous or finds
9 that the person filing the petition lacks standing, or the parties have
10 filed an agreement to have the case heard in superior court as provided
11 in RCW 36.70A.295, the board shall, within ten days of receipt of the
12 petition, set a time for hearing the matter.

13 (4) The board shall base its decision on the record developed by
14 the city, county, or the state and supplemented with additional
15 evidence if the board determines that such additional evidence would be
16 necessary or of substantial assistance to the board in reaching its
17 decision.

18 (5) The board, shall consolidate, when appropriate, all petitions
19 involving the review of the same comprehensive plan or the same
20 development regulation or regulations.

21 **Sec. 18.** RCW 70.95.094 and 1989 c 431 s 8 are each amended to read
22 as follows:

23 (1) The department and local governments preparing plans are
24 encouraged to work cooperatively during plan development. Each county
25 and city preparing a comprehensive solid waste management plan shall
26 submit a preliminary draft plan to the department for technical review.
27 The department shall review and comment on the draft plan within one
28 hundred twenty days of receipt. The department's comments shall state
29 specific actions or revisions that must be completed for plan approval.

30 (2) Each final draft solid waste management plan shall be submitted
31 to the department for approval. The department will limit its comments
32 on the final draft plans to those issues identified during its review
33 of the draft plan and any other changes made between submittal of the
34 preliminary draft and final draft plans. Disapproval of the local
35 comprehensive solid waste management plan shall be supported by
36 specific findings. A final draft plan shall be deemed approved if the
37 department does not disapprove it within forty-five days of receipt.

1 (3) If the department disapproves a plan or any plan amendments,
2 the submitting entity may appeal the decision (~~(under the procedures of~~
3 ~~Part IV of chapter 34.05 RCW. An administrative law judge shall~~
4 ~~preside over the appeal)~~) to the pollution control hearings board as
5 provided in RCW 43.21B.230. The appeal shall be limited to review of
6 the specific findings which supported the disapproval under subsection
7 (2) of this section.

8 **Sec. 19.** RCW 76.06.180 and 2007 c 480 s 7 are each amended to read
9 as follows:

10 (1) Prior to issuing a forest health hazard warning or forest
11 health hazard order, the commissioner shall consider the findings and
12 recommendations of the forest health technical advisory committee and
13 shall consult with county government officials, forest landowners and
14 forest land managers, consulting foresters, and other interested
15 parties to gather information on the threat, opportunities or
16 constraints on treatment options, and other information they may
17 provide. The commissioner, or a designee, shall conduct a public
18 hearing in a county within the geographical area being considered.

19 (2) The commissioner of public lands may issue a forest health
20 hazard warning when he or she deems such action is necessary to manage
21 the development of a threat to forest health or address an existing
22 threat to forest health. A decision to issue a forest health hazard
23 warning may be based on existing forest stand conditions and:

24 (a) The presence of an uncharacteristic insect or disease outbreak
25 that has or is likely to (i) spread to multiple forest ownerships and
26 cause extensive damage to forests; or (ii) significantly increase
27 forest fuel that is likely to further the spread of uncharacteristic
28 fire;

29 (b) When, due to extensive physical damage from wind or ice storm
30 or other cause, there are (i) insect populations building up to large
31 scale levels; or (ii) significantly increased forest fuels that are
32 likely to further the spread of uncharacteristic fire; or

33 (c) When otherwise determined by the commissioner to be
34 appropriate.

35 (3) The commissioner of public lands may issue a forest health
36 hazard order when he or she deems such action is necessary to address

1 a significant threat to forest health. A decision to issue a forest
2 health hazard order may be based on existing forest stand conditions
3 and:

4 (a) The presence of an uncharacteristic insect or disease outbreak
5 that has (i) spread to multiple forest ownerships and has caused and is
6 likely to continue to cause extensive damage to forests; or (ii)
7 significantly increased forest fuels that are likely to further the
8 spread of uncharacteristic fire;

9 (b) When, due to extensive physical damage from wind or ice storm
10 or other cause (i) insect populations are causing extensive damage to
11 forests; or (ii) significantly increased forest fuels are likely to
12 further the spread of uncharacteristic fire;

13 (c) Insufficient landowner action under a forest health hazard
14 warning; or

15 (d) When otherwise determined by the commissioner to be
16 appropriate.

17 (4) A forest health hazard warning or forest health hazard order
18 shall be issued by use of a commissioner's order. General notice of
19 the commissioner's order shall be published in a newspaper of general
20 circulation in each county within the area covered by the order and on
21 the department's web site. The order shall specify the boundaries of
22 the area affected, including federal and tribal lands, the forest stand
23 conditions that would make a parcel subject to the provisions of the
24 order, and the actions landowners or land managers should take to
25 reduce the hazard.

26 (5) Written notice of a forest health hazard warning or forest
27 health hazard order shall be provided to forest landowners of
28 specifically affected property.

29 (a) The notice shall set forth:

30 (i) The reasons for the action;

31 (ii) The boundaries of the area affected, including federal and
32 tribal lands;

33 (iii) Suggested actions that should be taken by the forest
34 landowner under a forest health hazard warning or the actions that must
35 be taken by a forest landowner under a forest health hazard order;

36 (iv) The time within which such actions should or must be taken;

37 (v) How to obtain information or technical assistance on forest
38 health conditions and treatment options;

1 (vi) The right to (~~request mitigation under subsection (6) of this~~
2 ~~section and~~) appeal under subsection (~~((7))~~) (6) of this section;

3 (vii) These requirements are advisory only for federal and tribal
4 lands.

5 (b) The notice shall be served by personal service or by mail to
6 the latest recorded real property owner, as shown by the records of the
7 county recording officer as defined in RCW 65.08.060. Service by mail
8 is effective on the date of mailing. Proof of service shall be by
9 affidavit or declaration under penalty of perjury.

10 (~~(6) (Forest landowners who have been issued a forest health hazard~~
11 ~~order under subsection (5) of this section may apply to the department~~
12 ~~for the remission or mitigation of such order. The application shall~~
13 ~~be made to the department within fifteen days after notice of the order~~
14 ~~has been served. Upon receipt of the application, the department may~~
15 ~~remit or mitigate the order upon whatever terms the department in its~~
16 ~~discretion deems proper, provided the department deems the remission or~~
17 ~~mitigation to be in the best interests of carrying out the purposes of~~
18 ~~this chapter. The department may ascertain the facts regarding all~~
19 ~~such applications in such reasonable manner and under such rule as it~~
20 ~~deems proper.~~

21 ~~((7))~~) Forest landowners who have been issued a forest health hazard
22 order under subsection (5) of this section may appeal the order to the
23 (~~(forest practices appeals)~~) pollution control hearings board(~~(-~~

24 ~~(a) The appeal shall be filed within thirty days after notice of~~
25 ~~the order has been served, unless application for mitigation has been~~
26 ~~made to the department. When such an application for mitigation is~~
27 ~~made, such appeal shall be filed within thirty days after notice of the~~
28 ~~disposition of the application for mitigation has been served)) as~~

29 provided in RCW 43.21B.230.

30 (~~((b) The appeal must set forth:~~

31 ~~(i) The name and mailing address of the appellant;~~

32 ~~(ii) The name and mailing address of the appellant's attorney, if~~
33 ~~any;~~

34 ~~(iii) A duplicate copy of the forest health hazard order;~~

35 ~~(iv) A separate and concise statement of each error alleged to have~~
36 ~~been committed;~~

37 ~~(v) A concise statement of facts upon which the appellant relies to~~
38 ~~sustain the statement of error; and~~

1 ~~(vi) A statement of the relief requested.~~

2 ~~(8))~~ (7) A forest health hazard order issued under subsection (5)
3 of this section is effective thirty days after date of service unless
4 ~~((application for remission or mitigation is made or))~~ an appeal is
5 filed. ~~((When an application for remission or mitigation is made, the
6 order is effective thirty days after notice setting forth the
7 disposition of the application is served unless an appeal is filed from
8 such disposition.))~~ Whenever an appeal of the order is filed, the
9 order shall become effective only upon completion of all administrative
10 and judicial review proceedings and the issuance of a final decision
11 confirming the order in whole or in part.

12 ~~((9))~~ (8) Upon written request, the department may certify as
13 adequate a forest health management plan developed by a forest
14 landowner, before or in response to a forest health hazard warning or
15 forest health hazard order, if the plan is likely to achieve the
16 desired result and the terms of the plan are being diligently followed
17 by the forest landowner. The certification of adequacy shall be
18 determined by the department in its sole discretion, and be provided to
19 the requestor in writing.

20 **Sec. 20.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are
21 each reenacted and amended to read as follows:

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

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

27 (2) "Appeals board" means the ~~((forest practices appeals))~~
28 pollution control hearings board created by RCW ~~((76.09.210))~~
29 43.21B.005.

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

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

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

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

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

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

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

13 (9) "Department" means the department of natural resources.

14 (10) "Fish passage barrier" means any artificial instream structure
15 that impedes the free passage of fish.

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

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

27 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
28 and the land on which appurtenances necessary to the production,
29 preparation, or sale of crops, fruit, dairy products, fish, and
30 livestock exist.

31 (12) "Forest landowner" means any person in actual control of
32 forest land, whether such control is based either on legal or equitable
33 title, or on any other interest entitling the holder to sell or
34 otherwise dispose of any or all of the timber on such land in any
35 manner. However, any lessee or other person in possession of forest
36 land without legal or equitable title to such land shall be excluded
37 from the definition of "forest landowner" unless such lessee or other

1 person has the right to sell or otherwise dispose of any or all of the
2 timber located on such forest land.

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

- 6 (a) Road and trail construction;
- 7 (b) Harvesting, final and intermediate;
- 8 (c) Precommercial thinning;
- 9 (d) Reforestation;
- 10 (e) Fertilization;
- 11 (f) Prevention and suppression of diseases and insects;
- 12 (g) Salvage of trees; and
- 13 (h) Brush control.

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

20 (14) "Forest practices rules" means any rules adopted pursuant to
21 RCW 76.09.040.

22 (15) "Forest road," as it applies to the operation of the road
23 maintenance and abandonment plan element of the forest practices rules
24 on small forest landowners, means a road or road segment that crosses
25 land that meets the definition of forest land, but excludes residential
26 access roads.

27 (16) "Forest trees" does not include hardwood trees cultivated by
28 agricultural methods in growing cycles shorter than fifteen years if
29 the trees were planted on land that was not in forest use immediately
30 before the trees were planted and before the land was prepared for
31 planting the trees. "Forest trees" includes Christmas trees, but does
32 not include Christmas trees that are cultivated by agricultural
33 methods, as that term is defined in RCW 84.33.035.

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

36 (18) "Operator" means any person engaging in forest practices
37 except an employee with wages as his or her sole compensation.

1 (19) "Person" means any individual, partnership, private, public,
2 or municipal corporation, county, the department or other state or
3 local governmental entity, or association of individuals of whatever
4 nature.

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

8 (21) "Small forest landowner" has the same meaning as defined in
9 RCW 76.09.450.

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

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

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

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

29 (26) "Date of receipt" has the same meaning as defined in RCW
30 43.21B.001.

31 **Sec. 21.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to
32 read as follows:

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

35 Class I: Minimal or specific forest practices that have no direct
36 potential for damaging a public resource and that may be conducted
37 without submitting an application or a notification except that when

1 the regulating authority is transferred to a local governmental entity,
2 those Class I forest practices that involve timber harvesting or road
3 construction within "urban growth areas," designated pursuant to
4 chapter 36.70A RCW, are processed as Class IV forest practices, but are
5 not subject to environmental review under chapter 43.21C RCW;

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

15 (a) On lands platted after January 1, 1960, as provided in chapter
16 58.17 RCW or on lands that have or are being converted to another use;

17 (b) Which require approvals under the provisions of the hydraulics
18 act, RCW 77.55.021;

19 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

20 (d) Excluded from Class II by the board; or

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

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

30 Class IV: Forest practices other than those contained in Class I
31 or II: (a) On lands platted after January 1, 1960, as provided in
32 chapter 58.17 RCW, (b) on lands that have or are being converted to
33 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
34 hereafter amended, are not to be reforested because of the likelihood
35 of future conversion to urban development, (d) involving timber
36 harvesting or road construction on lands that are contained within
37 "urban growth areas," designated pursuant to chapter 36.70A RCW, except
38 where the forest landowner provides: (i) A written statement of intent

1 signed by the forest landowner not to convert to a use other than
2 commercial forest product operations for ten years, accompanied by
3 either a written forest management plan acceptable to the department or
4 documentation that the land is enrolled under the provisions of chapter
5 84.33 RCW; or (ii) a conversion option harvest plan approved by the
6 local governmental entity and submitted to the department as part of
7 the application, and/or (e) which have a potential for a substantial
8 impact on the environment and therefore require an evaluation by the
9 department as to whether or not a detailed statement must be prepared
10 pursuant to the state environmental policy act, chapter 43.21C RCW.
11 Such evaluation shall be made within ten days from the date the
12 department receives the application: PROVIDED, That nothing herein
13 shall be construed to prevent any local or regional governmental entity
14 from determining that a detailed statement must be prepared for an
15 action pursuant to a Class IV forest practice taken by that
16 governmental entity concerning the land on which forest practices will
17 be conducted. A Class IV application must be approved or disapproved
18 by the department within thirty calendar days from the date the
19 department receives the application, unless the department determines
20 that a detailed statement must be made, in which case the application
21 must be approved or disapproved by the department within sixty calendar
22 days from the date the department receives the application, unless the
23 commissioner of public lands, through the promulgation of a formal
24 order, determines that the process cannot be completed within such
25 period. However, the applicant may not begin work on that forest
26 practice until all forest practice fees required under RCW 76.09.065
27 have been received by the department.

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

31 (2) Except for those forest practices being regulated by local
32 governmental entities as provided elsewhere in this chapter, no Class
33 II, Class III, or Class IV forest practice shall be commenced or
34 continued after January 1, 1975, unless the department has received a
35 notification with regard to a Class II forest practice or approved an
36 application with regard to a Class III or Class IV forest practice
37 containing all information required by RCW 76.09.060 as now or
38 hereafter amended. However, in the event forest practices regulations

1 necessary for the scheduled implementation of this chapter and RCW
2 90.48.420 have not been adopted in time to meet such schedules, the
3 department shall have the authority to regulate forest practices and
4 approve applications on such terms and conditions consistent with this
5 chapter and RCW 90.48.420 and the purposes and policies of RCW
6 76.09.010 until applicable forest practices regulations are in effect.

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

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

19 (5) Except for those forest practices being regulated by local
20 governmental entities as provided elsewhere in this chapter, the
21 department of natural resources shall notify the applicant in writing
22 of either its approval of the application or its disapproval of the
23 application and the specific manner in which the application fails to
24 comply with the provisions of this section or with the forest practices
25 regulations. Except as provided otherwise in this section, if the
26 department fails to either approve or disapprove an application or any
27 portion thereof within the applicable time limit, the application shall
28 be deemed approved and the operation may be commenced: PROVIDED, That
29 this provision shall not apply to applications which are neither
30 approved nor disapproved pursuant to the provisions of subsection (7)
31 of this section: PROVIDED, FURTHER, That if seasonal field conditions
32 prevent the department from being able to properly evaluate the
33 application, the department may issue an approval conditional upon
34 further review within sixty days: PROVIDED, FURTHER, That the
35 department shall have until April 1, 1975, to approve or disapprove an
36 application involving forest practices allowed to continue to April 1,
37 1975, under the provisions of subsection (2) of this section. Upon
38 receipt of any notification or any satisfactorily completed application

1 the department shall in any event no later than two business days after
2 such receipt transmit a copy to the departments of ecology and fish and
3 wildlife, and to the county, city, or town in whose jurisdiction the
4 forest practice is to be commenced. Any comments by such agencies
5 shall be directed to the department of natural resources.

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

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

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

20 (b) The objections relate to lands either:

21 (i) Platted after January 1, 1960, as provided in chapter 58.17
22 RCW; or

23 (ii) On lands that have or are being converted to another use.

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

36 (8) For those forest practices regulated by the board and the
37 department, in addition to any rights under the above paragraph, the
38 county, city, or town may appeal any department approval of an

1 application with respect to any lands within its jurisdiction. The
2 appeals board may suspend the department's approval in whole or in part
3 pending such appeal where there exists potential for immediate and
4 material damage to a public resource.

5 (9) For those forest practices regulated by the board and the
6 department, appeals under this section shall be made to the appeals
7 board in the manner and time provided in (~~RCW 76.09.220(8)~~) section
8 25 of this act. In such appeals there shall be no presumption of
9 correctness of either the county, city, or town or the department
10 position.

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

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

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

25 **Sec. 22.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to
26 read as follows:

27 (1) The department shall have the authority to serve upon an
28 operator a stop work order which shall be a final order of the
29 department if:

30 (a) There is any violation of the provisions of this chapter or the
31 forest practices regulations; or

32 (b) There is a deviation from the approved application; or

33 (c) Immediate action is necessary to prevent continuation of or to
34 avoid material damage to a public resource.

35 (2) The stop work order shall set forth:

36 (a) The specific nature, extent, and time of the violation,
37 deviation, damage, or potential damage;

1 (b) An order to stop all work connected with the violation,
2 deviation, damage, or potential damage;

3 (c) The specific course of action needed to correct such violation
4 or deviation or to prevent damage and to correct and/or compensate for
5 damage to public resources which has resulted from any violation,
6 unauthorized deviation, or willful or negligent disregard for potential
7 damage to a public resource; and/or those courses of action necessary
8 to prevent continuing damage to public resources where the damage is
9 resulting from the forest practice activities but has not resulted from
10 any violation, unauthorized deviation, or negligence; and

11 (d) The right of the operator to a hearing before the appeals
12 board.

13 The department shall immediately file a copy of such order with the
14 appeals board and mail a copy thereof to the timber owner and forest
15 land owner at the addresses shown on the application. The operator,
16 timber owner, or forest land owner may commence an appeal to the
17 appeals board within ~~((fifteen))~~ thirty days ~~((after service upon))~~
18 from the date of receipt of the order by the operator. If such appeal
19 is commenced, a hearing shall be held not more than twenty days after
20 copies of the notice of appeal were filed with the appeals board. Such
21 proceeding shall be an adjudicative proceeding within the meaning of
22 chapter 34.05 RCW, the administrative procedure act. The operator
23 shall comply with the order of the department immediately upon being
24 served, but the appeals board if requested shall have authority to
25 continue or discontinue in whole or in part the order of the department
26 under such conditions as it may impose pending the outcome of the
27 proceeding.

28 **Sec. 23.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each
29 amended to read as follows:

30 If a violation, a deviation, material damage or potential for
31 material damage to a public resource has occurred and the department
32 determines that a stop work order is unnecessary, then the department
33 shall issue and serve upon the operator or land owner a notice, which
34 shall clearly set forth:

35 (1)(a) The specific nature, extent, and time of failure to comply
36 with the approved application; or identifying the damage or potential
37 damage; and/or

1 (b) The relevant provisions of this chapter or of the forest
2 practice regulations relating thereto;

3 (2) The right of the operator or land owner to a hearing before the
4 ((department)) appeals board; and

5 (3) The specific course of action ordered by the department to be
6 followed by the operator to correct such failure to comply and to
7 prevent, correct and/or compensate for material damage to public
8 resources which resulted from any violation, unauthorized deviation, or
9 wilful or negligent disregard for potential damage to a public
10 resource; and/or those courses of action necessary to prevent
11 continuing damage to public resources where the damage is resulting
12 from the forest practice activities but has not resulted from any
13 violation, unauthorized deviation, or negligence.

14 The department shall mail a copy thereof to the forest land owner
15 and the timber owner at the addresses shown on the application, showing
16 the date of service upon the operator. Such notice to comply shall
17 become a final order of the department(~~(:—PROVIDED, That no direct
18 appeal to the appeals board will be allowed from such final order.
19 Such operator shall undertake the course of action so ordered by the
20 department unless, within fifteen days after the date of service of
21 such notice to comply, the operator, forest land owner, or timber
22 owner, shall request the department in writing to schedule a hearing.
23 If so requested, the department shall schedule a hearing on a date not
24 more than twenty days after receiving such request. Within ten days
25 after such hearing, the department shall issue a final order either
26 withdrawing its notice to comply or clearly setting forth the specific
27 course of action to be followed by such operator))~~). Such operator
28 shall undertake the course of action so ordered by the department
29 unless within thirty days after the date of receipt of such final
30 order, the operator, forest land owner, or timber owner appeals such
31 final order to the appeals board.

32 No person shall be under any obligation under this section to
33 prevent, correct, or compensate for any damage to public resources
34 which occurs more than one year after the date of completion of the
35 forest practices operations involved exclusive of reforestation, unless
36 such forest practices were not conducted in accordance with forest
37 practices rules and regulations: PROVIDED, That this provision shall
38 not relieve the forest land owner from any obligation to comply with

1 forest practices rules and regulations pertaining to providing
2 continuing road maintenance. No action to recover damages shall be
3 taken under this section more than two years after the date the damage
4 involved occurs.

5 **Sec. 24.** RCW 76.09.170 and 1999 sp.s. c 4 s 803 are each amended
6 to read as follows:

7 (1) Every person who violates any provision of RCW 76.09.010
8 through 76.09.280 or of the forest practices rules, or who converts
9 forest land to a use other than commercial timber operation within
10 three years after completion of the forest practice without the consent
11 of the county, city, or town, shall be subject to a penalty in an
12 amount of not more than ten thousand dollars for every such violation.
13 Each and every such violation shall be a separate and distinct offense.
14 In case of a failure to comply with a stop work order, every day's
15 continuance shall be a separate and distinct violation. Every person
16 who through an act of commission or omission procures, aids or abets in
17 the violation shall be considered to have violated the provisions of
18 this section and shall be subject to the penalty in this section. No
19 penalty shall be imposed under this section upon any governmental
20 official, an employee of any governmental department, agency, or
21 entity, or a member of any board or advisory committee created by this
22 chapter for any act or omission in his or her duties in the
23 administration of this chapter or of any rule adopted under this
24 chapter.

25 (2) The department shall develop and recommend to the board a
26 penalty schedule to determine the amount to be imposed under this
27 section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,
28 such penalty schedule to be effective no later than January 1, 1994.
29 The schedule shall be developed in consideration of the following:

- 30 (a) Previous violation history;
- 31 (b) Severity of the impact on public resources;
- 32 (c) Whether the violation of this chapter or its rules was
33 intentional;
- 34 (d) Cooperation with the department;
- 35 (e) Repairability of the adverse effect from the violation; and
- 36 (f) The extent to which a penalty to be imposed on a forest

1 landowner for a forest practice violation committed by another should
2 be reduced because the owner was unaware of the violation and has not
3 received substantial economic benefits from the violation.

4 (3) The penalty in this section shall be imposed by a notice in
5 writing, either by certified mail with return receipt requested or by
6 personal service, to the person incurring the same from the department
7 describing the violation with reasonable particularity. ~~((Within
8 fifteen days after the notice is received, the person incurring the
9 penalty may apply in writing to the department for the remission or
10 mitigation of such penalty. Upon receipt of the application, that
11 department may remit or mitigate the penalty upon whatever terms that
12 department in its discretion deems proper, provided the department
13 deems such remission or mitigation to be in the best interests of
14 carrying out the purposes of this chapter. The department shall have
15 authority to ascertain the facts regarding all such applications in
16 such reasonable manner and under such rule as it may deem proper.))~~

17 (4) Any person incurring a penalty under this section may appeal
18 the penalty to the ~~((forest practices))~~ appeals board. Such appeals
19 shall be filed within thirty days ~~((of))~~ after the date of receipt of
20 ~~((notice imposing any))~~ the penalty ~~((unless an application for
21 remission or mitigation is made to the department. When such an
22 application for remission or mitigation is made, such appeals shall be
23 filed within thirty days of receipt of notice from the department
24 setting forth the disposition of the application for remission or
25 mitigation))~~ in accordance with RCW 43.21B.230 (2) and (3).

26 (5) The penalty imposed under this section shall become due and
27 payable thirty days after receipt of a notice imposing the same unless
28 ~~((application for remission or mitigation is made or))~~ an appeal is
29 filed. ~~((When such an application for remission or mitigation is made,
30 any penalty incurred under this section shall become due and payable
31 thirty days after receipt of notice setting forth the disposition of
32 such application unless an appeal is filed from such disposition.))~~
33 Whenever an appeal of the penalty incurred is filed, the penalty shall
34 become due and payable only upon completion of all administrative and
35 judicial review proceedings and the issuance of a final decision
36 confirming the penalty in whole or in part.

37 (6) If the amount of any penalty is not paid to the department
38 within thirty days after it becomes due and payable, the attorney

1 general, upon the request of the department, shall bring an action in
2 the name of the state of Washington in the superior court of Thurston
3 county or of any county in which such violator may do business, to
4 recover such penalty, interest, costs, and attorneys' fees. In all
5 such actions the procedure and rules of evidence shall be the same as
6 an ordinary civil action except as otherwise provided in this chapter
7 (~~provided~~). In addition to or as an alternative to seeking
8 enforcement of penalties in superior court, the department may bring an
9 action in district court as provided in Title 3 RCW, to collect
10 penalties, interest, costs, and attorneys' fees.

11 (7) Penalties imposed under this section for violations associated
12 with a conversion to a use other than commercial timber operation shall
13 be a lien upon the real property of the person assessed the penalty and
14 the department may collect such amount in the same manner provided in
15 chapter 60.04 RCW for mechanics' liens.

16 (8) Any person incurring a penalty imposed under this section is
17 also responsible for the payment of all costs and attorneys' fees
18 incurred in connection with the penalty and interest accruing on the
19 unpaid penalty amount.

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

22 A person aggrieved by the approval or disapproval of an application
23 to conduct a forest practice or the approval or disapproval of any
24 landscape plan or permit or watershed analysis may seek review from the
25 appeals board by filing a request for the same within thirty days from
26 the date of receipt of the decision. Concurrently with the filing of
27 any request for review with the board as provided in this section, the
28 requestor must file a copy of his or her request with the department
29 and the attorney general. The attorney general may intervene to
30 protect the public interest and ensure that the provisions of this
31 chapter are complied with.

32 **Sec. 26.** RCW 76.09.310 and 1987 c 95 s 4 are each amended to read
33 as follows:

34 (1) The department shall send a notice to all forest landowners,
35 both public and private, within the geographic area selected for

1 review, stating that the department intends to study the area as part
2 of the hazard-reduction program.

3 (2) The department shall prepare a proposed plan for each
4 geographic area studied. The department shall provide the proposed
5 plan to affected landowners, Indian tribes, interested parties, and to
6 the advisory committee, if established pursuant to RCW 76.09.305.

7 (3) Any aggrieved landowners, agencies, tribes, and other persons
8 who object to any or all of the proposed hazard-reduction plan may,
9 within thirty days of issuance of the plan, request the department in
10 writing to schedule a conference. If so requested, the department
11 shall schedule a conference on a date not more than thirty days after
12 receiving such request.

13 (4) Within ten days after such a conference, the department shall
14 either amend the proposed plan or respond in writing indicating why the
15 objections were not incorporated into the plan.

16 (5) Within one hundred twenty days following the issuance of the
17 proposed plan as provided in subsection (2) of this section, the
18 department shall distribute a final hazard-reduction plan designating
19 those sites for which hazard-reduction measures are recommended and
20 those sites where no action is recommended. For each hazard-reduction
21 measure recommended, a description of the work and cost estimate shall
22 be provided.

23 (6) Any aggrieved landowners, agencies, tribes, and other persons
24 are entitled to appeal the final hazard-reduction plan to the (~~forest~~
25 ~~practices~~) appeals board if, within thirty days of the issuance of the
26 final plan, the party transmits a notice of appeal to the (~~forest~~
27 ~~practices~~) appeals board and to the department.

28 (7) A landowner's failure to object to the recommendations or to
29 appeal the final hazard-reduction plan shall not be deemed an admission
30 that the hazard-reduction recommendations are appropriate.

31 (8) The department shall provide a copy of the final hazard-
32 reduction plan to the department of ecology and to each affected
33 county.

34 **Sec. 27.** RCW 77.55.011 and 2009 c 549 s 1028 are each amended to
35 read as follows:

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

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

6 (2) "Board" means the (~~hydraulic appeals~~) pollution control
7 hearings board created in chapter 43.21B RCW (~~(77.55.301)~~).

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

9 (4) "Department" means the department of fish and wildlife.

10 (5) "Director" means the director of the department of fish and
11 wildlife.

12 (6) "Emergency" means an immediate threat to life, the public,
13 property, or of environmental degradation.

14 (7) "Hydraulic project" means the construction or performance of
15 work that will use, divert, obstruct, or change the natural flow or bed
16 of any of the salt or freshwaters of the state.

17 (8) "Imminent danger" means a threat by weather, water flow, or
18 other natural conditions that is likely to occur within sixty days of
19 a request for a permit application.

20 (9) "Marina" means a public or private facility providing boat
21 moorage space, fuel, or commercial services. Commercial services
22 include but are not limited to overnight or live-aboard boating
23 accommodations.

24 (10) "Marine terminal" means a public or private commercial wharf
25 located in the navigable water of the state and used, or intended to be
26 used, as a port or facility for the storing, handling, transferring, or
27 transporting of goods to and from vessels.

28 (11) "Ordinary high water line" means the mark on the shores of all
29 water that will be found by examining the bed and banks and
30 ascertaining where the presence and action of waters are so common and
31 usual, and so long continued in ordinary years as to mark upon the soil
32 or vegetation a character distinct from the abutting upland. Provided,
33 that in any area where the ordinary high water line cannot be found,
34 the ordinary high water line adjoining saltwater is the line of mean
35 higher high water and the ordinary high water line adjoining fresh
36 water is the elevation of the mean annual flood.

37 (12) "Permit" means a hydraulic project approval permit issued
38 under this chapter.

1 (13) "Sandbars" includes, but is not limited to, sand, gravel,
2 rock, silt, and sediments.

3 (14) "Small scale prospecting and mining" means the use of only the
4 following methods: Pans; nonmotorized sluice boxes; concentrators; and
5 minirocker boxes for the discovery and recovery of minerals.

6 (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds"
7 have the same meanings as defined in RCW 17.26.020.

8 (16) "Streambank stabilization" means those projects that prevent
9 or limit erosion, slippage, and mass wasting. These projects include,
10 but are not limited to, bank resloping, log and debris relocation or
11 removal, planting of woody vegetation, bank protection using rock or
12 woody material or placement of jetties or groins, gravel removal, or
13 erosion control.

14 (17) "Tide gate" means a one-way check valve that prevents the
15 backflow of tidal water.

16 (18) "Waters of the state" and "state waters" means all salt and
17 fresh waters waterward of the ordinary high water line and within the
18 territorial boundary of the state.

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

21 **Sec. 28.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read
22 as follows:

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

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

- 31 (a) General plans for the overall project;
- 32 (b) Complete plans and specifications of the proposed construction
33 or work within the mean higher high water line in saltwater or within
34 the ordinary high water line in freshwater;
- 35 (c) Complete plans and specifications for the proper protection of
36 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.

4 (3)(a) Protection of fish life is the only ground upon which
5 approval of a permit may be denied or conditioned. Approval of a
6 permit may not be unreasonably withheld or unreasonably conditioned.
7 Except as provided in this subsection and subsections (8), (10), and
8 (12) of this section, the department has forty-five calendar days upon
9 receipt of a complete application to grant or deny approval of a
10 permit. The forty-five day requirement is suspended if:

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

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

15 (iii) The applicant requests a delay; or

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

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

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

25 (4) If the department denies approval of a permit, the department
26 shall provide the applicant a written statement of the specific reasons
27 why and how the proposed project would adversely affect fish life.

28 (a) Except as provided in (b) of this subsection, issuance, denial,
29 conditioning, or modification of a permit shall be appealable to ((the
30 department or)) the board ((as specified in RCW 77.55.301)) within
31 thirty days from the date of receipt of the ((notice of)) decision as
32 provided in RCW 43.21B.230.

33 (b) Issuance, denial, conditioning, or modification of a permit may
34 be informally appealed to the department within thirty days from the
35 date of receipt of the decision. Requests for informal appeals must be
36 filed in the form and manner prescribed by the department by rule. A
37 permit decision that has been informally appealed to the department is

1 appealable to the board within thirty days from the date of receipt of
2 the department's decision on the informal appeal.

3 (5)(a) The permittee must demonstrate substantial progress on
4 construction of that portion of the project relating to the permit
5 within two years of the date of issuance.

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

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

19 (6) The department may, after consultation with the permittee,
20 modify a permit due to changed conditions. The modification (~~becomes~~
21 ~~effective unless appealed to the department or the board as specified~~
22 ~~in RCW 77.55.301 within thirty days from the notice of the proposed~~
23 ~~modification~~) is appealable as provided in subsection (4) of this
24 section. For hydraulic projects that divert water for agricultural
25 irrigation or stock watering purposes, or when the hydraulic project or
26 other work is associated with streambank stabilization to protect farm
27 and agricultural land as defined in RCW 84.34.020, the burden is on the
28 department to show that changed conditions warrant the modification in
29 order to protect fish life.

30 (7) A permittee may request modification of a permit due to changed
31 conditions. The request must be processed within forty-five calendar
32 days of receipt of the written request. A decision by the department
33 (~~may be appealed to the board within thirty days of the notice of the~~
34 ~~decision~~) is appealable as provided in subsection (4) of this section.
35 For hydraulic projects that divert water for agricultural irrigation or
36 stock watering purposes, or when the hydraulic project or other work is
37 associated with streambank stabilization to protect farm and

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

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

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

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

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

29 (10) The department or the county legislative authority may
30 determine an imminent danger exists. The county legislative authority
31 shall notify the department, in writing, if it determines that an
32 imminent danger exists. In cases of imminent danger, the department
33 shall issue an expedited written permit, upon request, for work to
34 remove any obstructions, repair existing structures, restore banks,
35 protect fish resources, or protect property. Expedited permit requests
36 require a complete written application as provided in subsection (2) of
37 this section and must be issued within fifteen calendar days of the
38 receipt of a complete written application. Approval of an expedited

1 permit is valid for up to sixty days from the date of issuance. The
2 department may not require the provisions of the state environmental
3 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
4 permit under this subsection.

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

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

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

34 **Sec. 29.** RCW 77.55.141 and 2005 c 146 s 501 are each amended to
35 read as follows:

36 (1) In order to protect the property of marine waterfront shoreline

1 owners it is necessary to facilitate issuance of permits for bulkheads
2 or rockwalls under certain conditions.

3 (2) The department shall issue a permit with or without conditions
4 within forty-five days of receipt of a complete and accurate
5 application which authorizes commencement of construction, replacement,
6 or repair of a marine beach front protective bulkhead or rockwall for
7 single-family type residences or property under the following
8 conditions:

9 (a) The waterward face of a new bulkhead or rockwall shall be
10 located only as far waterward as is necessary to excavate for footings
11 or place base rock for the structure and under no conditions shall be
12 located more than six feet waterward of the ordinary high water line;

13 (b) Any bulkhead or rockwall to replace or repair an existing
14 bulkhead or rockwall shall be placed along the same alignment as the
15 bulkhead or rockwall it is replacing. However, the replaced or
16 repaired bulkhead or rockwall may be placed waterward of and directly
17 abutting the existing structure only in cases where removal of the
18 existing bulkhead or rockwall would result in environmental degradation
19 or removal problems related to geological, engineering, or safety
20 considerations; and

21 (c) Construction of a new bulkhead or rockwall, or replacement or
22 repair of an existing bulkhead or rockwall waterward of the existing
23 structure shall not result in the permanent loss of critical food fish
24 or shellfish habitats; and

25 (d) Timing constraints shall be applied on a case-by-case basis for
26 the protection of critical habitats, including but not limited to
27 migration corridors, rearing and feeding areas, and spawning habitats,
28 for the proper protection of fish life.

29 (3) Any bulkhead or rockwall construction, replacement, or repair
30 not meeting the conditions in this section shall be processed under
31 this chapter in the same manner as any other application.

32 (4) Any person aggrieved by the approval, denial, conditioning, or
33 modification of a permit under this section may (~~formally~~) appeal the
34 decision (~~to the board pursuant to this chapter~~) as provided in RCW
35 77.55.021(4).

36 **Sec. 30.** RCW 77.55.181 and 2005 c 146 s 505 are each amended to
37 read as follows:

1 (1) In order to receive the permit review and approval process
2 created in this section, a fish habitat enhancement project must meet
3 the criteria under (a) and (b) of this subsection:

4 (a) A fish habitat enhancement project must be a project to
5 accomplish one or more of the following tasks:

6 (i) Elimination of human-made fish passage barriers, including
7 culvert repair and replacement;

8 (ii) Restoration of an eroded or unstable streambank employing the
9 principle of bioengineering, including limited use of rock as a
10 stabilization only at the toe of the bank, and with primary emphasis on
11 using native vegetation to control the erosive forces of flowing water;
12 or

13 (iii) Placement of woody debris or other instream structures that
14 benefit naturally reproducing fish stocks.

15 The department shall develop size or scale threshold tests to
16 determine if projects accomplishing any of these tasks should be
17 evaluated under the process created in this section or under other
18 project review and approval processes. A project proposal shall not be
19 reviewed under the process created in this section if the department
20 determines that the scale of the project raises concerns regarding
21 public health and safety; and

22 (b) A fish habitat enhancement project must be approved in one of
23 the following ways:

24 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

25 (ii) By the sponsor of a watershed restoration plan as provided in
26 chapter 89.08 RCW;

27 (iii) By the department as a department-sponsored fish habitat
28 enhancement or restoration project;

29 (iv) Through the review and approval process for the jobs for the
30 environment program;

31 (v) Through the review and approval process for conservation
32 district-sponsored projects, where the project complies with design
33 standards established by the conservation commission through
34 interagency agreement with the United States fish and wildlife service
35 and the natural resource conservation service;

36 (vi) Through a formal grant program established by the legislature
37 or the department for fish habitat enhancement or restoration; and

1 (vii) Through other formal review and approval processes
2 established by the legislature.

3 (2) Fish habitat enhancement projects meeting the criteria of
4 subsection (1) of this section are expected to result in beneficial
5 impacts to the environment. Decisions pertaining to fish habitat
6 enhancement projects meeting the criteria of subsection (1) of this
7 section and being reviewed and approved according to the provisions of
8 this section are not subject to the requirements of RCW
9 43.21C.030(2)(c).

10 (3)(a) A permit is required for projects that meet the criteria of
11 subsection (1) of this section and are being reviewed and approved
12 under this section. An applicant shall use a joint aquatic resource
13 permit application form developed by the office of regulatory
14 assistance to apply for approval under this chapter. On the same day,
15 the applicant shall provide copies of the completed application form to
16 the department and to each appropriate local government. Local
17 governments shall accept the application as notice of the proposed
18 project. The department shall provide a fifteen-day comment period
19 during which it will receive comments regarding environmental impacts.
20 Within forty-five days, the department shall either issue a permit,
21 with or without conditions, deny approval, or make a determination that
22 the review and approval process created by this section is not
23 appropriate for the proposed project. The department shall base this
24 determination on identification during the comment period of adverse
25 impacts that cannot be mitigated by the conditioning of a permit. If
26 the department determines that the review and approval process created
27 by this section is not appropriate for the proposed project, the
28 department shall notify the applicant and the appropriate local
29 governments of its determination. The applicant may reapply for
30 approval of the project under other review and approval processes.

31 (b) Any person aggrieved by the approval, denial, conditioning, or
32 modification of a permit under this section may ~~((formally))~~ appeal the
33 decision ~~((to the board pursuant to the provisions of this chapter))~~ as
34 provided in RCW 77.55.021(4).

35 (4) No local government may require permits or charge fees for fish
36 habitat enhancement projects that meet the criteria of subsection (1)
37 of this section and that are reviewed and approved according to the
38 provisions of this section.

1 **Sec. 31.** RCW 77.55.241 and 2005 c 146 s 602 are each amended to
2 read as follows:

3 (1) The legislature finds that the construction of hydraulic
4 projects may require mitigation for the protection of fish life, and
5 that the mitigation may be most cost-effective and provide the most
6 benefit to the fish resource if the mitigation is allowed to be applied
7 in locations that are off-site of the hydraulic project location. The
8 department may approve off-site mitigation plans that are submitted by
9 permit applicants.

10 (2) If a permit applicant proposes off-site mitigation and the
11 department does not approve the permit or conditions the permit in such
12 a manner as to render off-site mitigation unpracticable, the project
13 proponent (~~((must be given the opportunity to submit the permit
14 application to the board for approval))~~) may appeal the decision as
15 provided in RCW 77.55.021(4).

16 **Sec. 32.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to
17 read as follows:

18 (1) The department may levy civil penalties of up to one hundred
19 dollars per day for violation of any provisions of RCW 77.55.021. The
20 penalty provided shall be imposed by notice in writing, either by
21 certified mail or personal service to the person incurring the penalty,
22 from the director or the director's designee describing the violation.

23 (2)(a) Except as provided in (b) of this subsection, any person
24 incurring any penalty under this chapter may appeal the same under
25 chapter 34.05 RCW to the ((director)) board. Appeals shall be filed
26 within thirty days from the date of receipt of ((notice imposing any))
27 the penalty in accordance with RCW 43.21B.230.

28 (b) Issuance of a civil penalty may be informally appealed to the
29 department within thirty days from the date of receipt of the penalty.
30 Requests for informal appeal must be filed in the form and manner
31 prescribed by the department by rule. A civil penalty that has been
32 informally appealed to the department is appealable to the board within
33 thirty days from the date of receipt of the department's decision on
34 the informal appeal.

35 (3) The penalty imposed shall become due and payable thirty days
36 after receipt of a notice imposing the penalty unless an appeal is
37 filed. Whenever an appeal of any penalty incurred under this chapter

1 is filed, the penalty shall become due and payable only upon completion
2 of all review proceedings and the issuance of a final order confirming
3 the penalty in whole or in part.

4 (4) If the amount of any penalty is not paid within thirty days
5 after it becomes due and payable, the attorney general, upon the
6 request of the director, shall bring an action in the name of the state
7 of Washington in the superior court of Thurston county or of any county
8 in which such violator may do business, to recover such penalty. In
9 all such actions the procedure and rules of evidence shall be the same
10 as an ordinary civil action. All penalties recovered under this
11 section shall be paid into the state's general fund.

12 **Sec. 33.** RCW 78.44.270 and 1993 c 518 s 35 are each amended to
13 read as follows:

14 (~~Appeals from~~) Department determinations under this chapter
15 (~~shall be made as follows:~~

16 ~~Appeals from department determinations made under this chapter~~
17 ~~shall be made under the provisions of the Administrative Procedure Act~~
18 ~~(chapter 34.05 RCW), and shall be considered an adjudicative proceeding~~
19 ~~within the meaning of the Administrative Procedure Act, chapter 34.05~~
20 ~~RCW)) may be appealed to the pollution control hearings board as~~
21 ~~provided in RCW 43.21B.230. Only a person aggrieved within the meaning~~
22 ~~of RCW 34.05.530 has standing and can file an appeal.~~

23 **Sec. 34.** RCW 78.44.380 and 2007 c 192 s 3 are each amended to read
24 as follows:

25 (1) The department may issue an order to stop all surface mining to
26 any permit holder, miner, or other person who authorizes, directs, or
27 conducts such activities without a valid surface mine reclamation
28 permit. This order is effective upon issuance unless otherwise stated
29 in the order. Administrative appeal of the order to stop work does not
30 stay the stop work requirement. The department shall notify the local
31 jurisdiction of record when a stop work order has been issued for
32 operating without a valid reclamation permit.

33 (2) The department may issue an order to stop surface mining
34 occurring outside of any permit area to a permit holder that does not
35 have a legal right to occupy the affected area. This order is

1 effective upon issuance unless otherwise stated in the order. An
2 administrative appeal of the order to stop work does not stay the stop
3 work requirement.

4 (3) Where a permit holder is conducting surface mining activities
5 outside of its permit boundary, but within land that it has the right
6 to occupy, the department may issue an order to stop surface mining or
7 mining-related activities occurring outside of the authorized area
8 after the permit holder fails to comply with a notice of correction.
9 The notice of correction must specify the corrections necessary as per
10 the violation and provide a reasonable time to do so. This order is
11 effective upon issuance unless otherwise stated in the order. An
12 administrative appeal of the order to stop work does not stay the stop
13 work requirement.

14 (4) Stop work orders must be in writing, delivered by United States
15 certified mail with return receipt requested, facsimile, or by hand to
16 the permit holder of record. The order must state the facts supporting
17 the violation, the law being violated, and the specific activities
18 being stopped. Stop work orders must be signed by the state geologist
19 or an assistant state geologist. The (~~department~~) pollution control
20 hearings board shall proceed as quickly as feasible to complete any
21 requested adjudicative proceedings unless the parties stipulate to an
22 appeal timeline or the department's stop work order states that it is
23 not effective until after the administrative review process. If the
24 recipient appeals the order, the recipient may file a motion for stay
25 with the presiding officer, which will be reviewed under (~~preliminary~~
26 ~~injunction standards~~) RCW 43.21B.320.

27 **Sec. 35.** RCW 79.100.120 and 2006 c 153 s 5 are each amended to
28 read as follows:

29 (1) A person seeking to contest an authorized public entity's
30 decision to take temporary possession or custody of a vessel under this
31 chapter, or to contest the amount of reimbursement owed to an
32 authorized public entity under this chapter, may request a hearing in
33 accordance with this section.

34 (2)(a) If the contested decision or action was undertaken by a
35 state agency, a written request for a hearing related to the decision
36 or action must be filed with the (~~aquatic resources division of the~~
37 ~~department~~) pollution control hearings board and served on the state

1 agency in accordance with RCW 43.21B.230 (2) and (3) within ((twenty))
2 thirty days of the date the authorized public entity acquires custody
3 of the vessel under RCW 79.100.040, or if the vessel is redeemed before
4 the authorized public entity acquires custody, the date of redemption,
5 or the right to a hearing is deemed waived and the vessel's owner is
6 liable for any costs owed the authorized public entity. In the event
7 of litigation, the prevailing party is entitled to reasonable
8 attorneys' fees and costs.

9 (b) Upon receipt of a timely hearing request, the ((department))
10 pollution control hearings board shall proceed to hear and determine
11 the validity of the decision to take the vessel into temporary
12 possession or custody and the reasonableness of any towing, storage, or
13 other charges permitted under this chapter. Within five business days
14 after the request for a hearing is filed, the ((department)) pollution
15 control hearings board shall notify the vessel owner requesting the
16 hearing and the authorized public entity of the date, time, and
17 location for the hearing. Unless the vessel is redeemed before the
18 request for hearing is filed, the ((department)) pollution control
19 hearings board shall set the hearing on a date that is within ten
20 business days of the filing of the request for hearing. If the vessel
21 is redeemed before the request for a hearing is filed, the
22 ((department)) pollution control hearings board shall set the hearing
23 on a date that is within sixty days of the filing of the request for
24 hearing. A proceeding brought under this subsection may be heard by
25 one member of the pollution control hearings board, whose decision is
26 the final decision of the board.

27 (3)(a) If the contested decision or action was undertaken by a
28 metropolitan park district, port district, city, town, or county, which
29 has adopted rules or procedures for contesting decisions or actions
30 pertaining to derelict or abandoned vessels, those rules or procedures
31 must be followed in order to contest a decision to take temporary
32 possession or custody of a vessel, or to contest the amount of
33 reimbursement owed.

34 (b) If the metropolitan park district, port district, city, town,
35 or county has not adopted rules or procedures for contesting decisions
36 or actions pertaining to derelict or abandoned vessels, then a person
37 requesting a hearing under this section must follow the procedure

1 established in RCW 53.08.320(5) for contesting the decisions or actions
2 of moorage facility operators.

3 **Sec. 36.** RCW 84.33.0775 and 1999 sp.s. c 5 s 1 are each amended to
4 read as follows:

5 (1) A taxpayer is allowed a credit against the tax imposed under
6 RCW 84.33.041 for timber harvested on and after January 1, 2000, under
7 a forest practices notification filed or application approved under RCW
8 76.09.050 and subject to enhanced aquatic resources requirements.

9 (2)(a) For a person other than a small harvester who elects to
10 calculate tax under RCW 84.33.074, the credit is equal to the stumpage
11 value of timber harvested for sale or for commercial or industrial use
12 multiplied by eight-tenths of one percent.

13 (b) For a small harvester who elects to calculate tax under RCW
14 84.33.074, the credit is equal to sixteen percent of the tax imposed
15 under this chapter.

16 (c) The amount of credit claimed by a taxpayer under this section
17 shall be reduced by the amount of any compensation received from the
18 federal government for reduced timber harvest due to enhanced aquatic
19 resource requirements. If the amount of compensation from the federal
20 government exceeds the amount of credit available to a taxpayer in any
21 reporting period, the excess shall be carried forward and applied
22 against credits in future reporting periods. This subsection does not
23 apply to small harvesters as defined in RCW 84.33.073.

24 (d) Refunds may not be given in place of credits. Credit may not
25 be claimed in excess of tax owed. The department of revenue shall
26 disallow any credits, used or unused, upon written notification from
27 the department of natural resources of a final decision that timber for
28 which credit was claimed was not harvested under a forest practices
29 notification filed or application approved under RCW 76.09.050 and
30 subject to enhanced aquatic resources requirements.

31 (3) As used in this section, a forest (~~(practice[s])~~) practices
32 notification or application is subject to enhanced aquatic resource
33 requirements if it includes, in whole or in part, riparian area,
34 wetland, or steep or unstable slope from which the operator is limited,
35 by rule adopted under RCW 76.09.055, 34.05.090, 43.21C.250, and
36 76.09.370, or any federally approved habitat conservation plan or
37 department of natural resources approved watershed analysis, from

1 harvesting timber, or if a road is included within or adjacent to the
2 area covered by such notification or application and the road is
3 covered by a road maintenance plan approved by the department of
4 natural resources under rules adopted under chapter 76.09 RCW, the
5 forest practices act, or a federally approved habitat conservation
6 plan.

7 (4) For forest practices notification or applications submitted
8 after January 1, 2000, the department of natural resources shall
9 indicate whether the notification or application is subject to enhanced
10 aquatic resource requirements and, unless notified of a contrary
11 determination by the ((~~forest practices appeals board~~)) pollution
12 control hearings board, the department of revenue shall use such
13 indication in determining the credit to be allowed against the tax
14 assessed under RCW 84.33.041. The department of natural resources
15 shall develop revisions to the form of the forest practices
16 notifications and applications to provide a space for the applicant to
17 indicate and the department of natural resources to confirm or not
18 confirm, whether the notification or application is subject to enhanced
19 aquatic resource requirements. For forest practices notifications or
20 applications submitted before January 1, 2000, the applicant may submit
21 the approved notification or application to the department of natural
22 resources for confirmation that the notification or application is
23 subject to enhanced aquatic resource requirements. Upon any such
24 submission, the department of natural resources will within thirty days
25 confirm or deny that the notification or application is subject to
26 enhanced aquatic resource requirements and will forward separate
27 evidence of each confirmation to the department of revenue. Unless
28 notified of a contrary ruling by the ((~~forest practices appeals board~~))
29 pollution control hearings board, the department of revenue shall use
30 the separate confirmations in determining the credit to be allowed
31 against the tax assessed under RCW 84.33.041.

32 (5) A refusal by the department of natural resources to confirm
33 that a notification or application is subject to enhanced aquatic
34 resources requirements may be appealed to the ((~~forest practices~~
35 ~~appeals board under RCW 76.09.220~~)) pollution control hearings board.

36 (6) A person receiving approval of credit must keep records
37 necessary for the department of revenue to verify eligibility under
38 this section.

1 **Sec. 37.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
2 read as follows:

3 (1) A development shall not be undertaken on the shorelines of the
4 state unless it is consistent with the policy of this chapter and,
5 after adoption or approval, as appropriate, the applicable guidelines,
6 rules, or master program.

7 (2) A substantial development shall not be undertaken on shorelines
8 of the state without first obtaining a permit from the government
9 entity having administrative jurisdiction under this chapter.

10 A permit shall be granted:

11 (a) From June 1, 1971, until such time as an applicable master
12 program has become effective, only when the development proposed is
13 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
14 adoption, the guidelines and rules of the department; and (iii) so far
15 as can be ascertained, the master program being developed for the area;

16 (b) After adoption or approval, as appropriate, by the department
17 of an applicable master program, only when the development proposed is
18 consistent with the applicable master program and this chapter.

19 (3) The local government shall establish a program, consistent with
20 rules adopted by the department, for the administration and enforcement
21 of the permit system provided in this section. The administration of
22 the system so established shall be performed exclusively by the local
23 government.

24 (4) Except as otherwise specifically provided in subsection (11) of
25 this section, the local government shall require notification of the
26 public of all applications for permits governed by any permit system
27 established pursuant to subsection (3) of this section by ensuring that
28 notice of the application is given by at least one of the following
29 methods:

30 (a) Mailing of the notice to the latest recorded real property
31 owners as shown by the records of the county assessor within at least
32 three hundred feet of the boundary of the property upon which the
33 substantial development is proposed;

34 (b) Posting of the notice in a conspicuous manner on the property
35 upon which the project is to be constructed; or

36 (c) Any other manner deemed appropriate by local authorities to
37 accomplish the objectives of reasonable notice to adjacent landowners
38 and the public.

1 The notices shall include a statement that any person desiring to
2 submit written comments concerning an application, or desiring to
3 receive notification of the final decision concerning an application as
4 expeditiously as possible after the issuance of the decision, may
5 submit the comments or requests for decisions to the local government
6 within thirty days of the last date the notice is to be published
7 pursuant to this subsection. The local government shall forward, in a
8 timely manner following the issuance of a decision, a copy of the
9 decision to each person who submits a request for the decision.

10 If a hearing is to be held on an application, notices of such a
11 hearing shall include a statement that any person may submit oral or
12 written comments on an application at the hearing.

13 (5) The system shall include provisions to assure that construction
14 pursuant to a permit will not begin or be authorized until (~~((twenty-~~
15 ~~one))~~ after thirty days from the date (~~((the permit decision was filed))~~)
16 of receipt as provided in subsection (6) of this section; or until all
17 review proceedings are terminated if the proceedings were initiated
18 within (~~((twenty-one))~~) thirty days from the date of (~~((filing))~~) receipt
19 as defined in subsection (6) of this section except as follows:

20 (a) In the case of any permit issued to the state of Washington,
21 department of transportation, for the construction and modification of
22 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
23 begin after thirty days from the date of filing, and the permits are
24 valid until December 31, 1995;

25 (b) Construction may be commenced no sooner than thirty days after
26 the date of the appeal of the board's decision is filed if a permit is
27 granted by the local government and (i) the granting of the permit is
28 appealed to the shorelines hearings board within (~~((twenty-one))~~) thirty
29 days of the date of (~~((filing))~~) receipt, (ii) the hearings board
30 approves the granting of the permit by the local government or approves
31 a portion of the substantial development for which the local government
32 issued the permit, and (iii) an appeal for judicial review of the
33 hearings board decision is filed pursuant to chapter 34.05 RCW. The
34 appellant may request, within ten days of the filing of the appeal with
35 the court, a hearing before the court to determine whether construction
36 pursuant to the permit approved by the hearings board or to a revised
37 permit issued pursuant to the order of the hearings board should not
38 commence. If, at the conclusion of the hearing, the court finds that

1 construction pursuant to such a permit would involve a significant,
2 irreversible damaging of the environment, the court shall prohibit the
3 permittee from commencing the construction pursuant to the approved or
4 revised permit until all review proceedings are final. Construction
5 pursuant to a permit revised at the direction of the hearings board may
6 begin only on that portion of the substantial development for which the
7 local government had originally issued the permit, and construction
8 pursuant to such a revised permit on other portions of the substantial
9 development may not begin until after all review proceedings are
10 terminated. In such a hearing before the court, the burden of proving
11 whether the construction may involve significant irreversible damage to
12 the environment and demonstrating whether such construction would or
13 would not be appropriate is on the appellant;

14 (c) If the permit is for a substantial development meeting the
15 requirements of subsection (11) of this section, construction pursuant
16 to that permit may not begin or be authorized until (~~(twenty-one)~~)
17 after thirty days from the date (~~(the permit decision was filed)~~) of
18 receipt as provided in subsection (6) of this section.

19 If a permittee begins construction pursuant to subsections (a),
20 (b), or (c) of this subsection, the construction is begun at the
21 permittee's own risk. If, as a result of judicial review, the courts
22 order the removal of any portion of the construction or the restoration
23 of any portion of the environment involved or require the alteration of
24 any portion of a substantial development constructed pursuant to a
25 permit, the permittee is barred from recovering damages or costs
26 involved in adhering to such requirements from the local government
27 that granted the permit, the hearings board, or any appellant or
28 intervener.

29 (6) Any decision on an application for a permit under the authority
30 of this section, whether it is an approval or a denial, shall,
31 concurrently with the transmittal of the ruling to the applicant, be
32 (~~(filed with)~~) transmitted to the department and the attorney general.
33 A petition for review of such a decision must be commenced within
34 thirty days from the date of receipt of the decision. With regard to
35 a permit other than a permit governed by subsection (10) of this
36 section, "date of (~~(filing)~~) receipt" as used herein (~~(means)~~) refers
37 to the date (~~(of actual receipt by the department)~~) that the applicant
38 receives written notice from the department that the department has

1 received the decision. With regard to a permit for a variance or a
2 conditional use, "date of ((filing)) receipt" means the date a local
3 government or applicant receives the written decision of the department
4 rendered on the permit pursuant to subsection (10) of this section ((is
5 ~~transmitted by the department to the local government. The department~~
6 ~~shall notify in writing the local government and the applicant of the~~
7 ~~date of filing)). For the purposes of this subsection, the term "date
8 of receipt" has the same meaning as provided in RCW 43.21B.001.~~

9 (7) Applicants for permits under this section have the burden of
10 proving that a proposed substantial development is consistent with the
11 criteria that must be met before a permit is granted. In any review of
12 the granting or denial of an application for a permit as provided in
13 RCW 90.58.180 (1) and (2), the person requesting the review has the
14 burden of proof.

15 (8) Any permit may, after a hearing with adequate notice to the
16 permittee and the public, be rescinded by the issuing authority upon
17 the finding that a permittee has not complied with conditions of a
18 permit. If the department is of the opinion that noncompliance exists,
19 the department shall provide written notice to the local government and
20 the permittee. If the department is of the opinion that the
21 noncompliance continues to exist thirty days after the date of the
22 notice, and the local government has taken no action to rescind the
23 permit, the department may petition the hearings board for a rescission
24 of the permit upon written notice of the petition to the local
25 government and the permittee if the request by the department is made
26 to the hearings board within ((fifteen)) thirty days of the termination
27 of the thirty-day notice to the local government.

28 (9) The holder of a certification from the governor pursuant to
29 chapter 80.50 RCW shall not be required to obtain a permit under this
30 section.

31 (10) Any permit for a variance or a conditional use by local
32 government under approved master programs must be submitted to the
33 department for its approval or disapproval.

34 (11)(a) An application for a substantial development permit for a
35 limited utility extension or for the construction of a bulkhead or
36 other measures to protect a single family residence and its appurtenant
37 structures from shoreline erosion shall be subject to the following
38 procedures:

1 (i) The public comment period under subsection (4) of this section
2 shall be twenty days. The notice provided under subsection (4) of this
3 section shall state the manner in which the public may obtain a copy of
4 the local government decision on the application no later than two days
5 following its issuance;

6 (ii) The local government shall issue its decision to grant or deny
7 the permit within twenty-one days of the last day of the comment period
8 specified in (i) of this subsection; and

9 (iii) If there is an appeal of the decision to grant or deny the
10 permit to the local government legislative authority, the appeal shall
11 be finally determined by the legislative authority within thirty days.

12 (b) For purposes of this section, a limited utility extension means
13 the extension of a utility service that:

14 (i) Is categorically exempt under chapter 43.21C RCW for one or
15 more of the following: Natural gas, electricity, telephone, water, or
16 sewer;

17 (ii) Will serve an existing use in compliance with this chapter;
18 and

19 (iii) Will not extend more than twenty-five hundred linear feet
20 within the shorelines of the state.

21 **Sec. 38.** RCW 90.58.180 and 2003 c 393 s 22 are each amended to
22 read as follows:

23 (1) Any person aggrieved by the granting, denying, or rescinding of
24 a permit on shorelines of the state pursuant to RCW 90.58.140 may,
25 except as otherwise provided in chapter 43.21L RCW, seek review from
26 the shorelines hearings board by filing a petition for review within
27 ~~((twenty-one))~~ thirty days of the date of ~~((filing))~~ receipt of the
28 decision as ~~((defined))~~ provided for in RCW 90.58.140(6).

29 Within seven days of the filing of any petition for review with the
30 board as provided in this section pertaining to a final decision of a
31 local government, the petitioner shall serve copies of the petition on
32 the department, the office of the attorney general, and the local
33 government. The department and the attorney general may intervene to
34 protect the public interest and ~~((insure))~~ ensure that the provisions
35 of this chapter are complied with at any time within fifteen days from
36 the date of the receipt by the department or the attorney general of a
37 copy of the petition for review filed pursuant to this section. The

1 shorelines hearings board shall schedule review proceedings on the
2 petition for review without regard as to whether the period for the
3 department or the attorney general to intervene has or has not expired.

4 (2) The department or the attorney general may obtain review of any
5 final decision granting a permit, or granting or denying an application
6 for a permit issued by a local government by filing a written petition
7 with the shorelines hearings board and the appropriate local government
8 within ~~((twenty-one))~~ thirty days from the date ~~((the final decision~~
9 ~~was filed))~~ of receipt as provided in RCW 90.58.140(6).

10 (3) The review proceedings authorized in subsections (1) and (2) of
11 this section are subject to the provisions of chapter 34.05 RCW
12 pertaining to procedures in adjudicative proceedings. Judicial review
13 of such proceedings of the shorelines hearings board is governed by
14 chapter 34.05 RCW. The board shall issue its decision on the appeal
15 authorized under subsections (1) and (2) of this section within one
16 hundred eighty days after the date the petition is filed with the board
17 or a petition to intervene is filed by the department or the attorney
18 general, whichever is later. The time period may be extended by the
19 board for a period of thirty days upon a showing of good cause or may
20 be waived by the parties.

21 (4) Any person may appeal any rules, regulations, or guidelines
22 adopted or approved by the department within thirty days of the date of
23 the adoption or approval. The board shall make a final decision within
24 sixty days following the hearing held thereon.

25 (5) The board shall find the rule, regulation, or guideline to be
26 valid and enter a final decision to that effect unless it determines
27 that the rule, regulation, or guideline:

28 (a) Is clearly erroneous in light of the policy of this chapter; or

29 (b) Constitutes an implementation of this chapter in violation of
30 constitutional or statutory provisions; or

31 (c) Is arbitrary and capricious; or

32 (d) Was developed without fully considering and evaluating all
33 material submitted to the department during public review and comment;
34 or

35 (e) Was not adopted in accordance with required procedures.

36 (6) If the board makes a determination under subsection (5)(a)
37 through (e) of this section, it shall enter a final decision declaring
38 the rule, regulation, or guideline invalid, remanding the rule,

1 regulation, or guideline to the department with a statement of the
2 reasons in support of the determination, and directing the department
3 to adopt, after a thorough consultation with the affected local
4 government and any other interested party, a new rule, regulation, or
5 guideline consistent with the board's decision.

6 (7) A decision of the board on the validity of a rule, regulation,
7 or guideline shall be subject to review in superior court, if
8 authorized pursuant to chapter 34.05 RCW. A petition for review of the
9 decision of the shorelines hearings board on a rule, regulation, or
10 guideline shall be filed within thirty days after the date of final
11 decision by the shorelines hearings board.

12 **Sec. 39.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read
13 as follows:

14 (1) The appeal of the department's decision to adopt a master
15 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is
16 governed by RCW 34.05.510 through 34.05.598.

17 (2)(a) The department's final decision to approve(~~(7)~~) or reject(~~(7~~
18 ~~or modify)~~) a proposed master program or master program amendment
19 (~~adopted~~) by a local government planning under RCW 36.70A.040 shall
20 be appealed to the growth management hearings board (~~(with jurisdiction~~
21 ~~over the local government. The appeal shall be initiated)~~) by filing
22 a petition within thirty days from the date of the department's written
23 notice to the local government of the department's final decision to
24 approve or reject a proposed master program or master program
25 amendment, as provided in RCW ((36.70A.250 through 36.70A.320))
26 36.70A.290. The department's written notice must conspicuously and
27 plainly state that it is the department's final decision and that there
28 will be no further modifications under RCW 90.58.090(2).

29 (b) If the appeal to the growth management hearings board concerns
30 shorelines, the growth management hearings board shall review the
31 proposed master program or amendment solely for compliance with the
32 requirements of this chapter, the policy of RCW 90.58.020 and the
33 applicable guidelines, the internal consistency provisions of RCW
34 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter
35 43.21C RCW as it relates to the adoption of master programs and
36 amendments under chapter 90.58 RCW.

1 (c) If the appeal to the growth management hearings board concerns
2 a shoreline of statewide significance, the board shall uphold the
3 decision by the department unless the board, by clear and convincing
4 evidence, determines that the decision of the department is
5 inconsistent with the policy of RCW 90.58.020 and the applicable
6 guidelines.

7 (d) The appellant has the burden of proof in all appeals to the
8 growth management hearings board under this subsection.

9 (e) Any party aggrieved by a final decision of a growth management
10 hearings board under this subsection may appeal the decision to
11 superior court as provided in RCW 36.70A.300.

12 (3)(a) The department's final decision to approve(~~(7)~~) or reject(~~(7~~
13 ~~or modify)~~) a proposed master program or master program amendment by a
14 local government not planning under RCW 36.70A.040 shall be appealed to
15 the shorelines hearings board by filing a petition within thirty days
16 of the date of the department's written notice to the local government
17 of the department's final decision to approve(~~(7)~~) or reject(~~(7~~
18 ~~or modify)~~) a proposed master program or master program amendment (~~as~~
19 ~~provided in RCW 90.58.090(2)~~). The department's written notice must
20 conspicuously and plainly state that it is the department's final
21 decision and that there will be no further modifications under RCW
22 90.58.090(2).

23 (b) In an appeal relating to shorelines, the shorelines hearings
24 board shall review the proposed master program or master program
25 amendment and, after full consideration of the presentations of the
26 local government and the department, shall determine the validity of
27 the local government's master program or amendment in light of the
28 policy of RCW 90.58.020 and the applicable guidelines.

29 (c) In an appeal relating to shorelines of statewide significance,
30 the shorelines hearings board shall uphold the decision by the
31 department unless the board determines, by clear and convincing
32 evidence that the decision of the department is inconsistent with the
33 policy of RCW 90.58.020 and the applicable guidelines.

34 (d) Review by the shorelines hearings board shall be considered an
35 adjudicative proceeding under chapter 34.05 RCW, the administrative
36 procedure act. The aggrieved local government shall have the burden of
37 proof in all such reviews.

1 (e) Whenever possible, the review by the shorelines hearings board
2 shall be heard within the county where the land subject to the proposed
3 master program or master program amendment is primarily located. The
4 department and any local government aggrieved by a final decision of
5 the hearings board may appeal the decision to superior court as
6 provided in chapter 34.05 RCW.

7 (4) A master program amendment shall become effective after the
8 approval of the department or after the decision of the shorelines
9 hearings board to uphold the master program or master program
10 amendment, provided that the board may remand the master program or
11 master program adjustment to the local government or the department for
12 modification prior to the final adoption of the master program or
13 master program amendment.

14 **Sec. 40.** RCW 90.58.210 and 1995 c 403 s 637 are each amended to
15 read as follows:

16 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
17 43.05.150, the attorney general or the attorney for the local
18 government shall bring such injunctive, declaratory, or other actions
19 as are necessary to (~~insure~~) ensure that no uses are made of the
20 shorelines of the state in conflict with the provisions and programs of
21 this chapter, and to otherwise enforce the provisions of this chapter.

22 (2) Any person who shall fail to conform to the terms of a permit
23 issued under this chapter or who shall undertake development on the
24 shorelines of the state without first obtaining any permit required
25 under this chapter shall also be subject to a civil penalty not to
26 exceed one thousand dollars for each violation. Each permit violation
27 or each day of continued development without a required permit shall
28 constitute a separate violation.

29 (3) The penalty provided for in this section shall be imposed by a
30 notice in writing, either by certified mail with return receipt
31 requested or by personal service, to the person incurring the same from
32 the department or local government, describing the violation with
33 reasonable particularity and ordering the act or acts constituting the
34 violation or violations to cease and desist or, in appropriate cases,
35 requiring necessary corrective action to be taken within a specific and
36 reasonable time.

1 ~~applications in such manner and under such regulations as he or she may~~
2 ~~deem proper.))~~

3 (3) Any person incurring any penalty under this section may appeal
4 the penalty to the hearings board as provided for in chapter 43.21B
5 RCW. Such appeals shall be filed within thirty days from the date of
6 receipt of ~~((notice imposing any))~~ the penalty ~~((unless an application~~
7 ~~for remission or mitigation is made to the department. When an~~
8 ~~application for remission or mitigation is made, such appeals shall be~~
9 ~~filed within thirty days of receipt of notice from the director or the~~
10 ~~director's representative setting forth the disposition of the~~
11 ~~application))~~. Any penalty imposed under this section shall become due
12 and payable thirty days after receipt of a notice imposing the same
13 unless ~~((application for remission or mitigation is made or))~~ an appeal
14 is filed. ~~((When an application for remission or mitigation is made,~~
15 ~~any penalty incurred hereunder shall become due and payable thirty days~~
16 ~~after receipt of notice setting forth the disposition of the~~
17 ~~application unless an appeal is filed from such disposition.))~~
18 Whenever an appeal of any penalty incurred under this section is filed,
19 the penalty shall become due and payable only upon completion of all
20 review proceedings and the issuance of a final order confirming the
21 penalty in whole or in part.

22 (4) If the amount of any penalty is not paid to the department
23 within thirty days after it becomes due and payable, the attorney
24 general, upon the request of the director, shall bring an action in the
25 name of the state of Washington in the superior court of Thurston
26 county or of any county in which such violator may do business, to
27 recover such penalty. In all such actions the procedure and rules of
28 evidence shall be the same as an ordinary civil action except as
29 otherwise provided in this chapter ~~((provided))~~. All penalties
30 recovered under this section shall be paid into the state treasury and
31 credited to the general fund.

32 NEW SECTION. **Sec. 42.** The following acts or parts of acts are
33 each repealed:

34 (1) RCW 43.21B.190 (Judicial review--Appeal from board's order) and
35 2004 c 204 s 2, 1995 c 382 s 4, 1994 c 253 s 7, 1988 c 202 s 43, & 1970
36 ex.s. c 62 s 49;

1 (2) RCW 76.09.210 (Forest practices appeals board--Created--
2 Membership--Terms--Vacancies--Removal) and 1979 ex.s. c 47 s 4 & 1974
3 ex.s. c 137 s 21;

4 (3) RCW 76.09.220 (Forest practices appeals board--Compensation--
5 Travel expenses--Chair--Office--Quorum--Powers and duties--
6 Jurisdiction--Review) and 2007 c 480 s 8, 2003 c 393 s 20, 1999 sp.s.
7 c 4 s 902, & 1999 c 90 s 1;

8 (4) RCW 76.09.230 (Forest practices appeals board--Mediation--
9 Appeal procedure--Judicial review) and 1994 c 253 s 9, 1992 c 52 s 23,
10 1989 c 175 s 165, & 1974 ex.s. c 137 s 23;

11 (5) RCW 77.55.301 (Hydraulic appeals board--Members--Jurisdiction--
12 Procedures) and 2005 c 146 s 801, 2003 c 393 s 21, 2000 c 107 s 20,
13 1996 c 276 s 2, 1993 sp.s. c 2 s 37, 1989 c 175 s 160, 1988 c 272 s 3,
14 1988 c 36 s 37, & 1986 c 173 s 4; and

15 (6) RCW 77.55.311 (Hydraulic appeals board--Procedures) and 2005 c
16 146 s 802, 1995 c 382 s 7, 1989 c 175 s 161, & 1986 c 173 s 5.

17 NEW SECTION. **Sec. 43.** (1) This act applies prospectively only and
18 not retroactively. It applies only to appeals that are commenced on or
19 after the effective date of this section. The repeals in section 42 of
20 this act do not affect any existing right acquired or liability or
21 obligation incurred under the statutes repealed or under any rule or
22 order adopted under those statutes nor do they affect any proceeding
23 instituted under them.

24 (2) All pending cases before the forest practices appeals board and
25 the hydraulics appeals board shall be continued and acted upon by those
26 boards. All existing rules of the forest practices appeals board shall
27 remain in effect and be used by the pollution control hearings board
28 until the pollution control hearings board adopts superceding rules for
29 forest practices appeals.

30 NEW SECTION. **Sec. 44.** A new section is added to chapter 36.70A
31 RCW to read as follows:

32 (1) The powers, duties, and functions of the growth management
33 hearings board are hereby transferred to the environmental and land use
34 hearings office.

35 (2)(a) All reports, documents, surveys, books, records, files,
36 papers, or written material in the possession of the growth management

1 hearings board shall be delivered to the custody of the environmental
2 and land use hearings office. All cabinets, furniture, office
3 equipment, motor vehicles, and other tangible property employed by the
4 growth management hearings board shall be made available to the
5 environmental and land use hearings office. All funds, credits, or
6 other assets held by the growth management hearings board shall be
7 assigned to the environmental and land use hearings office.

8 (b) Any appropriations made to the growth management hearings board
9 shall, on the effective date of this section, be transferred and
10 credited to the environmental and land use hearings office.

11 (c) If any question arises as to the transfer of any personnel,
12 funds, books, documents, records, papers, files, equipment, or other
13 tangible property used or held in the exercise of the powers and the
14 performance of the duties and functions transferred, the director of
15 financial management shall make a determination as to the proper
16 allocation and certify the same to the state agencies concerned.

17 (3) All employees of the growth management hearings board are
18 transferred to the jurisdiction of the environmental and land use
19 hearings office. All employees classified under chapter 41.06 RCW, the
20 state civil service law, are assigned to the environmental and land use
21 hearings office to perform their usual duties upon the same terms as
22 formerly, without any loss of rights, subject to any action that may be
23 appropriate thereafter in accordance with the laws and rules governing
24 state civil service.

25 (4) All existing rules and all pending cases before the growth
26 management hearings board shall be continued and acted upon by the
27 growth management hearings board located within the environmental and
28 land use hearings office. All pending business, existing contracts,
29 and obligations shall remain in full force and shall be performed by
30 the environmental and land use hearings office.

31 (5) The transfer of the powers, duties, functions, and personnel of
32 the growth management hearings board shall not affect the validity of
33 any act performed before the effective date of this section.

34 (6) If apportionments of budgeted funds are required because of the
35 transfers directed by this section, the director of financial
36 management shall certify the apportionments to the agencies affected,
37 the state auditor, and the state treasurer. Each of these shall make

1 the appropriate transfer and adjustments in funds and appropriation
2 accounts and equipment records in accordance with the certification.

3 NEW SECTION. **Sec. 45.** (1) Sections 1, 3, 5, 7, 9 through 14, and
4 16 through 43 of this act take effect July 1, 2010.

5 (2) Sections 2, 4, 6, 15, and 44 of this act take effect July 1,
6 2011. The chief executive officer of the environmental hearings office
7 may take the necessary steps to ensure that these sections are
8 implemented on their effective date.

9 (3) Section 8 of this act takes effect June 30, 2019.

10 NEW SECTION. **Sec. 46.** (1) Sections 3 and 5 of this act expire
11 July 1, 2011.

12 (2) Section 7 of this act expires June 30, 2019.

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