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

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

NEW SECTION. Sec. 1. The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection. The legislature intends to update provisions relating to natural resource management and
regulatory programs including the hydraulic project approval program, forest practices act, and state environmental policy act, in order to achieve these opportunities.

PART ONE

Hydraulic Project Approvals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) "Expedit ed permit" means a hydraulic project approval issued
to a person under RCW 77.55.021 (14) and (16).
(22) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

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

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

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

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

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

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

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

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

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;
(c) Complete plans and specifications for the proper protection of fish life; 

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

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

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

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

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

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

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

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

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or
(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((11)) (15)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a
permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and ((42)) (7) of this section.

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

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

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

(1) The department shall charge an application fee of one hundred fifty dollars for a hydraulic project permit or permit modification issued under RCW 77.55.021 where the project is located at or below the ordinary high water line. The application fee established under this subsection may only be charged after June 30, 2012, if section 104 of this act has been enacted into law by that date.

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

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

(b) If sections 201 through 203 of this act are enacted into law by June 30, 2012, forest practices hydraulic projects;
(c) Pamphlet hydraulic projects; and  
(d) Mineral prospecting and mining activities.  
(3) All fees collected under this section must be deposited in the 
hydraulic project approval account created in section 105 of this act.  
(4) The fee provisions contained in this section are prospective 
only. The department of fish and wildlife may not charge fees for 
hydraulic project permits issued under this title prior to the 
effective date of this section.  
(5) This section expires June 30, 2016.  

NEW SECTION. Sec. 104. (1) The University of Washington, through 
colleges and schools with relevant subject matter expertise, shall 
conduct a review of state, federal, and local natural resources, 
environmental, and other regulatory programs to:
   (a) Identify programs that regulate construction or the performance 
of work conducted above the ordinary high water line;  
   (b) Identify construction activities or the performance of work 
conducted above the ordinary high water line that potentially use, 
divert, or change the natural flow or bed of any of the salt or 
freshwaters of the state; 
   (c) Analyze the manner and degree to which the activities 
identified in (b) of this subsection are regulated under the programs 
identified in (a) of this subsection;  
   (d) Using the analysis under (c) of this subsection, identify any 
regulatory gaps that may exist in providing for the protection of fish 
life for activities identified in (b) of this subsection that use, 
divert, or change the natural flow or bed of any of the salt or 
freshwaters of the state; and 
   (e) Identify the scale of the potential risk to fish life from any 
regulatory gaps identified in (d) of this subsection.  
(2) The University of Washington shall conduct the review in 
consultation with appropriate federal and state agencies, local 
governments, tribal governments, and business and environmental 
interests. The University of Washington shall consult with and solicit 
input from these entities both: (a) Through a forum gathering the 
stakeholders together at the onset of the review to discuss matters 
including the scope and timeline of the study; and (b) throughout the
review process. The University of Washington shall include a summary of their comments on the outcomes of the review process in the report required under subsection (3) of this section.

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

(4) This section expires January 1, 2015.

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

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

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

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

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

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

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

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.
Upon application under RCW 77.55.021, the department shall issue a renewable, five-year general permit to a marina or marine terminal for its regular maintenance activities identified in the application.

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

(a) Maintenance, repair, or replacement of a boat ramp, launch, or float within the existing footprint;
(b) Maintenance or repair of an existing overwater structure within the existing footprint;
(c) Maintenance or repair of boat lifts or railway launches;
(d) New, maintenance, or removal of pilings;
(e) Dredging of less than fifty cubic yards;
(f) Maintenance or repair of shoreline armoring or bank protection;
(g) Maintenance or repair of wetland, riparian, or estuarine habitat; and
(h) Maintenance or repair of an existing outfall.

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

A permit under this section is subject to the application fee provided in section 103 of this act.

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

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

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

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

NEW SECTION. Sec. 108. A new section is added to chapter 77.55 RCW to read as follows:
The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of this chapter, including the changes resulting from this act.

NEW SECTION. Sec. 109. A new section is added to chapter 77.55 RCW to read as follows:
The department shall develop a system to provide local governments, affected tribes, and other interested parties with access to hydraulic project approval applications, including applications for a general permit.

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

PART TWO
Hydraulic Project Approval and Forest Practices Integration

NEW SECTION. Sec. 201. A new section is added to chapter 77.55 RCW to read as follows:
(1) The requirements of this chapter do not apply to any forest practices hydraulic project, or to any activities that are associated with such a project, upon incorporation of fish protection standards adopted under this chapter into the forest practices rules and approval of technical guidance as required under RCW 76.09.040, at which time these projects are regulated under chapter 76.09 RCW.

(2) The department must continue to conduct regulatory and enforcement activities under this chapter for forest practices hydraulic projects until the forest practices board incorporates fish
(3) By December 31, 2013, the department shall adopt rules establishing the form and procedures for the concurrence review process consistent with section 202 of this act. The concurrence review process must allow the department up to thirty days to review forest practices hydraulic projects meeting the criteria under section 202(2) (a) and (b) of this act for consistency with fish protection standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Establish minimum standards for forest practices;

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

(iii) Set forth necessary administrative provisions;

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

(v) Allow for the development of watershed analyses.

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

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

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

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

(ii) After the expiration of the thirty-day period, the board shall hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

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

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

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 204. A new section is added to chapter 77.55
RCW to read as follows:
(1) The department and the department of natural resources shall
enter into and maintain a memorandum of agreement between the two
agencies that describes how to implement integration of hydraulic
project approvals into forest practices applications consistent with
this act.
(2) The initial memorandum of agreement between the two departments
must be executed by December 31, 2012. The memorandum of agreement may
be amended as agreed to by the two departments.

Sec. 205. RCW 76.09.050 and 2011 c 207 s 1 are each amended to
read as follows:
(1) The board shall establish by rule which forest practices shall
be included within each of the following classes:
Class I: Minimal or specific forest practices that have no direct
potential for damaging a public resource and that may be conducted
without submitting an application or a notification except that when
the regulating authority is transferred to a local governmental entity,
those Class I forest practices that involve timber harvesting or road
construction within "urban growth areas," designated pursuant to
chapter 36.70A RCW, are processed as Class IV forest practices, but are
not subject to environmental review under chapter 43.21C RCW;
Class II: Forest practices which have a less than ordinary
potential for damaging a public resource that may be conducted without
submitting an application and may begin five calendar days, or such
lesser time as the department may determine, after written notification
by the operator, in the manner, content, and form as prescribed by the
department, is received by the department. However, the work may not
begin until all forest practice fees required under RCW 76.09.065 have
been received by the department. Class II shall not include forest
practices:
(a) On forest lands that are being converted to another use;
(b) Forest practices which require approvals under the provisions of the
hydraulics act, RCW 77.55.021;

p. 19  ESSB 6406
Within "shorelines of the state" as defined in RCW 90.58.030; Excluded from Class II by the board; or Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) For those forest practices regulated by the board and the
department, appeals under this section shall be made to the appeals
board in the manner and time provided in RCW 76.09.205. In such
appeals there shall be no presumption of correctness of either the
county, city, or town or the department position.
(10) For those forest practices regulated by the board and the
department, the department shall, within four business days notify the
county, city, or town of all notifications, approvals, and disapprovals
of an application affecting lands within the county, city, or town,
except to the extent the county, city, or town has waived its right to
such notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.
(f) Landowners who have not stated an intent to convert the land
covered by an application or notification and who decide to convert the
land to a nonforestry use within six years of receiving an approved
application or notification must do so in a manner consistent with RCW
76.09.470.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((4) Recording fees shall be as provided in chapter 36.18 RCW.)
An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.

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

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

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;
(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and
(c) Notify the department withdraw any applicable applications or notifications and submit a new application for the conversion. The fee for a new application for conversion under this subsection (1)(c) is the difference between the applicable fee for the new application under RCW 76.09.065 and the fee previously paid for the original application or notification, which must be deposited in the forest practices application account created in RCW 76.09.065.

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

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and
(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;
(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and
(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

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

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

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

(b) The director of the department of commerce or the director's designee;

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

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

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

(f) An elected member of a county legislative authority appointed by the governor: Provided, That such member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and
(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Department" means the department of natural resources.
(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.
(24) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 214. (1) The departments of natural resources and fish and wildlife must jointly provide a report to the appropriate committees of the legislature containing findings and any recommendations relating to the regulatory integration of hydraulic projects and forest practices as provided in this act, including:
(a) Progress made in implementing the integration required under this act, including rule incorporation and development of forest practices board manual guidance;

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

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

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

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

(3) This section expires December 31, 2016.

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

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

NEW SECTION. Sec. 217. Nothing in this act authorizes the department of fish and wildlife to assume authority over approval, disapproval, conditioning, or enforcement of applications or notifications submitted under chapter 76.09 RCW.
NEW SECTION.  Sec. 218. Nothing in this act affects the jurisdiction or other authority of a federally recognized Indian tribe within the boundary of its reservation or on other tribally owned lands.

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

PART THREE
State Environmental Policy Act and Local Development Regulations

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

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

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

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

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

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

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

(v) Landfilling or excavation activities; and
(vi) The installation of an electric facility, lines, equipment, or
appurtenances, other than substations.

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

(i) An incorporated city;
(ii) An unincorporated area within an urban growth area;
(iii) An unincorporated area outside of an urban growth area but
within a county planning under chapter 36.70A RCW; or
(iv) An unincorporated area within a county not planning under
chapter 36.70A RCW.

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

(i) Improve efficiency of the environmental checklist; and
(ii) Not include any new subjects into the scope of the checklist,
including climate change and greenhouse gases.

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

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

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

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

(iii) Create categorical exemptions for minor code amendments for
which review under chapter 43.21C RCW would not be required because
they do not lessen environmental protection.
(b) During this process, the department of ecology may also review and update the thresholds resulting from the 2012 rule-making process outlined in subsection (2) of this section.

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

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

(ii) Ensure that state agencies and other interested parties can receive notice about projects of interest through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW; and

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

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

(5) This section expires July 31, 2014.

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

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this act do not require environmental review or the preparation of an environmental impact statement under this chapter. ((In a county, city, or town planning under RCW 36.70A.040, a planned action, as provided for in subsection (2) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.))
(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

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

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

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

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

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

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

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

(b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection.))
NEW SECTION.  Sec. 303. A new section is added to chapter 43.21C RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(b) A county, city, or town is not required to make a threshold
determination and may not require additional environmental review, for
a proposal that is determined to be consistent with the development or
redevelopment described in the planned action ordinance, except for
impacts that are specifically deferred to the project level at the time
of the planned action ordinance's adoption. At least one community
meeting must be held before the notice is issued for the planned action
ordinance. Notice for the planned action and notice of the community
meeting required by this subsection (3)(b) must be mailed or otherwise
verifiably provided to: (i) All affected federally recognized tribal
governments; and (ii) agencies with jurisdiction over the future
development anticipated for the planned action. The determination of
consistency, and the adequacy of any environmental review that was
specifically deferred, are subject to the type of administrative appeal
that the county, city, or town provides for the proposal itself
consistent with RCW 36.70B.060.

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

(a) All property owners of record within the county, city, or town;
(b) All affected federally recognized tribal governments; and
(c) All agencies with jurisdiction over the future development
anticipated for the planned action.

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

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

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

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet, excluding retail development;

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

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

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

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

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

NEW SECTION. Sec. 305. A new section is added to chapter 43.21C RCW to read as follows:
A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and section 303 of this act:

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

(b) With funding from private sources; and

(c) By the assessment of fees consistent with the requirements and limitations of this section.

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with section 303 of this act regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

(b) The amount of the fee must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the environmental impact statement.

(3) A county, city, or town assessing fees under subsection (2)(a) of this section must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees under subsection (1) of this section or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees. Project proponents who choose this option may not make use of or benefit from the up-front environmental review prepared by the local jurisdiction.

(4) Prior to the collection of fees, the county, city, or town must enact an ordinance that establishes the total amount of expenses to be recovered through fees and provides objective standards for determining the fee amount to be imposed upon each development proposal proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental review. The ordinance must provide (a) a procedure by which an applicant who disagrees with whether the amount of the fee is correct, reasonable, or proportionate may pay the fee with the written stipulation "paid under protest"; and (b) if the county, city, or town provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved.
in the same administrative appeals process. Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

(5) The ordinance adopted under subsection (4) of this section must make information available about the amount of the expenses designated for recovery. When such expenses have been fully recovered, the county, city, or town may no longer assess a fee under this section.

(6) Any fees collected under this section from subsequent development may be used to reimburse funding received from private sources to conduct the environmental review.

(7) The city, county, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under section 303 of this act, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the city, county, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter.

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

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal
corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

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

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

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

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

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

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

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

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

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

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

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

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

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

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

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

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;
(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:
   (a) Increased protections for critical areas, such as enhanced buffers or setbacks;
   (b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and
   (c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:
   (a) Building codes required by chapter 19.27 RCW;
   (b) Energy codes required by chapter 19.27A RCW; and
   (c) Electrical codes required by chapter 19.28 RCW.

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

(1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;
(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

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

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

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

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

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

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

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

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

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

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

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

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

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

It shall be the duty and function of the department of ecology:
(1) To adopt and amend rules of interpretation and
implementation of this chapter, subject to the requirements of chapter
34.05 RCW, for the purpose of providing uniform rules and guidelines to
all branches of government including state agencies, political
subdivisions, public and municipal corporations, and counties. The
proposed rules shall be subject to full public hearings requirements
associated with rule adoption. Suggestions for modifications of the proposed rules shall be considered on their
merits, and the department shall have the authority and responsibility
for full and appropriate independent adoption of rules, assuring consistency with this chapter as amended and with the
preservation of protections afforded by this chapter. The rule-making
powers authorized in this section shall include, but shall not be
limited to, the following phases of interpretation and implementation
of this chapter:

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

(b) Rules for criteria and procedures applicable to the
determination of when an act of a branch of government is a major
action significantly affecting the quality of the environment for which
a detailed statement is required to be prepared pursuant to RCW 43.21C.030.
(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

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

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

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

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

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

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

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.
(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

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

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

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

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

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

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.
Sec. 312. RCW 43.21C.095 and 1983 c 117 s 5 are each amended to read as follows:

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

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

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter ((90.48 RCW)) or otherwise, the following:

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

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

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

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

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

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

(a) ((Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.)) By July 31, 2012, the department shall reissue without modification and for a term of one
any national pollutant discharge elimination system municipal storm water general permit first issued January 17, 2007, for western Washington municipalities.

(b) The department shall issue updated national pollutant discharge elimination system municipal storm water general permits for western Washington municipalities whose permits were first issued or reissued January 17, 2007, as follows:

(i) By July 1, 2012, the department shall publish final proposed permits following consideration of comments from the public and appropriate stakeholders, and provide the final proposed permits to the appropriate committees of the senate and house of representatives for legislative review;

(ii) The legislature may modify the final proposed permits through legislative enactment by the end of the 2013 regular legislative session. Except as directed by the legislature, the department may not modify the final proposed permits following its being published under (b)(i) of this subsection;

(iii) On July 1, 2013, the department shall issue final permits consisting of the provisions of the final proposed permits and any modifications directed by the legislature; and

(iv) The final permit becomes effective August 1, 2013.

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

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

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007, for eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014.