

RCW 76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Fish protection standards—Program for the acquisition of riparian open space. (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) 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.

(ii) 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 July 10, 2012, 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 RCW 77.55.361; 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 July 10, 2012, 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 forestlands within unconfined channel migration zones or forestlands 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 forestland 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 forestlands 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. [2012 1st sp.s. c 1 s 203; 2010 c 188 s 4; 2009 c 246 s 1; 2000 c 11 s 3; 1999 sp.s. c 4 s 701; 1997 c 173 s 1; 1994 c 264 s 48; 1993 c 443 s 2; 1988 c 36 s 46; 1987 c 95 s 8; 1974 ex.s. c 137 s 4.]

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: "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." [2012 1st sp.s. c 1 s 217.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Findings—Intent—2010 c 188: See note following RCW 76.44.070.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 443: See note following RCW 76.09.010.