

RCW 76.13.120 Findings — Definitions — Forestry riparian easement program.

(1) The legislature finds that along forested riparian and other sensitive aquatic areas, the state should acquire easements ~~along riparian and other sensitive aquatic areas~~ from small forest landowners willing to sell or donate such easements to the state, provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those forest trees within riparian areas and channel migration zones --covered by a forest practices application-- that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that by those rules is made uneconomical to harvest by; ~~those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber~~ or those trees for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules pertaining to riparian areas or channel migration zones. "Qualifying timber" includes forest trees bordering a commercially reasonable harvest unit (as determined under rules adopted by the forest practices board) for which the small forest landowner is willing to grant the state a forestry riparian easement. Examples of trees excluded from qualifying timber are trees restricted from harvest for potentially unstable slopes and landforms outside riparian and other sensitive aquatic areas, or trees with harvest restrictions from conditions of an existing conservation easement.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics:

(i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee prior to July 1, 2011 or the applicant is a lineal descendant of a landowner meeting this condition or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted;

(ii) ~~an~~An entity that has harvested from its own lands in this state during the three years prior to the year ~~of application~~ the department offers compensation for the forestry riparian easement, an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) ~~an~~An entity that ~~certifies~~ at the time of application the department offers compensation for the forestry riparian easement certifies that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following ~~application~~ their forestry riparian easement

1 | [transaction](#). If a landowner's prior three-year average harvest exceeds the limit
2 | of RCW 84.33.035, or the landowner expects to exceed this limit during the ten
3 | years following application, and that landowner establishes to the department of
4 | natural resources' reasonable satisfaction that the harvest limits were or will be
5 | exceeded to raise funds to pay estate taxes or equally compelling and
6 | unexpected obligations such as court-ordered judgments or extraordinary
7 | medical expenses, the landowner shall be deemed to be a small forest
8 | landowner.

9 | For purposes of determining whether a person qualifies as a small forest
10 | landowner, the small forest landowner office, created in RCW 76.13.110, shall
11 | evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of
12 | the date that the ~~forest practices application is submitted or the date the~~
13 | ~~landowner notifies the~~ department ~~that the harvest is to begin with which offers~~
14 | [compensation for](#) the forestry riparian easement ~~is associated~~. A small forest
15 | landowner can include an individual, partnership, corporate, or other
16 | nongovernmental legal entity. If a landowner grants timber rights to another
17 | entity for less than five years, the landowner may still qualify as a small forest
18 | landowner under this section. If a landowner is unable to obtain an approved
19 | forest practices application for timber harvest for any of his or her land because
20 | of restrictions under the forest practices rules, the landowner may still qualify as
21 | a small forest landowner under this section.

22 | (d) "Completion of harvest" means that the trees have been harvested from an area and
23 | that further entry into that area by mechanized logging or slash treating equipment
24 | is not expected [to occur](#).

25 | (3) The department of natural resources is authorized and directed to accept and hold in
26 | the name of the state of Washington forestry riparian easements granted by small
27 | forest landowners covering qualifying timber and to pay compensation to such
28 | landowners in accordance with subsections (6) and (7) of this section. The department
29 | of natural resources may not transfer the easements to any entity other than another
30 | state agency.

31 | (4) Forestry riparian easements shall be effective for fifty years from the date [that](#) the
32 | forest practices application associated with the qualifying timber is submitted to the
33 | department of natural resources, unless the easement is [voluntarily](#) terminated earlier
34 | by the department of natural resources ~~voluntarily~~, based on a determination that
35 | termination is in the best interest of the state, or under the terms of a termination
36 | clause in the easement.

37 | (5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of
38 | the easement premises by the landowner that are consistent with the terms of the
39 | easement and the requirement to protect riparian functions during the term of the
40 | easement, subject to the restriction that the leave trees required by the rules to be left
41 | on the easement premises may not be cut during the term of the easement. No right of
42 | public access to or across, or any public use of the easement premises is created by this
43 | statute or by the easement. Forestry riparian easements shall not be deemed to trigger

1 the compensating tax of or otherwise disqualify land from being taxed under chapter
2 84.33 or 84.34 RCW.

3 (6) Upon receiving the small forest landowners forestry riparian easement application of
4 the following shall occur:

5 (a) The small forest landowner office shall determine what constitutes a completed
6 application for a riparian easement that is associated with a. Such an application
7 shall include documentation of the owner's status as a small forest landowner, an
8 approved forest practices application and the landowner's marking documentation
9 of the qualifying completion of harvest, or a disapproved forest practice application--
10 if the small forest landowner is unable to obtain an approved forest practices
11 application for-- timber on the qualifying lands, the harvest for any of his or her land
12 due to restrictions under the forest practices rules pertaining to riparian area, and
13 channel migration zones.

14 (b) The small forest landowner office shall determine the compensation to be offered to
15 the small forest landowner as provided for in this section. The small forest
16 landowner office shall also determine the compensation to be offered to a small
17 forest landowner for qualifying timber for which an approved forest practices
18 application for timber harvest cannot be obtained because of restrictions under the
19 forest practices rules for qualifying timber, subject to available funding, after a
20 completed application is received and the landowner has completed marking the
21 qualifying timber. The legislature recognizes that there is not readily available
22 market transaction evidence of value for easements of this nature, and thus
23 establishes the following methodology to ascertain the value for forestry riparian
24 easements. Values so determined shall not be considered competent evidence of
25 value for any other purpose.

26 (c) The small forest landowner office shall establish the volume of the qualifying timber.
27 Based on that volume and using data obtained or maintained by the department of
28 revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office
29 shall attempt to determine the fair market value of the qualifying timber as of the
30 date that the forest practices application associated with the qualifying timber was
31 submitted or the date the landowner notifies the department that the harvest is to
32 begin forestry riparian easement application is received. Removal of any qualifying
33 timber before the expiration of the easement must be in accordance with the forest
34 practices rules and the terms of the easement. There shall be no reduction in
35 compensation for reentry.

36 (a)(d) Small forest landowners whose land is under a long term forest stewardship
37 plan, recognized by the department, shall have priority for payment under this
38 section.

39 (6)(7) Except as provided in subsection (8) of this section, the small forest landowner office
40 shall, subject to available funding, offer compensation to the small forest landowner in
41 the amount of fifty percent of the value determined in subsection (6) of this section,
42 plus the compliance and reimbursement costs as determined in accordance with RCW
43 76.13.140. If the landowner accepts the offer for qualifying timber ~~that will be harvested~~

1 | ~~pursuant to an approved forest practices application~~, the department of natural
2 | resources shall pay the compensation promptly upon (a) completion of harvest in the
3 | area ~~covered by~~within a commercially reasonable harvest unit with which the forestry
4 | riparian easement is associated (for an approved forest practices application or if a
5 | forest practices application cannot be obtained because of restrictions under forest
6 | practices rules); (b) verification that ~~there the landowner~~ has ~~been compliance with~~
7 | ~~the no outstanding violations under the Forest Practices Act or~~ rules ~~requiring leave~~
8 | ~~trees in the easement area~~; and (c) execution and delivery of the easement to the
9 | department of natural resources. ~~If the landowner accepts the offer for qualifying~~
10 | ~~timber for which an approved forest practices application for timber harvest cannot be~~
11 | ~~obtained because of restrictions under the forest practices rules, the department of~~
12 | ~~natural resources shall pay the compensation promptly upon (i) verification that there~~
13 | ~~has been compliance with the rules requiring leave trees in the easement area; and (ii)~~
14 | ~~execution and delivery of the easement to the department of natural resources.~~ Upon
15 | donation or payment of compensation, the department of natural resources may record
16 | the easement.

17 | ~~(7)~~(8) For approved forest practices applications ~~where for which~~ the regulatory impact is
18 | greater than the average percentage impact for all small forest landowners as
19 | determined by the department of natural resources analysis under the regulatory
20 | fairness act, chapter 19.85 RCW, the compensation offered will be increased to one
21 | hundred percent for that portion of the regulatory impact that is in excess of the
22 | average. Regulatory impact ~~includes trees left in buffers, special management zones,~~
23 | ~~and those rendered uneconomic to harvest by these rules~~ is considered for all trees
24 | identified as qualifying timber. A separate average or high impact regulatory threshold
25 | shall be established for western and eastern Washington. Criteria for these
26 | measurements and payments shall be established by the small forest landowner office.

27 | ~~(8)~~(9) The forest practices board shall adopt rules under the administrative procedure act,
28 | chapter 34.05 RCW, to implement the forestry riparian easement program, including the
29 | following:

- 30 | (a) A standard version or versions of all documents necessary or advisable to create the
31 | forestry riparian easements as provided for in this section;
- 32 | (b) Standards for descriptions of the easement premises with a degree of precision that
33 | is reasonable in relation to the values involved;
- 34 | (c) Methods and standards for cruises and valuation of forestry riparian easements for
35 | purposes of establishing the compensation. The department of natural resources
36 | shall perform the timber cruises of forestry riparian easements required under this
37 | chapter and chapter 76.09 RCW. Any rules concerning the methods and standards
38 | for valuations of forestry riparian easements shall apply only to the department of
39 | natural resources, small forest landowners, and the small forest landowner office;
- 40 | (d) A method to determine that a forest practices application involves a commercially
41 | reasonable harvest, and adopt criteria for entering into a forest riparian easement
42 | where a commercially reasonable harvest is not possible or a forest practices

- 1 application that has been submitted cannot be approved because of restrictions
2 under the forest practices rules;
- 3 (e) A method to address blowdown of qualified timber falling outside the easement
4 premises;
- 5 (f) A formula for sharing of proceeds in relation to the acquisition of qualified timber
6 covered by an easement through the exercise or threats of eminent domain by a
7 federal or state agency with eminent domain authority, based on the present value
8 of the department of natural resources' and the landowner's relative interests in the
9 qualified timber;
- 10 (g) High impact regulatory thresholds;
- 11 (h) A method to determine timber that is qualifying timber because it is rendered
12 uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370;
13 and
- 14 (i) A method for internal department of natural resources review of small forest
15 landowner office compensation decisions under subsection (7) of this section.