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NO. 98602-9

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID SCHULZ, JOHN ALEXIOS,
WAYNE BINKLEY, and DAGMAR DEVERE, et al.,

Petitioners,

v.

STATE OF WASHINGTON,
DEPARTMENT OF NATURAL RESOURCES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. COUNTERSTATEMENT OF THE ISSUE2

III. COUNTERSTATEMENT OF THE CASE2

 A. DNR Fights Wildland Fires on Public and Private Land
 for the Benefit of the Public.....2

 B. DNR Also Manages Public Lands and, Like Other
 Participating Landowners, Pays Assessments for DNR
 Fire Suppression.....3

 C. DNR’s Fire Suppression Arm Responded to the Carlton
 Complex Fire in July 2014.....3

 D. Over 300 Landowners Filed Suit Against DNR,
 Challenging the Actions It Took in Suppressing the
 Carlton Complex Fire5

 E. The Court of Appeals Affirmed Summary Judgment for
 DNR10

IV. REASONS WHY THE COURT SHOULD DENY REVIEW11

 A. Dismissal of Plaintiffs’ Claims Was Required by
 RCW 76.04.016 and Consistent with *Oberg*, A Unique
 “Narrow” Decision that Pre-Dated RCW 76.04.01612

 B. The Court of Appeals Opinion Does Not “Effectively
 Resurrect Sovereign Immunity” Nor Preclude Future
 Landowner Negligence Claims Against DNR.....16

 C. Plaintiffs Had Multiple Opportunities to Address this
 Basis for Dismissal17

V. CONCLUSION20

TABLE OF AUTHORITIES

Cases

<i>Ehrhart v. King County</i> , 195 Wn.2d 388, 460 P.3d 612 (2020).....	17
<i>Keller v. City of Spokane</i> , 146 Wn.2d 237, 44 P.3d 845 (2002).....	16, 18
<i>LK Operating, LLC v. Collection Grp., LLC</i> , 181 Wn.2d 48, 331 P.3d 1147 (2014).....	18
<i>Mithoug v. Apollo Radio of Spokane</i> , 128 Wn.2d 460, 909 P.2d 291 (1996).....	18
<i>Munich v. Skagit Emergency Commc 'ns Ctr.</i> , 175 Wn.2d 871, 288 P.3d 328 (2012).....	18
<i>Oberg v. Department of Natural Resources</i> , 114 Wn.2d 278, 787 P.2d 918 (1990).....	1, 6, 9, 11, 13-15
<i>Schulz v. State</i> , 12 Wn. App. 2d 729, 459 P.3d 1090 (2020).....	7, 10, 17, 20
<i>Wuthrich v. King Cty.</i> , 185 Wn.2d 19, 366 P.3d 926 (2016).....	9, 16, 18, 20

Statutes

Laws of 1993, ch. 196, § 1.....	12
RCW 76.04	13
RCW 76.04.005(5).....	2, 4, 6, 12, 15
RCW 76.04.005(12).....	3
RCW 76.04.005(15).....	13
RCW 76.04.015(2).....	2

RCW 76.04.015(3)(b)	4, 15
RCW 76.04.016	1-2, 5-6, 8-15, 17, 19
RCW 76.04.155	4, 15
RCW 76.04.165	4
RCW 76.04.165(2).....	15
RCW 76.04.167	3-4
RCW 76.04.167(2).....	2, 15
RCW 76.04.205	13
RCW 76.04.215	13
RCW 76.04.246	13
RCW 76.04.325	13
RCW 76.04.435	13
RCW 76.04.445	13
RCW 76.04.465	13
RCW 76.04.486	13
RCW 76.04.600	3
RCW 76.04.610	3-4, 6, 12
RCW 76.04.610(1)(a)	2, 15
RCW 76.04.610(7).....	2-4, 12
RCW 76.04.630.	3
RCW 76.04.650	13

RCW 76.04.660	13
RCW 76.04.700	13
RCW 76.04.710	13
RCW 76.04.740	13
RCW 76.04.760	9
RCW 76.06	13
RCW 76.09	13
RCW 79.02	3

Rules

RAP 2.5(a)	18
RAP 9.12.....	18
RAP 13.4(b)(1)	15, 17
RAP 13.4(b)(3)	17
RAP 13.4(b)(4)	16

I. INTRODUCTION

The Washington State Department of Natural Resources (DNR) functions in two distinct capacities. First, in its proprietary role, DNR manages state public lands. Second, in its regulatory role, DNR enforces the Forest Protection Act and fights wildland fires for the benefit of the public.

Plaintiffs—landowners who lost property in the Carlton Complex fires—sued DNR, claiming it was negligent in its firefighting efforts. Plaintiffs’ theory was that because the fires originated on DNR land, DNR was liable as a landowner for any acts of negligence DNR committed in its firefighting capacity. But the Court of Appeals correctly rejected this theory based on RCW 76.04.016, which recognizes that DNR’s “statutory capacity as a fire prevention and suppression agency” is separate from its landowner capacity. RCW 76.04.016 was enacted in direct response to *Oberg v. Department of Natural Resources*, 114 Wn.2d 278, 285, 787 P.2d 918 (1990), where this Court advised that it might “be wise and prudent” for the Legislature “to clearly separate the duties of DNR as a landowner and as a firefighter.” Accordingly, RCW 76.04.016 precludes DNR’s statutory fire suppression actions from giving rise to individual tort duties.

Contrary to Plaintiffs’ portrayal, nothing in the Court of Appeals’ decision precludes future negligence claims against DNR that are actually premised on DNR’s actions as a landowner, such as negligently starting a fire to begin with, or failing to report a fire to proper authorities. But by the same token, Plaintiffs do not state landowner claims simply by artificially labeling them as such. This Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUE

Does RCW 76.04.016 preclude DNR from owing an individualized tort duty for its statutory public fire suppression efforts, including those expended on fires ignited by lightning on DNR-managed land?

III. COUNTERSTATEMENT OF THE CASE

A. DNR Fights Wildland Fires on Public and Private Land for the Benefit of the Public

DNR is Washington's largest on-call wildland fire department. CP 198. It has the "direct charge of and supervision of all matters pertaining to the forest fire service of the state." RCW 76.04.015(2). In total, DNR protects over 13 million acres of publicly- and privately-owned forestlands. CP 198; RCW 76.04.005(5), .610. When performing its statutory fire suppression and prevention responsibilities, DNR "is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public." RCW 76.04.016. Second only to saving lives, DNR's primary mission in that regard is protecting forest resources and suppressing wildland fires. RCW 76.04.167(2).

Forestland owners who do not provide their own DNR-approved protection against the spread of fire are required to pay forest fire protection assessments and receive DNR's fire suppression services. RCW 76.04.610(1)(a). Nonfederal public entities owning or administering forestland do not have a choice to provide their own fire protection; they are required to be participating landowners, pay the assessment, and receive DNR's fire protection. RCW 76.04.610(7).

B. DNR Also Manages Public Lands and, Like Other Participating Landowners, Pays Assessments for DNR Fire Suppression

In a completely separate capacity from that related to its forest fire prevention and suppression responsibilities, DNR also manages millions of acres of state trust land, state-owned aquatic lands, and natural areas that protect native ecosystems. CP 198; *see generally* RCW 79.02 (“Public Lands Management—General”).¹ This includes more than three million acres of state trust lands for the benefit of certain trust beneficiaries. CP 198. In that capacity, DNR is also a forest landowner subject to DNR regulation under Washington’s forest protection laws, just like other public and private forest landowners. RCW 76.04.005(12).

As a nonfederal public body, DNR in its capacity as a land manager is not permitted to provide its own fire protection under RCW 76.04.600. Rather, it is required to pay forest fire protection assessments and receive statutory DNR fire suppression services. RCW 76.04.610(7); CP 199.

C. DNR’s Fire Suppression Arm Responded to the Carlton Complex Fire in July 2014

On July 14-15, 2014, a lightning storm ignited at least four fires in South Okanogan County, which later combined into the Carlton Complex fire. CP 201. For purposes of summary judgment only, DNR has not disputed Plaintiffs’ allegation that the fires started on DNR land. CP 27.

Each of the four fires was reported directly to the Northeast Washington Interagency Communications Center (NEWICC). CP 210,

¹ DNR’s fire prevention and suppression program is funded and staffed separately from the funding and staffing DNR receives to manage public lands in its proprietary capacity. CP 198; RCW 76.04.167, .610, .630.

214–15, 334, 348, 358, 369. NEWICC is the interagency dispatch center providing dispatching and logistical support to wildland fire suppression forces on lands in the northeast corner of Washington State protected by DNR, the federal Bureau of Land Management, United States Forest Service, and United States Department of Fish and Wildlife. CP 207–08, 334, 348, 358, 369. After receiving a report of a wildland fire, NEWICC broadcasts the report to all fire suppression ground resources in the field in the applicable area and dispatches the closest available engines to respond. CP 208. DNR fire crews responded accordingly. CP 210.

DNR’s fire suppression response to the four fires at issue here did not depend on whether DNR also managed the land in its proprietary capacity. State law requires DNR in its fire suppression capacity to respond to a fire threatening a participating landowner’s land no matter whether the fire starts on DNR-managed land or any other Department protected lands. RCW 76.04.610, .005(5); CP 198-99; *see also* RCW 76.04.015(3)(b), .155, .165, .167. “Department protected lands” are defined as lands subject to the forest fire protection assessment. CP 198-99; RCW 76.04.005(5), .610. In addition to including all private land covered by the forest fire protection assessment, “Department protected lands” necessarily include all forest land owned by state agencies. RCW 76.04.610(7). Thus, as soon as the fires were first reported to NEWICC, DNR responded in its statutory fire suppression capacity. RCW 76.04.165, .610; CP 198, 210.

A total of 74 wildland fires were reported to have started in Washington and Oregon on July 14 alone, in addition to 12 ongoing large

fires still uncontained at the time. CP 210. At its height, the Carlton Complex was estimated to have burned three acres per minute. CP 202. Despite the valiant effort of numerous firefighting agencies, the Carlton Complex fire ultimately burned over 250,000 acres. CP 202.

D. Over 300 Landowners Filed Suit Against DNR, Challenging the Actions It Took in Suppressing the Carlton Complex Fire

Starting in November 2015, over 300 landowners collectively filed five separate actions against DNR for property damage caused by the Carlton Complex fire. CP 1-6, 498-509, 537-46, 575-81, 605-11. All of the actions were ultimately consolidated because they involved the same claims. CP 15-19. Plaintiffs do not contend that DNR started any of these lightning-caused fires that merged to form the Carlton Complex, or that DNR was present or conducting landowner activities on its land at the time the fires ignited. Plaintiffs base their claims against DNR entirely on allegations that DNR was negligent in its efforts to suppress the fires, thereby not stopping the spread of fire from DNR-managed lands to neighboring properties. CP 1-6, 498-509, 537-46, 575-81, 605-11.

Following substantial discovery, DNR moved for summary judgment based on the lack of any actionable duty pursuant to RCW 76.04.016 and the public duty doctrine. CP 20-47.² DNR explained that, even though Plaintiffs purported to base their claims on DNR's duty as an owner of forestland, they were really challenging DNR's decision making and actions performed in its statutory capacity as a fire prevention

² The parties exchanged over 350,000 documents and conducted 25 depositions in the nearly three years before DNR filed its motion for summary judgment. CP 50.

and suppression agency. *See, e.g.*, CP 24-26, 30-31. DNR made clear that DNR's firefighting function is "quite separate and apart" from its land management capacity. CP 25, 198-99. Moreover, DNR explained that its statutory firefighting obligation and response does not at all depend on whether DNR owns the land; the relevant designation is "Department protected land," which includes private and public land subject to fire protection assessments. CP 26, 198-99; RCW 76.04.005(5), .610.

DNR pointed out in its motion that Plaintiffs challenged only events that were exclusively within DNR's statutory fire suppression capacity, such as allegedly failing to request aircraft from partner fire agencies in anticipation of worsening fire conditions. CP 24, 26, 31; *see also* CP at 198-202, 206-11 (explaining DNR statutory firefighting response processes). DNR argued that alleged acts of negligence under its statutory fire suppression capacity could not give rise to a duty in tort under the plain language of RCW 76.04.016. CP 24, 26, 31. DNR distinguished this Court's decision in *Oberg*, 114 Wn.2d 278, which previously found that the Legislature had "intermixed" DNR's duties as a landowner and a fire suppression agency, and pointed out that RCW 76.04.016 was enacted specifically in response to that case. CP 37-39.

Plaintiffs responded to DNR's motion by recounting only actions performed by DNR and its partner firefighting agencies in their public fire suppression capacities. CP 220-45. Specifically, they complained that the fire agencies failed to properly request and allocate suppression resources, and otherwise accurately assess the risk that the fires would continue to

spread. CP 222-32. Plaintiffs described all of these actions as those performed by “fire agencies,” “fire managers,” “firefighters,” and “Incident Management Teams.” CP 222-32. Plaintiffs’ argument was that, because the fires allegedly started on DNR-managed land, DNR’s fire suppression response was necessarily part of its landowner response. CP 241-43; *see also Schulz v. State*, 12 Wn. App. 2d 729, 736, 459 P.3d 1090 (2020) (“Implicitly, [Plaintiffs] argue that when the landowner is DNR, its landowner duty is the same as its duty as a fire prevention and suppression agency.”).

Demonstrating a clear understanding of DNR’s arguments, Plaintiffs devoted an entire section of their response to argue that their “Claims are Based on DNR’s Statutory and Common Law Duties as a Landowner, not DNR’s Role as a Fire Suppression Agency.” CP 241. Yet they pointed to no facts or allegations implicating DNR’s capacity as a landowner. CP 241. Nor did they refute DNR’s testimony that DNR performs distinct functions as a land manager and as a fire suppression agency, and that the fires were reported to and responded to by DNR only in its fire suppression capacity. CP 241; *see also* CP 198-99, 208-10, 214. Instead, Plaintiffs argued that DNR is necessarily acting simultaneously as a landowner and a fire suppression agency when it “undertakes suppression of a forest fire spreading from forestland it owns.” CP 241.³

³ Plaintiffs also suggested in their response that DNR’s motion violated a stipulation the parties had entered into to consolidate the five separate actions for purposes of discovery and summary judgment, but DNR’s motion did no such thing. Nothing in the parties’ stipulation limited the bases upon which DNR could file a motion for summary judgment, nor prevented Plaintiffs from conducting discovery they felt necessary to

DNR replied by reiterating that RCW 76.04.016 precluded Plaintiffs' arguments that DNR's landowner actions can subsume its firefighting actions. CP 412-22. As DNR explained, Plaintiffs continued to complain only of DNR's statutory firefighting actions, such as initial attack, resource allocation, and dispatch communications. CP 412, 416-18 ("These are not allegations of landowner liability."). RCW 76.04.016 expresses clear legislative intent that DNR's statutory fire suppression response is a separate capacity from DNR's landowner capacity. CP 412, 416-18; *see also* CP 198-99. DNR pointed out that Plaintiffs did not make any allegations about DNR's maintenance of its land or other acts that implicate DNR's capacity as a landowner, such as calling 911 once aware of a fire. CP 418. Thus, "under the circumstances claimed by plaintiffs," DNR argued that it did not owe Plaintiffs an actionable duty. CP 412, 420-21.

During oral argument on DNR's motion, DNR's counsel again acknowledged that DNR has landowner duties, but noted that this case raises the question of "where do you draw the line? Where is the difference between the duty owed as a fire suppression agency, which we now have codified is a public duty, and the duty owed as a landowner[?]" VRP 17; *see also* VRP 26, 28, 47. To answer that, DNR noted that the undisputed evidence showed these were lightning-caused fires, and there was no landowner operation going on at the time that "either caused a fire, or at

respond to any such motion. CP 15-19. Further, Plaintiffs have not appealed any order with respect to any CR 56(f) motion. *See* CP 44-54 (dismissing all claims on summary judgment), 62-64 (Notice of Appeal); *See generally* Appellants' Opening Br.

least put a person in proximity where they could see a fire on DNR land and then have to deal with it as a land manager.” VRP 18. Thus, DNR emphasized that Plaintiffs’ claims were about DNR’s fire suppression response, not actions it took or should have taken as a landowner. VRP 18-19. Based on Plaintiffs’ own allegations, DNR argued this was a “clear case” of challenging DNR’s actions as a fire suppression agency and not as a landowner, the former of which RCW 76.04.016 precludes. VRP 21-24.

For their part, Plaintiffs’ counsel acknowledged DNR’s argument that none of Plaintiffs’ allegations implicated DNR’s landowner capacity, but argued that it was not the trial court’s role to define the scope of a duty. VRP 31. DNR had already pointed out that this position was incorrect. CP 422 (“As the Court well knows, ‘[t]he existence and scope of a duty are questions of law.’”) (quoting *Wuthrich v. King Cty.*, 185 Wn.2d 19, 25, 366 P.3d 926 (2016)). Plaintiffs further argued that DNR’s arguments were foreclosed by *Oberg*. VRP 32. DNR responded that RCW 76.04.016 was enacted in response to *Oberg* and must be given meaning. VRP 46-47.

Following oral argument, Plaintiffs filed a “sur-reply” to address what they believed were new arguments relating to whether they properly pled a common law negligence claim and whether any such cause of action was abrogated by RCW 76.04.760. CP 441. Neither of these issues were the basis of DNR’s motion. CP 23-41. In its response, DNR reiterated that “the main issue” of its summary judgment “motion is whether DNR was acting in its capacity as a landowner or in its capacity as a fire suppression agency.” CP 455-56. DNR repeated: “Plaintiffs’ claims here are for the breach of a

non-existent fire-suppression duty and not a landowner duty.” CP 455-56.

The trial court granted summary judgment and dismissal to DNR based on RCW 76.04.016 and RCW 76.04.760.⁴ CP 448-54. Plaintiffs moved for reconsideration, repeating the same arguments made in their earlier materials. CP at 462-80. At no point did Plaintiffs argue they needed additional discovery or briefing related to the question of what capacity DNR was acting in when it took the actions Plaintiffs claim were negligent. The trial court denied the Plaintiffs’ motion for reconsideration. CP 481-82.

E. The Court of Appeals Affirmed Summary Judgment for DNR

On appeal, Plaintiffs re-characterized their allegations and described the firefighting acts they claimed to be negligent as “landowner actions.” *Compare* Appellants’ Br. at 9-10, *with* CP 222-44 (describing DNR’s allegedly negligent “initial attack,” “pre-positioning,” dispatch, and incident management system, as acts of “fire agencies,” “fire managers,” “firefighters,” and “Incident Management Teams”). In response, DNR pointed out that the undisputed record and controlling statutes provide that these are actions relating solely to DNR’s statutory fire suppression capacity. Respondent’s Br. at 8-10.

The Court of Appeals affirmed summary judgment based on RCW 76.04.016. It rejected Plaintiffs’ argument that when a fire starts on DNR land, “DNR’s duty as a landowner is identical to its duty as a fire suppression agency.” *Schulz*, 12 Wn. App. 2d at 741. It concluded that, in

⁴ As noted above, DNR did not move on the basis of RCW 76.04.760, so the Court of Appeals correctly declined to address it. *Schulz*, 12 Wn. App. 2d at 734 n.1.

response to DNR’s motion for summary judgment, Plaintiffs pointed to no evidence that would implicate DNR’s landowner duties rather than its public duties as a fire suppression agency. *Id.* at 740-41. Instead, Plaintiffs made “only allegations that DNR committed negligence in protecting or suppressing fire in the forest protection zones for which it is responsible as a fire suppression agency.” *Id.* at 741. The Court concluded “[t]his does not present a genuine issue of fact of *landowner* liability.” *Id.* The Court rejected Plaintiffs’ argument that their subjective labeling of DNR actions as “landowner actions” precludes summary judgment:

Not only does [RCW 76.04.016] bring DNR’s firefighting capacity clearly within the public duty doctrine, it evinces the legislature’s view that DNR *does* act in different capacities, in which it has different duties.

By the new provision’s plain language, the public duty doctrine applies to DNR “when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency.” *A plaintiff cannot avoid that result by alleging that such action was taken in DNR’s capacity as a landowner.*

Id. at 743 (quoting RCW 76.04.016) (second emphasis added). Plaintiffs seek discretionary review of that decision under RAP 13.4(b).

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

Plaintiffs establish none of the criteria for discretionary review. The Court of Appeals decision is a straightforward application of RCW 76.04.016 to Plaintiffs’ own allegations of negligence. It is consistent with *Oberg*, and leaves fundamental landowner liability undisturbed. Further, it addresses the arguments that the parties made below.

A. Dismissal of Plaintiffs’ Claims Was Required by RCW 76.04.016 and Consistent with *Oberg*, A Unique “Narrow” Decision that Pre-Dated RCW 76.04.016

The Court of Appeals decision is a straightforward application of RCW 76.04.016, which unequivocally and unambiguously recognizes that DNR’s statutory fire suppression response is separate from its landowner capacity and does not give rise to an actionable duty in tort:

The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, *is carrying out duties owed to the public in general and not to any individual person* or class of persons separate and apart from the public. Nothing contained in this title . . . may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department’s duties and responsibilities as a landowner.

Laws of 1993, ch. 196, § 1 (codified in RCW 76.04.016 (emphasis added)).

When DNR responds to wildland fires on land it is statutorily required to protect, it is acting entirely within its fire suppression capacity. *See* RCW 76.04.610, .016; CP 198–99; *see also* CP 24-26, 30-31, 36-40. DNR’s statutory fire suppression duty extends to, and is identical on, *any* land subject to a forest fire protection assessment, including land managed by DNR in its proprietary capacity. RCW 76.04.005(5), .610(7); CP 198-199. Thus, when DNR responds to fires in its fire suppression capacity, including fires starting on DNR-managed land, it is performing statutory public duties completely separate from those which may be imposed on individual landowners. RCW 76.04.016.

By contrast, landowners, including DNR in its capacity as a land

manager, have a number of different obligations under RCW Title 76. *See, e.g.*, RCW 76.04 (Forest Protection); RCW 76.06 (Forest Insect and Disease Control); RCW 76.09 (Forest Practices). Specific to mitigating the risk of fires, landowners have certain obligations that largely relate to the manner and method of conducting operations on their land, such as harvesting forest products, clearing land, and taking actions that intentionally or unintentionally start fires. *See* RCW 76.04.005(15) (defining “landowner operation”). Landowners must also report any fires to 911 or to DNR fire suppression. *See, e.g.*, RCW 76.04.445.⁵ The failure to comply with statutory landowner obligations may be evidence of landowner negligence. RCW 5.40.050. None of these requirements encompass DNR’s professional firefighting response to fires threatening land under its statutory protection.

Plaintiffs rely heavily on this Court’s decision in *Oberg*, 114 Wn.2d 278—a decision that predated RCW 76.04.016 and actually led to its enactment—to advocate for why DNR has an actionable landowner duty with respect to its fire suppression response in this case. Appellants’ Br. at 2–5, 25–31, 43–44, 49. In *Oberg*, the Court found DNR liable for its response to the lightning-caused Barker Mountain Fire, which started on and spread from DNR-managed land. *Oberg*, 114 Wn.2d at 279, 286–87, 289. But, by its own terms, *Oberg* was a “narrow” holding based on the “peculiar state of [the] record and the unique dual, specific duties statutorily placed on DNR.” *Id.* at 284. The Court in that case found that, although it

⁵ RCW 76.04 imposes a number of additional duties on landowners. *See, e.g.*, RCW 76.04.205, .215, .246, .325, .405, .435, .465, .486, .650-.660, .700, .710, .740.

might “be wise and prudent [for the Legislature] to separate clearly the duties of DNR as a landowner and as a firefighter,” the Legislature had “not done so,” but, instead, “intermixed these duties.” *Oberg*, 114 Wn.2d at 285.

The Court also found critical that DNR had effectively conceded negligence in that case, and, thereby, a duty, by not appealing the sufficiency and admissibility of the evidence or the instructions underlying the jury’s verdict. *See id.* at 280, 284–85, 288–89. Indeed, DNR conceded in that case that it would have been liable for the escape of the fire “under normal circumstances,” but claimed that its liability should be excused because it was fighting multiple fires at the same time. *Id.* at 281. As such, *Oberg* did not need to describe the nature of either DNR’s landowner or fire suppression duties individually, because at the time the duties were mixed, and, in any event, conceded.

In response to *Oberg*, the Legislature enacted RCW 76.04.016, which patently separates DNR’s function as a landowner from that as a firefighting agency, and precludes DNR from owing an individualized duty for its fire suppression activities. CP 177-78, 95. Thus, *Oberg* does not control the statutory scheme at issue here. Additionally, none of the peculiarities identified in *Oberg*, which followed a jury finding of negligence and included several key DNR concessions, are present in this case. Here, DNR does not concede that it would be liable “under normal circumstances” for its fire suppression response, nor does it argue the existence of a duty depends on how many fires it is fighting at a time. Thus, nothing about the Court of Appeals opinion conflicts with *Oberg* so as to

warrant this Court's review under RAP 13.4(b)(1).

Rather, consistent with *Oberg* and based on RCW 76.04.016, DNR has argued that everything Plaintiffs claimed was negligent fell under DNR's statutory fire suppression capacity, not its landowner capacity. *See, e.g.*, CP 24-25, 30-31, 36, 38-40, 412, 416-19, 422, 456; VRP 17, 19, 21-24. DNR performs its fire suppression responsibilities regardless of whether a fire starts on DNR-managed land or any other "Department Protected Land" subject to the forest fire protection assessment. CP 198-99, 207; *See also* RCW 76.04.005(5), .015(3)(b), .155, .165(2), .167(2), .610(1)(a).

While certain landowner acts or omissions might result in landowner liability, no such conduct was alleged by Plaintiffs in this case. Here, there were no allegations (or evidence supporting such allegations) that DNR land managers even knew the fires existed before DNR fire suppression and its partner fire agencies responded. Nor did Plaintiffs offer evidence that DNR was conducting landowner operations or was otherwise present on the land and failed to report the fires when they ignited. There were likewise no allegations that DNR maintained its property in such a way as to encourage the spread of fire. The undisputed facts in this case are that DNR first learned of the fires through calls to 911 or dispatch, and DNR fire suppression responded accordingly. CP 199, 201, 210, 214. Plaintiffs pointed to no authority that requires landowners to take additional actions to stop the spread of fire when firefighting is already underway, particularly when the landowners did not start the fire, are not present for the ignition of the fire, and are not conducting landowner activities. Thus, Plaintiffs failed

to implicate any landowner duties by complaining only about actions exclusively within DNR's statutory fire suppression capacity.

To defeat summary judgment, it was up to Plaintiffs to identify (and proffer admissible evidence of) acts they claimed were negligent that concerned DNR's capacity as a landowner. CR 56. They did not do so. Instead, they argued that when DNR's fire suppression resources are responding to a fire on DNR-managed land, that DNR's landowner capacity necessarily *includes* DNR's statutory fire suppression response. CP 241 (“[W]hen DNR undertakes suppression of a forest fire spreading from forestland it owns, it is performing *both* a public duty and a private duty.”); *see generally* CP 234-43. This is a legal question regarding the nature and scope of DNR's landowner duty that was appropriately addressed by the Court of Appeals in its de novo review. *Wuthrich*, 185 Wn.2d at 25; *see also Keller v. City of Spokane*, 146 Wn.2d 237, 243, 44 P.3d 845 (2002) (Whether a duty is owed “in a particular situation” is a question of law; the court decides “not only who owes the duty, but also to whom the duty is owed, and what is the nature of the duty owed.”).

B. The Court of Appeals Opinion Does Not “Effectively Resurrect Sovereign Immunity” Nor Preclude Future Landowner Negligence Claims Against DNR

In their effort to garner this Court's interest in taking review under RAP 13.4(b)(4), Plaintiffs misstate the holding, breadth, and impact of the Court of Appeals decision. Nowhere in that decision does the court conclude that DNR's fire suppression capacity “subsumes” its landowner capacity. Nor does the opinion “resurrect sovereign immunity.” *Cf.* Pet. for

Review (Pet.) at 18-19. Those are *solely* Plaintiffs’ arguments—they are not the conclusions of the Court of Appeals. To the contrary, the Court of Appeals concluded, consistent with the plain language of RCW 76.04.016, related statutes, and the common law public duty doctrine,⁶ that DNR’s actions in its landowner capacity are separate and distinct from those in its statutory fire suppression capacity, and only the former may give rise to an actionable tort duty.

Also contrary to Plaintiffs’ contentions, the Court of Appeals’ opinion does not foreclose all future claims of landowner negligence against DNR. As the Court of Appeals readily acknowledged, there may be circumstances in which DNR is conducting activity on its land and has an opportunity to take reasonable steps in that capacity to prevent the spread of fire before emergency services have responded. *Schulz*, 459 P.3d at 739-41. But no such allegations were made here, because the fires were reported directly to emergency fire suppression services, which responded. *Id.*

C. Plaintiffs Had Multiple Opportunities to Address this Basis for Dismissal

Finally, there is no constitutional question or procedural irregularity involved in this case to warrant review under RAP 13.4(b)(1) or (3). Plaintiffs suggest the Court of Appeals somehow departed from the usual practice in reviewing the summary judgment motion de novo and violated Plaintiffs’ procedural due process rights in reaching an argument not relied

⁶ This Court recently declined an invitation to abandon the common law public duty doctrine in *Ehrhart v. King County*, and instead clarified its doctrinal roots and purpose. 195 Wn.2d 388, 398-400 & n.6, 460 P.3d 612 (2020).

upon by the trial court nor allegedly advanced by DNR in support of summary judgment. *See* Pet. at 19-20. They are mistaken.

An appellate court reviews an order on summary judgment *de novo*, engaging in the same inquiry as the trial court. *Munich v. Skagit Emergency Commc'ns Ctr.*, 175 Wn.2d 871, 877, 288 P.3d 328 (2012). RAP 9.12 and this Court's precedent confirm that the Court of Appeals may disagree with the trial court's reasoning yet still affirm summary judgment dismissal. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 70–71, 331 P.3d 1147 (2014). RAP 9.12 should not be read so narrowly as to limit appellate review only to the evidence or arguments "considered" by the trial court. *Mithoug v. Apollo Radio of Spokane*, 128 Wn.2d 460, 462, 909 P.2d 291 (1996). Rather, the reviewing court is to consider "evidence and issues called to the attention of the trial court," to "effectuate the rule that the appellate court engages in the same inquiry as the trial court." *Id.* That is what the Court of Appeals did here, and doing so does not implicate a due process violation. *See* RAP 2.5(a); *LK Operating, LLC*, 181 Wn.2d at 72.

Based on Plaintiffs' allegations, controlling law, and the undisputed facts, DNR's motion raised a legal question that the Court of Appeals appropriately decided. The existence and scope of a duty, including whether it is owed "in a particular situation," are legal questions of law for the court to decide. *Keller*, 146 Wn.2d at 243; *Wuthrich*, 185 Wn.2d at 25. Here, DNR argued that summary judgment was required because "[a]ll of plaintiffs' claims arise from allegations that DNR was negligent in its efforts to suppress the wildfires that formed the Carlton Complex," and "[b]y both

common law and statute, DNR owed no actionable duty to these plaintiffs because claims of negligent fire suppression are governed by the public duty doctrine.” CP 24-25 (referencing RCW 76.04.016); *see also* CP 30-31, 36, 38-40, 412, 416-19, 422, 456; VRP 17, 19, 21-24. In support of its motion, DNR offered testimony and argument that DNR’s response to the Carlton Complex fire was entirely in its statutory firefighting capacity, which is separate and distinct from its landowner capacity. CP 25-26, 198-99, 207-217. Because Plaintiffs’ claims were entirely premised on actions taken by DNR in its fire suppression capacity, DNR argued there were “no facts plaintiffs [could] raise to defeat summary judgment on the issue of duty.” CP 40. Accordingly, DNR argued it did not owe Plaintiffs any actionable duty in this situation because RCW 76.04.016 precludes a tort duty based on DNR’s acts performed in its statutory fire suppression capacity. CP 39.

Plaintiffs had multiple opportunities to respond to these arguments, including in their (1) initial response to DNR’s motion for summary judgment, (2) “sur-reply,” (3) oral argument on the motion for summary judgment, and (4) motion for reconsideration. At no time did Plaintiffs disagree that DNR was performing statutorily-required public fire suppression services in response to the Carlton Complex Fires, nor claimed they needed additional discovery to contest that point. Instead, the crux of Plaintiffs’ argument was and continues to be that when a fire starts on DNR land, DNR’s statutorily-required fire suppression response is necessarily part of its landowner response. But, as the Court of Appeals concluded in rejecting Plaintiffs’ position, RCW 76.04.016 and related statutes clearly

separate DNR's capacity and duties as a landowner from its statutory capacity as a fire suppression agency, and the undisputed evidence was that DNR responded to the Carlton Complex fire in its capacity as a fire suppression agency. This is a question of law involving the interpretation and application of RCW 76.04.016 and related statutes, and the Court of Appeals appropriately addressed it.

Contrary to Plaintiffs' characterization, the Court of Appeals did not decide whether Plaintiffs *established* a breach of duty. *Compare* Pet. at 3 *with Schulz*, 12 Wn. App. 2d at 740-41. Rather, Plaintiffs did not controvert the undisputed evidence that the fires were spotted and reported to the NEWICC dispatch center. This triggered DNR's statutory fire suppression response. CP 198-99, 207-11; *Schulz*, 12 Wn. App. 2d at 740-41 ("Instead, we find only *allegations* that DNR committed negligence in protecting or suppressing fire in the forest protection zones for which it is responsible as a fire suppression agency. This does not present a genuine issue of fact of *landowner liability*.") (First emphasis added). The issue was always the respective scope of DNR's actionable landowner duty versus its non-actionable public fire suppression duty, which is a legal question. *See Wuthrich*, 185 Wn.2d at 25. The Court of Appeals correctly addressed DNR's argument that Plaintiffs' own allegations and the undisputed facts of this case did not implicate DNR's duties as a landowner.

V. CONCLUSION

This Court should deny Plaintiffs' petition.

RESPECTFULLY SUBMITTED this 13th day of July 2020.

ROBERT W. FERGUSON
Attorney General

s/ Alicia O. Young
ALICIA O. YOUNG, WSBA 35553
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2020, I caused the foregoing document to be electronically filed with the Clerk of the Court using the appellate CM/ECF system, which will send notification of such filing to all parties of record. True and correct copies of the foregoing documents were also served via email upon the following parties:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of July, 2020.

s/ Stacey McGahey

STACEY MCGAHEY
Legal Assistant

Appendix A

RCW 76.04

Chapter Listing | RCW Dispositions

Chapter 76.04 RCW

FOREST PROTECTION

Sections

ADMINISTRATION

- 76.04.005** Definitions.
- 76.04.015** Fire protection powers and duties of department—Enforcement—Investigation—Administration.
- 76.04.016** Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.
- 76.04.021** Department must accommodate livestock owner's request to retrieve or care for animals at risk due to a wildfire—Liability.
- 76.04.025** Federal funds.
- 76.04.035** Wardens—Appointment—Duties.
- 76.04.045** Rangers—Appointment—Ex officio rangers—Compensation.
- 76.04.055** Service of notices.
- 76.04.065** Arrests without warrants.
- 76.04.075** Rules—Penalty.
- 76.04.085** Penalty for violations.
- 76.04.095** Cooperative protection.
- 76.04.105** Contracts for protection and development.
- 76.04.115** Articles of incorporation—Requirements.
- 76.04.125** Requisites of contract.
- 76.04.135** Cooperative agreements—Public agencies—Transfer of ownership of department-owned firefighting vehicle, procedure.
- 76.04.155** Firefighting—Employment—Assistance.
- 76.04.165** Legislative declaration—Forest protection zones.
- 76.04.167** Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression.
- 76.04.175** Fire suppression equipment—Comparison of costs.
- 76.04.177** Fire suppression equipment—Requirement to utilize private equipment.
- 76.04.179** Wildland fire advisory committee.
- 76.04.181** Maximizing the utilization of local fire suppression assets—Department's duty.
- 76.04.183** Prescribed burn manager certification program—Rule-making authority.

PERMITS

- 76.04.205** Burning permits.
- 76.04.215** Burning mill wood waste—Arresters.

76.04.235 Dumping mill waste, forest debris—Penalty.

76.04.246 Use of blasting fuse.

CLOSURES/SUSPENSIONS

76.04.305 Closed to entry—Designation.

76.04.315 Suspension of burning permits/privileges.

76.04.325 Closure of forest operations or forestlands.

FIRE PROTECTION REGULATION

76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.

76.04.415 Penalty for violations—Work stoppage notice.

76.04.425 Unauthorized entry into sealed fire tool box.

76.04.435 Deposit of fire or live coals.

76.04.445 Reports of fire.

76.04.455 Discarding lighted material or smoking flammable material—Discharge, release, or detonation of certain materials—Receptacles in conveyances—Posting a copy of this section.

76.04.465 Certain snags to be felled currently with logging.

76.04.475 Reimbursement for costs of suppression action.

76.04.486 Escaped slash burns—Obligations.

76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600 Owners to protect forests.

76.04.610 Forest fire protection assessment.

76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.

HAZARD ABATEMENT

76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.

FIRE REGULATION

76.04.700 Failure to extinguish campfire.

76.04.710 Wilful setting of fire.

76.04.720 Removal of notices.

76.04.730 Negligent fire—Spread.

76.04.740 Reckless burning.

76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.

- 76.04.760** Civil actions—Forested lands—Fire damage.
- 76.04.770** Authorization to enter privately or publicly owned land to extinguish or control a wildland fire—Limitation of liability.
- 76.04.780** Utility wildland fire prevention task force—Duties.
- 76.04.900** Captions—1986 c 100.

NOTES:

Burning permits within fire protection districts: RCW 52.12.101.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers and pressure vessels, construction, installation, inspection, and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.02.320.

RCW 76.04.005

Definitions.

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Additional fire hazard" means a condition existing on any land in the state:
- (a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or
 - (b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forestland in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.
- (2) "Closed season" means the period between April 15th and October 15th, unless the department designates different dates because of prevailing fire weather conditions.
- (3) "Commissioner" means the commissioner of public lands.
- (4) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.
- (5) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.
- (6) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, windstorms, ice storms, and fires.
- (7) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of

equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(8) "Exploding target" means a device that is designed or marketed to ignite or explode when struck by firearm ammunition or other projectiles.

(9) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forestland.

(10) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(11) "Forestland" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forestlands when such areas are adjacent to or intermingled with areas supporting tree growth. Forestland, for protection purposes, does not include structures.

(12) "Forestland owner," "owner of forestland," "landowner," or "owner" means the owner or the person in possession of any public or private forestland.

(13) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(14) "Incendiary ammunition" means ammunition that is designed to ignite or explode upon impact with or penetration of a target or designed to trace its course in the air with a trail of smoke, chemical incandescence, or fire.

(15) "Landowner operation" means every activity, and supporting activities, of a forestland owner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forestland subject to the forest protection assessment under RCW **76.04.610** for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(16) "Local fire suppression assets" means firefighting equipment that is located in close proximity to the wildland fire and that meets department standards and requirements.

(17) "Local wildland fire liaison" means the person appointed by the commissioner to serve as the local wildland fire liaison as provided in RCW **43.30.111**.

(18) "Participating landowner" means an owner of forestland whose land is subject to the forest protection assessment under RCW **76.04.610**.

(19) "Sky lantern" means an unmanned self-contained luminary device that uses heated air produced by an open flame or produced by another source to become or remain airborne.

(20) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forestland as a result of a landowner operation.

(21) "Slash burning" means the planned and controlled burning of forest debris on forestlands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(22) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(23) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property.

[2015 c 182 § 7. Prior: 2014 c 90 § 1; 2007 c 480 § 12; 1992 c 52 § 24; 1986 c 100 § 1.]

NOTES:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

RCW 76.04.015

Fire protection powers and duties of department—Enforcement—Investigation—Administration.

(1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and, consistent with RCW 76.04.021, direct the work of suppressing forest fires;

(c)(i) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

(ii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if the evidence is used by the owner in conducting a business or in providing an electric utility

service and the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

(iii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this subsection (3)(c)(iii) does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

(iv) Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state, areas where forest health treatments were undertaken on state, federal, or private land, public general transportation roads and public and private logging roads, water bodies, and other features on the landscape relevant in planning a fire response and include those features on a geographic information system for use by fire response personnel to assist in response decision making;

(f) Maximize the effective utilization of local fire suppression assets consistent with RCW **76.04.181**; and

(g) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules consistent with this section for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timberlands within the state;

(ii) The extent to which timberlands are being destroyed by fire and the damage thereon;

(e) Provide fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by the department or another state agency, but only to the extent that providing these services does not interfere with or detract from the obligations set forth in subsection (3) of this section. If the department provides fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by another state agency, the department must be fully reimbursed for the work through a cooperative agreement as provided for in RCW **76.04.135**(1).

(5) Any rules adopted under this section for the suppression of forest fires must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW **43.43.963**, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond

the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(6) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest firefighting and patrol.

[2019 c 305 § 2; 2016 c 109 § 1; 2015 c 182 § 5; 2012 c 38 § 1; 2010 c 38 § 1; 1993 c 196 § 3; 1986 c 100 § 2.]

RCW 76.04.016

Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.

The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner.

[1993 c 196 § 1.]

RCW 76.04.021

Department must accommodate livestock owner's request to retrieve or care for animals at risk due to a wildfire—Liability.

(1)(a) The department must make every reasonable effort to accommodate a livestock owner's request to retrieve or care for animals in his or her charge that are at risk due to a wildfire.

(b) The department may only prohibit livestock owners, or the owner's employees or agents, from retrieving or caring for livestock that are lawfully present on the public lands during any fire suppression response if doing so is reasonably necessary to prevent interference with a direct, active fire response.

(2) The department must incorporate the implementation of this section into any prefire season training or coordination conducted in local communities that contain active grazing areas.

(3)(a) The owner of livestock lawfully present on public lands assumes full liability for any damages incurred to himself or herself, and any employees or agents in his or her charge,

if public lands are accessed to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question.

(b) No civil liability may be imposed by any court on the state, the department, or another political subdivision of the state for any direct or indirect adverse impacts, including injury or death, resulting from:

(i) The department's reasonable efforts under this section to accommodate a livestock owner, or the owner's employees or agents, to retrieve or care for animals in his or her charge that are at risk due to a wildfire; or

(ii) A livestock owner, or the owner's employees or agents, accessing public lands to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question.

[2016 c 109 § 2.]

RCW 76.04.025

Federal funds.

The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests.

[1986 c 100 § 3.]

RCW 76.04.035

Wardens—Appointment—Duties.

(1) The department may appoint any of its employees as wardens, at the times and localities as it considers the public welfare demands, within any area of the state where there is forestland requiring protection.

(2) The duties of wardens shall be:

(a) To provide forest fire prevention and protection information to the public;

(b) To investigate discovered or reported fires on forestlands and take appropriate action;

(c) To patrol their areas as necessary;

(d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;

(e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;

(f) To see that operations or activities on forestland have all required fire prevention and suppression equipment or devices as required by law;

(g) To extinguish wildfires;

(h) To set back-fires to control fires;

- (i) To summons, impress, and employ help in controlling wildfires;
 - (j) To see that all laws for the protection of forests are enforced;
 - (k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and
 - (l) To perform all other duties as prescribed by law and as the department directs.
- (3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how employed, the area visited, expenses incurred, and other information as required by the department.
- (4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.
- (5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.
- (6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state.

[1986 c 100 § 4.]

RCW 76.04.045

Rangers—Appointment—Ex officio rangers—Compensation.

- (1) All Washington state patrol officers, fish and wildlife officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.
- (2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens as specified in this chapter and as directed by the department.
- (3) Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: PROVIDED, That rangers actually engaged in extinguishing or preventing the spread of fire on forestland or elsewhere that may endanger forestland shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.
- (4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office.

[2001 c 253 § 9; 1986 c 100 § 5.]

RCW 76.04.055

Service of notices.

Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice.

[1986 c 100 § 6.]

RCW 76.04.065

Arrests without warrants.

Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law.

[1986 c 100 § 7.]

RCW 76.04.075

Rules—Penalty.

Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided.

[1986 c 100 § 8.]

RCW 76.04.085

Penalty for violations.

Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021.

[1986 c 100 § 9.]

RCW 76.04.095

Cooperative protection.

When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state.

[1986 c 100 § 10.]

RCW 76.04.105

Contracts for protection and development.

The department may enter into contracts and undertakings with private corporations for the protection and development of the forestlands within the state, subject to the provisions of this chapter.

[1986 c 100 § 11.]

RCW 76.04.115

Articles of incorporation—Requirements.

Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department.

[1986 c 100 § 12.]

RCW 76.04.125

Requisites of contract.

Any undertaking for the protection and development of the forestlands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of

disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forestlands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corporation for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105.

[1986 c 100 § 13.]

RCW 76.04.135

Cooperative agreements—Public agencies—Transfer of ownership of department-owned firefighting vehicle, procedure.

(1) For the purpose of promoting and facilitating cooperation among fire protection agencies, including the department, and between the department and other agencies that manage lands owned by the state, and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect or manage.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands.

(4) The department may transfer ownership of depreciated firefighting vehicles and related equipment upon terms subject to mutual agreement to local fire districts in wildfire prone areas in all areas of the state, as determined by the department, and where the median household income is below the state average. These vehicle and equipment transfers are exempt from the requirements in RCW 43.19.1919(1). The department must notify the chairs and ranking members of the legislative committees with jurisdiction regarding these transfers at least ten days prior to transfer of the equipment.

[2017 c 280 § 2; 2012 c 38 § 2; 1986 c 100 § 14.]

NOTES:

Effective date—2017 c 280: See note following RCW 43.30.575.

RCW 76.04.155**Firefighting—Employment—Assistance.**

(1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire.

[1986 c 100 § 16.]

RCW 76.04.165**Legislative declaration—Forest protection zones.**

(1) The legislature finds and declares that forestlands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forestlands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forestland which the department is obligated to protect but shall not include forestland within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forestland not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW **76.04.610** or **76.04.630**.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter **34.05** RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement.

[1995 c 151 § 2; 1988 c 273 § 2.]

RCW 76.04.167

Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression.

(1) The legislature hereby finds and declares that:

(a) Forest wildfires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, economic and employment opportunities, structures, and other improvements;

(b) Forestland owners and the public have a shared interest in protecting forests and forest resources by preventing and suppressing forest wildfires;

(c) A recent independent analysis of the state fire program considered it imperative to restore a more equitable split between the general fund and forest protection assessments;

(d) Without a substantial increase in forest protection funds, the state's citizens will be paying much more money for emergency fire suppression; and

(e) It is therefore the intent of the legislature that the costs of fire protection be equitably shared between the forest protection assessment account and state contributions to ensure that there will be sufficient firefighters who are equipped and trained to respond quickly to fires in order to keep fires small and manage those large fires that do occur. In recognition of increases in landowner assessments, the legislature declares its intent that increases in the state's share for forest protection should be provided to stabilize the funding for the forest protection program, and that sufficient state funds should be committed to the forest protection program so that the recommendations contained in the 1997 tridata report can be implemented on an equitable basis.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wildfires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wildfires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wildfires by maintaining healthy forests and eliminating sources of fuel.

[2001 c 279 § 1; 1995 c 151 § 1.]

RCW 76.04.175

Fire suppression equipment—Comparison of costs.

(1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires.

[[1995 c 113 § 2.](#)]

NOTES:

Finding—Intent—1995 c 113: "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW [76.04.015\(4\)\(b\)](#), when such utilization will be most effective and efficient." [[1995 c 113 § 1.](#)]

RCW [76.04.177](#)

Fire suppression equipment—Requirement to utilize private equipment.

Before constructing or purchasing any equipment listed in RCW [76.04.175\(1\)](#) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder.

[[1995 c 113 § 3.](#)]

NOTES:

Finding—Intent—1995 c 113: See note following RCW [76.04.175](#).

RCW [76.04.179](#)

Wildland fire advisory committee.

(1) The commissioner must appoint and maintain a wildland fire advisory committee to generally advise the commissioner on all matters related to wildland firefighting in the state. This includes, but is not limited to, developing recommendations regarding department capital budget requests related to wildland firefighting and developing strategies to enhance the safe and effective use of private and public wildland firefighting resources.

(2) The commissioner may appoint members to the wildland fire advisory committee as the commissioner determines is the most helpful in the discharge of the commissioner's duties. However, at a minimum, the commissioner must invite the following:

(a) Two county commissioners, one from east of the crest of the Cascade mountains and one from west of the crest of the Cascade mountains;

(b) Two owners of industrial land, one an owner of timberland and one an owner of rangeland;

(c) The state fire marshal or a representative of the state fire marshal's office;

(d) Two individuals with the title of fire chief, one from a community located east of the crest of the Cascade mountains and one from a community located west of the crest of the Cascade mountains;

(e) An individual with the title of fire commissioner whose authority is pursuant to chapter **52.14** RCW;

(f) A representative of a federal wildland firefighting agency;

(g) A representative of a tribal nation;

(h) A representative of a statewide environmental organization;

(i) A representative of a state land trust beneficiary; and

(j) A small forestland owner.

(3) The local wildland fire liaison serves as the administrative chair for the wildland fire advisory committee.

(4) The department must provide staff support for all committee meetings.

(5) The wildland fire advisory committee must meet at the call of the administrative chair for any purpose that directly relates to the duties set forth in subsection (1) of this section or as is otherwise requested by the commissioner or the administrative chair.

(6) Each member of the wildland fire advisory committee serves without compensation but may be reimbursed for travel expenses as authorized in RCW **43.03.050** and **43.03.060**.

(7) The members of the wildland fire advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(8) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

[**2015 c 182 § 3.**]

RCW 76.04.181

Maximizing the utilization of local fire suppression assets—Department's duty.

(1) To maximize the effective utilization of local fire suppression assets, the department is required to:

(a) Actively engage in ongoing prefire season outreach and recruitment of qualified wildland fire suppression contractors and equipment owners who have valid incident qualifications for the type of contracted work to be performed and compile and annually update a master list of the qualified contractors. In order to be included on a master list of qualified wildland fire suppression contractors:

(i) Contractors providing fire engines, tenders, crews, or similar resources must have training and qualifications sufficient for federal wildland fire contractor eligibility, including possessing a valid incident qualification card, commonly called a red card; and

(ii) Contractors other than those identified in (a)(i) of this subsection must have training and qualifications evidenced by possession of a valid department qualification and safety document, commonly called a blue card, issued to people cooperating with the department pursuant to an agreement;

(b) Provide timely advance notification of the dates and locations of department blue card training to all potential wildland fire suppression contractors known to the department and make the training available in several locations that are reasonably convenient for contractors;

(c) Organize the lists of qualified wildland fire suppression contractors to identify the counties where the contractors are located and make the lists, and the availability status of the contractors on the list, available to emergency dispatchers, county legislative authorities, emergency management departments, and local fire districts;

(d) Cooperate with federal wildland firefighting agencies to prioritize, based on predicted need, the efficient use of local resources in close proximity to wildland fire incidents, including local private wildland suppression contractors;

(e) Enter into preemptive agreements with landowners and other contractors in possession of firefighting capability that may be utilized in wildland fire suppression efforts, including the use of bulldozers, fallers, fuel tenders, potable water tenders, water sprayers, wash trailers, refrigeration units, and buses; and

(f) Conduct outreach to provide basic incident command system and wildland fire safety training to landowners in possession of firefighting capability to help ensure that any wildland fire suppression actions taken by private landowners on their own land are accomplished safely and in coordination with any related incident command structure.

(2) The local wildland fire liaison may play an active role in the outreach and recruitment of wildland fire suppression contractors under subsection (1) of this section. This effort may include, but is not limited to, reaching out to local fire districts and collecting their knowledge to identify potential fire suppression contractors.

(3) Nothing in subsection (1) of this section prohibits the department from:

(a) Engaging, as needed, local private wildland fire suppression contractors not included on the master list or subject to a preemptive agreement; or

(b) Conducting safety training on the site of a wildland fire in order to utilize available contractors not included on a master list of qualified wildland fire suppression contractors.

(4) When entering into preemptive agreements with landowners and other contractors under this section, the department must:

(a) Ensure that all equipment and personnel satisfy department standards, including any applicable safety training certifications required by the department of labor and industries;

(b) Ensure that all contractors are, when engaged in fire suppression activities, under the supervision of recognized wildland fire personnel;

(c) Verify that the agreements have been finalized with an agreed upon standard operating rate identified before being included on the master list of qualified contractors; and

(d) Inspect, or verify the inspection of, any equipment included in the agreement to ensure that all safety and dependability standards are satisfied.

(5) The department may authorize operational field personnel to carry additional personal protection equipment in order to loan the equipment to private fire suppression contractors as needed.

(6) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from training or personal protection equipment provided by the department or preemptive agreements entered into by the department under the provisions of this section except upon proof of gross negligence or willful or wanton misconduct.

(5) [(7)] All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

[**2017 c 104 § 1**; **2015 c 182 § 6**.]

NOTES:

Effective date—2017 c 104: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2017." [**2017 c 104 § 4**.]

RCW 76.04.183

Prescribed burn manager certification program—Rule-making authority.

(1) Subject to availability of amounts appropriated for this specific purpose, the department must create a prescribed burn manager certification program for those who practice prescribed burning in the state. The certification program must include training on all relevant aspects of prescribed fire in Washington including, but not limited to, the following: Legal requirements; safety; weather; fire behavior; smoke management; prescribed fire techniques; public relations; planning; and contingencies.

(2) The department may not require certification under the program created under subsection (1) of this section for burn permit approval under this chapter. Nothing in this section may be construed as creating a mandatory prescribed burn manager certification requirement to conduct prescribed burning in Washington.

(3) No civil or criminal liability may be imposed by any court, the state, or its officers and employees, on a prescribed burn manager certified under the program created under subsection (1) of this section, for any direct or proximate adverse impacts resulting from a prescribed fire conducted under the provisions of this chapter except upon proof of gross negligence or willful or wanton misconduct.

(4) The department may adopt rules to create the prescribed burn manager certification program and to set periodic renewal criteria. The rules should be developed in consultation with prescribed burn programs in other states. The department may also adopt rules to establish a decertification process for certified prescribed burn managers who commit

a violation under this chapter or rules adopted under this chapter. The department may, in its own discretion, develop an equivalency test for experienced prescribed burn managers.

(5) Certified prescribed burn managers may be issued burn permits with modified requirements in recognition of their training and skills. In such cases, normal smoke management and fire risk parameters apply.

[2018 c 172 § 1.]

RCW 76.04.205

Burning permits.

(1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

- (a) Any flammable material on any lands under the protection of the department; or
- (b) Refuse or waste forest material on forestlands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee.

Conditions may be imposed in the permit for the protection of life, property, or air quality and [the department] may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

- (a) All requirements relating to firefighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;
- (b) No unreasonable danger will result; and
- (c) Burning will be done in compliance with air quality standards established by chapter

70.94 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter **70.94** RCW.

[1986 c 100 § 17.]

RCW 76.04.215

Burning mill wood waste—Arresters.

(1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks.

[1986 c 100 § 18.]

RCW 76.04.235

Dumping mill waste, forest debris—Penalty.

(1) No person may dump mill waste from forest products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forestlands located in this state without first obtaining a written permit issued by the department on such terms and conditions determined by the department pursuant to rules enacted to protect forestlands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW **9A.20.021** and may further be required to remove all materials dumped.

[1986 c 100 § 19.]

RCW 76.04.246

Use of blasting fuse.

It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit.

[1986 c 100 § 20.]

RCW 76.04.305

Closed to entry—Designation.

(1) When, in the opinion of the department, any forestland is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard-CLOSED TO ENTRY-except as provided by RCW **76.04.305**" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section.

[**1986 c 100 § 21.**]

RCW 76.04.315

Suspension of burning permits/privileges.

In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW **76.04.205** and may prohibit absolutely the use of fire in such locations.

[**1986 c 100 § 22.**]

RCW 76.04.325

Closure of forest operations or forestlands.

(1) When in the opinion of the department weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forestlands may be endangered, the department may issue an order restricting access to and activities on forestlands. The order shall describe the regions and extent of restrictions necessary to protect forestlands. During the period in which the order is in effect, all persons

may be excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense.

[1986 c 100 § 23.]

RCW 76.04.405

Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.

It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forestland or in any place where, in the opinion of the department, fire could spread to forestland, without first complying with the requirements as may be established by the department by rule pursuant to this chapter.

[1986 c 100 § 24.]

RCW 76.04.415

Penalty for violations—Work stoppage notice.

(1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW **76.04.215**, **76.04.305**, **76.04.405**, or **76.04.650** or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day.

[1986 c 100 § 25.]

RCW 76.04.425

Unauthorized entry into sealed fire tool box.

It is unlawful to enter into a sealed fire tool box without authorization.

[1986 c 100 § 26.]

RCW 76.04.435**Deposit of fire or live coals.**

No person operating a railroad may permit to be deposited by any employee, and no one may deposit fire or live coals, upon the right-of-way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished.

[1986 c 100 § 27.]

RCW 76.04.445**Reports of fire.**

(1) Any person engaged in any activity on forestlands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forestlands.

(2) Railroad companies and other public carriers operating on or through forestlands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right-of-way or route.

[1986 c 100 § 28.]

RCW 76.04.455**Discarding lighted material or smoking flammable material—Discharge, release, or detonation of certain materials—Receptacles in conveyances—Posting a copy of this section.**

(1)(a) Except as otherwise provided in this subsection, it is unlawful for any person to, during the closed season:

(i) Discard any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material, discharge any incendiary ammunition, release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas; or

(ii) Smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(b) The prohibitions contained in this subsection do not apply to the detonation of nonflammable exploding targets on any forest, brush, range, or grain areas if the person detonating the nonflammable exploding target:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(c) The prohibitions contained in this subsection do not apply to suppression actions authorized or conducted by the department under the authority of this chapter.

(2)(a) Except as otherwise provided in this subsection, it is unlawful for any person to, during any time outside of the closed season, discharge any incendiary ammunition, release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas.

(b) The prohibitions contained in this subsection do not apply if the person conducting the otherwise prohibited action:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(3) Every conveyance operated through or above forest, range, brush, or grain areas must be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation.

[2014 c 90 § 2; 1986 c 100 § 29.]

RCW 76.04.465

Certain snags to be felled currently with logging.

Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat.

[1986 c 100 § 30.]

RCW 76.04.475

Reimbursement for costs of suppression action.

Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may

be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW **76.04.486**.

(2) If the fire is started in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental.

[1986 c 100 § 31.]

RCW 76.04.486

Escaped slash burns—Obligations.

(1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forestlands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forestlands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner.

[1986 c 100 § 32.]

RCW 76.04.495

Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.

(1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forestland; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the firefighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington.

[1993 c 196 § 2; 1986 c 100 § 33.]

RCW 76.04.600

Owners to protect forests.

Every owner of forestland in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department.

[1986 c 100 § 34.]

RCW 76.04.610

Forest fire protection assessment.

(1)(a) If any owner of forestland within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (i) A flat fee assessment of seventeen dollars and fifty cents; and (ii) twenty-seven cents on each acre exceeding fifty acres.

(b) Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars, (ii) twenty-seven cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. Property owners with the following number of parcels may apply to the department in the year indicated:

Year	Number of Parcels
2002	10 or more parcels
2003	8 or more parcels
2004 and thereafter	6 or more parcels

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forestlands.

(4) For the purpose of this chapter, the department may divide the forestlands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may

classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forestlands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW **52.16.170**.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forestlands or received from any other source for necessary administrative costs in connection with the enforcement of RCW **76.04.660**. During the 2017-2019 and 2019-2021 fiscal biennia, the legislature may appropriate moneys from the account for department of natural resources wildfire response and forest health activities.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forestland included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW **76.04.630**. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forestlands owned or administered by it, is liable for the costs of suppression incurred by the department

or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments.

[**2019 c 415 § 981**; **2018 c 299 § 912**; **2012 2nd sp.s. c 7 § 922**; **2007 c 110 § 1**; **2004 c 216 § 1**; **2001 c 279 § 2**; **1993 c 36 § 1**; **1989 c 362 § 1**; **1988 c 273 § 3**; **1986 c 100 § 35.**]

NOTES:

Effective date—2019 c 415: See note following RCW **28B.20.476**.

Effective date—2018 c 299: See note following RCW **43.41.433**.

Effective date—2012 2nd sp.s. c 7: See note following RCW **2.68.020**.

Effective date—1993 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 15, 1993]." [**1993 c 36 § 3.**]

RCW 76.04.620

State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.

Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer.

[**1986 c 100 § 36.**]

RCW 76.04.630

Landowner contingency forest fire suppression account—Expenditures—Assessments.

There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forestlands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, the determination shall be final, unless, within ninety days of the notification, or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598.

[2010 1st sp.s. c 7 § 129; 1993 c 36 § 2; 1991 sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

NOTES:

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW **43.03.027**.

Effective date—1993 c 36: See note following RCW **76.04.610**.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW **18.08.240**.

Effective date—1989 c 175: See note following RCW **34.05.010**.

RCW 76.04.650**Disposal of forest debris—Permission to allow trees to fall on another's land.**

Everyone clearing land or clearing right-of-way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right-of-way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right-of-way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right-of-way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section.

[**1986 c 100 § 38.**]

RCW 76.04.660**Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.**

(1) The owner of land on which there is an additional fire hazard, when the hazard is the result of a landowner operation or the land is within an area covered by a forest health

hazard warning issued under RCW **76.06.180**, shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) An extreme fire hazard shall exist within areas covered by a forest health hazard order issued by the commissioner of public lands under RCW **76.06.180** in which there is an additional fire hazard caused by disturbance agents and the landowner has failed to take such action as required by the forest health hazard order. The duties and liability of such landowner under this chapter are as described in subsections (5), (6), and (7) of this section.

(3) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(4) The department may adopt rules defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(5) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(6) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW **76.04.650** refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(7) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(8) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW **76.04.650** exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(9) A landowner or manager may make a written request to the department to inspect their property and provide a written notice that they have complied with a forest health hazard warning or forest health hazard order, or otherwise adequately abated, isolated, or reduced an additional or extreme fire hazard. An additional or extreme fire hazard shall be considered to continue to exist unless and until the department, in its sole discretion, issues such notice.

[**2010 1st sp.s. c 7 § 130; 2007 c 480 § 13; 1986 c 100 § 39.**]

NOTES:

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

RCW 76.04.700

Failure to extinguish campfire.

It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire.

[1986 c 100 § 40.]

RCW 76.04.710

Wilful setting of fire.

It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forestlands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree.

[1986 c 100 § 41.]

RCW 76.04.720

Removal of notices.

It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter.

[1986 c 100 § 42.]

RCW 76.04.730

Negligent fire—Spread.

It is unlawful for any person to negligently allow fire originating on the person's own property to spread to the property of another.

[1986 c 100 § 43.]

RCW 76.04.740**Reckless burning.**

(1) It is unlawful to knowingly cause a fire or explosion and thereby place forestlands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW **9A.48.040**.

(3) Terms used in this section shall have the meanings given to them in Title **9A** RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW **9A.20.021**.

[**1986 c 100 § 44.**]

RCW 76.04.750**Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.**

Any fire on or threatening any forestland burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forestlands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forestland within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW **76.04.475**, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right-of-way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the firefighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a firefighting crew or fire patrol until authority has been granted in writing by the department.

[**1988 c 273 § 4; 1986 c 100 § 45.**]

RCW 76.04.760**Civil actions—Forested lands—Fire damage.**

(1) The owner of public or private forested lands may bring a civil action in superior court for property damage to public or private forested lands, including real and personal property on those lands, when the damage results from a fire that started on or spread from public or private forested lands.

(2) Liability under this section attaches to the extent that evidence demonstrates that:

(a) An action or inaction by a person relating to the start or spread of the fire from public or private forested lands constituted negligence or a higher degree of fault; and

(b) The action or inaction under (a) of this subsection was a proximate cause of the property damage.

(3) Recoverable damages under this section are limited to:

(a) Either: (i) The difference in the fair market value of the damaged property immediately before and after the fire. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter **18.140** RCW; or (ii) the reasonable cost of restoring the damaged property to the general condition it was in immediately before the fire, to the extent permitted by Washington law;

(b) The reasonable expenses incurred to suppress or extinguish the fire unless otherwise provided for in this chapter;

(c) Any other objectively verifiable monetary loss, that is not duplicative of the recovery specified under (a) or (b) of this subsection including, but not limited to: Out-of-pocket expenses; loss of earnings; loss of use of property; or loss of business or employment opportunities; and

(d) In actions brought by an Indian tribe for recovery of damages from injury to archaeological objects, archaeological sites, or historic archaeological resources, damages as measured in accordance with WAC 25-48-043 as it existed on June 12, 2014.

(4) This section provides the exclusive cause of action for property damage to public or private forested lands, including real and personal property on those lands, resulting from a fire that started on or spread from public or private forested lands.

(5) The definitions in this subsection only apply throughout this section relating to the specification of damages for fire damage to public and private forested lands, unless the context clearly requires otherwise, and do not apply to and are not intended as a source for interpretation of other sections of this chapter.

(a) "Fair market value" means the amount that a willing buyer would pay to a willing seller for property in an arms-length transaction if both parties were fully informed about all advantages and disadvantages of the property and neither party is acting under a compulsion to sell, as determined by: (i) For real property, a state-certified general real estate appraiser as defined under RCW **18.140.010**; and (ii) for personal property, an appraiser qualified to

appraise the property based on training and experience. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter **18.140 RCW**.

(b) "Forest tree species" means a tree species that is capable of producing logs, fiber, or other wood materials that are suitable for the production of lumber, sheeting, pulp, firewood, or other forest products.

(c) "Owner of public or private forested lands" means any person in actual control of public or private forested lands, whether the 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 the land in any manner.

(d) "Person" includes: An individual; a corporation; a public or private entity or organization; a local, state, or federal government or governmental entity; any business organization, including corporations and partnerships; or a group of two or more individuals acting with a common purpose.

(e) "Public or private forested lands" means any lands used or biologically capable of being used for growing forest tree species regardless of the existing use of the land except when the predominant physical use of the land at the time of the fire is not consistent with the growing, conservation, or preservation of forest tree species. Examples of inconsistent uses include, but are not limited to, buildings, airports, parking lots, mining, solid waste disposal, cropfields, orchards, vineyards, pastures, feedlots, communication sites, and home sites that may include up to ten acres. Public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands.

[**2014 c 81 § 1.**]

NOTES:

Authority of chapter—2014 c 81: "This act does not: Affect or preclude any action relating to the imposition of criminal or civil penalties as authorized by law; affect or preclude the recovery of fire suppression costs as authorized under chapter **76.04 RCW**; affect or preclude an action under RCW **4.24.630** against a person who goes onto the land of another without authorization and wrongfully, intentionally, and unreasonably causes a fire resulting in property damage; affect or preclude an action under chapter **27.44** or **27.53 RCW**; or affect the provisions of RCW **76.04.016.**" [**2014 c 81 § 4.**]

Application—2014 c 81: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise on or after June 12, 2014." [**2014 c 81 § 5.**]

RCW 76.04.770**Authorization to enter privately or publicly owned land to extinguish or control a wildland fire—Limitation of liability.**

(1)(a) An individual may, consistent with this section, enter privately owned or publicly owned land for the purposes of attempting to extinguish or control a wildland fire, regardless of whether the individual owns the land, when fighting the wildland fire in that particular time and location can be reasonably considered a public necessity due to an imminent danger.

(b) No civil or criminal liability may be imposed by any court on an individual acting pursuant to this section for any direct or proximate adverse impacts resulting from an individual's access to land for the purposes of attempting to extinguish or control a wildland fire when fighting the wildland fire in that particular time and location can be reasonably considered a public necessity, except upon proof of gross negligence or willful or wanton misconduct by the individual.

(c) An individual may enter land under this subsection (1) only if:

(i) There is an active fire on or in near proximity to the land;

(ii) The individual has a reasonable belief that the local fire conditions are creating an emergency situation and that there is an imminent danger of a fire growing or spreading to or from the parcel of land being entered;

(iii) The individual has a reasonable belief that preventive measures will extinguish or control the wildfire;

(iv) The individual has a reasonable belief that he or she is capable of taking preventive measures;

(v) The individual only undertakes measures that are reasonable and necessary until professional wildfire suppression personnel arrives;

(vi) The individual does not continue to take suppression actions after specific direction to cease from the landowner;

(vii) The individual takes preventive measures only for the period of time until efforts to control the wildfire have been assumed by professional wildfire suppression personnel, unless explicitly authorized by professional wildland firefighting personnel to remain engaged in suppressing the fire;

(viii) The individual follows the instructions of professional wildland firefighting personnel, including ceasing to engage in firefighting activities, when directed to do so by professional wildland firefighting personnel; and

(ix) The individual promptly notifies emergency personnel and the landowner, lessee, or occupant prior to entering the land or within a reasonable time after the individual attempts to extinguish or control the wildland fire.

(d) Nothing in this section authorizes any person to materially benefit from accessing land or retain any valuable materials that may be collected or harvested during the time the individual attempts to extinguish or control the wildland fire.

(e)(i) The authority to enter privately owned or publicly owned land under this subsection (1) is limited to the minimum necessary activities reasonably required to extinguish or control the wildland fire.

(ii) Activities that may be reasonable under this subsection (1) include, but are not limited to: Using hand tools to clear the ground of debris, operating readily available water hoses, clearing flammable materials from the vicinity of structures, unlocking or opening gates to assist firefighter access, and safely scouting and reporting fire behavior.

(iii) Activities that do not fall within the scope of this subsection (1)(e), due to the high potential for adverse consequences, include, but are not limited to: Lighting a fire in an attempt to stop the spread of another fire; using explosives as a firefighting technique; using aircraft for fire suppression; and directing other individuals to engage in firefighting.

(f) Nothing in this subsection (1) confers a legal or civil duty or obligation on a person to attempt to extinguish or control a wildfire.

(2)(a) No civil or criminal liability may be imposed by any court on the owner, lessee, or occupant of any land accessed as permitted under subsection (1) of this section for any direct or proximate adverse impacts resulting from the access to privately owned or publicly owned land allowed under subsection (1) of this section, except upon proof of willful or wanton misconduct by the owner, lessee, or occupant. The barriers to civil and criminal liability imposed by this subsection include, but are not limited to, impacts on:

(i) The individual accessing the privately owned or publicly owned land and the individual's personal property, including loss of life;

(ii) Any structures or land alterations constructed by individuals entering the privately owned or publicly owned land;

(iii) Other landholdings; and

(iv) Overall environmental resources.

(b) This subsection (2) does not apply in any case where liability for damages is provided under RCW 4.24.040.

(3) Nothing in this section limits or otherwise effects any other statutory or common law provisions relating to land access or the control of a conflagration.

[2015 c 182 § 4.]

RCW 76.04.780

Utility wildland fire prevention task force—Duties.

(1) The commissioner shall convene a utility wildland fire prevention task force with electrical power distribution utilities by July 1, 2019, and no less than quarterly thereafter until December 1, 2020. The duties of the task force are to advise the department on issues including, but not limited to:

(a) Developing, for consideration by the department and individual electric utilities, a model agreement for managing danger trees and other vegetation that pose a risk of wildland fire and associated utility liability due to the proximity to electrical transmission wires and other utility equipment;

(b) Developing communication protocols and educational exchanges between the department and electric utilities for identifying and addressing issues relating to utility infrastructure to reduce the risks of wildland fires;

(c) Developing protocols, including thresholds, for implementing the relevant provisions of RCW 76.04.015 when the department's investigation involves electric utility infrastructure or potential electric utility liability;

(d) Creating rosters of certified wildland fire investigation firms or persons and third-party qualified utility operations personnel who may be called upon by the parties as appropriate; and

(e) Other issues brought forward by task force members.

(2) In consultation with the task force created in subsection (1) of this section, the department must:

(a) Make available the form of communication protocols and educational exchanges between the department and electric utilities;

(b) With the assistance of the task force, distribute a voluntary model danger tree management agreement to utilities for their consideration for execution with the department;

(c) Publish the protocols and thresholds described in subsection (1)(c) of this section;

(d) Issue a roster of third-party certified wildland fire investigators and qualified utility personnel that may assist the department or utility in understanding and reducing risks and liabilities from wildland fire. The department must update the roster of third-party certified wildland fire investigators and qualified utility personnel no less than every four years.

(3) The department must submit, in compliance with RCW **43.01.036**, a preliminary report to the legislature by December 1, 2019, and a final report to the legislature by December 1, 2020, on the results of tasks identified in subsections (1) and (2) of this section and identification of legislation, if any, necessary to implement the recommendations of the task force.

(4) The commissioner or the commissioner's designee must chair the task force created in subsection (1) of this section and must appoint task force members. Task force membership should include:

(a) Entities providing retail electric service, including:

(i) One person representing each investor-owned utility;

(ii) Two persons representing municipal utilities;

(iii) Two persons representing public utility districts;

(iv) Two persons representing rural electric cooperatives;

(v) One person representing small forestland owners;

(vi) One person representing industrial forestland owners; and

(b) Other persons with expertise in wildland fire risk reduction and prevention.

(5) The commissioner or the commissioner's designee shall convene the initial meeting of the task force.

(6) Participation on the task force created in subsection (1) of this section is strictly voluntary and without compensation.

[**2019 c 77 § 1.**]

RCW 76.04.900

Captions—1986 c 100.

As used in this act subchapter and section captions constitute no part of the law.

[**1986 c 100 § 60.**]

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Comments:

ANSWER TO PETITION FOR REVIEW

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